

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 28 1999

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)

FCC MAIL ROOM
CC Docket No. 96-45

TWELFTH ORDER ON RECONSIDERATION
IN CC DOCKET NO. 96-45

Adopted: May 27, 1999

Released: May 28, 1999

By the Commission: Chairman Kennard and Commissioners Ness and Tristani issuing separate statements; Commissioner Furchtgott-Roth dissenting and issuing a statement at a later date; Commissioner Powell concurring in part and dissenting in part, and issuing a statement.

I. INTRODUCTION

1. In this Order, we reconsider, on our own motion, the Commission's decision governing the amount of money that may be collected during the second six months of 1999 and the first six months of 2000 to fund the second year of the federal universal service support mechanisms for schools, libraries, and rural health care providers.¹ For the reasons set forth below, we find that we should set the collection rate for the schools and libraries support mechanism at the \$2.25 billion cap adopted in the *Universal Service Order*² and that we should modify the collection rate for the rural health care support mechanism by setting a collection level of \$12 million.³ Although we modify the collection rate for the rural health

¹ The Commission retains jurisdiction to reconsider its own rules on its own motion. See 47 C.F.R. § 1.108. See also *Central Florida Enterprises, Inc., v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), cert. dismissed, 441 U.S. 957 (1979).

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 9054, para. 529 (1997), appeal pending sub nom. Texas Office of Util. Counsel, No. 97-60421 (5th Cir., filed June 25, 1997) (*Universal Service Order*).

³ See Letter from Robert Haga, Secretary and Treasurer, Universal Service Administrative Company, to Magalie Roman Salas, Secretary, Federal Communications Commission, dated May 17, 1999 (USAC May 17 Letter).

collection level of \$12 million.³ Although we modify the collection rate for the rural health care support mechanism, we do not revise the annual \$400 million cap for the rural health care support mechanism adopted in the *Universal Service Order*. In addition, we do not revise the rules of priority adopted in the *Fifth Order on Reconsideration* and the *Eleventh Order on Reconsideration* to govern the schools and libraries support mechanism.⁴

2. In this Order, we direct the Universal Service Administrative Company (USAC or the Administrator)⁵ to collect no more than \$562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism, and to limit collections to no more than \$3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the rural health care universal service support mechanism. Furthermore, we direct USAC neither to commit nor disburse more than \$2.25 billion for the schools and libraries support mechanism during the third and fourth quarters of 1999 and the first two quarters of 2000 or more than \$12 million for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care support mechanism.

³ See Letter from Robert Haga, Secretary and Treasurer, Universal Service Administrative Company, to Magalie Roman Salas, Secretary, Federal Communications Commission, dated May 17, 1999 (USAC May 17 Letter).

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14934, para. 31 (1998) (*Fifth Reconsideration Order*). The rules of funding priority provide that requests for telecommunications services and Internet access for all discount categories shall receive first priority for available funds. When sufficient funds are not available to fund all requests for discounts on internal connection, the Administrator shall allocate funds for discounts to schools and libraries beginning with those applicants at the ninety percent discount level and, to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on. See *Changes to the Board of Directors of the National Exchange Carrier Association, Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration in CC Docket No. 97-21, Eleventh Order on Reconsideration in CC Docket No. 96-45, and Further Notice of Proposed Rulemaking, FCC 99-49, para. 4 (adopted Mar. 18, 1999) (*Eleventh Reconsideration Order*).

⁵ In a November 20, 1998 order, the Commission revised the organizational structure of the universal service support mechanisms. As of January 1, 1999, the Schools and Libraries Corporation and the Rural Health Care Division Corporation merged into the Universal Service Administrative Company (USAC). USAC now serves as the single entity responsible for administering all of the universal service support mechanisms. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21, and Eighth Order on Reconsideration in CC Docket No. 96-45, FCC 98-306 (rel. Nov. 20, 1998).

II. COLLECTIONS DURING THE SECOND FUNDING YEAR

A. BACKGROUND

3. When we initially implemented the schools and libraries and rural health care support mechanisms in 1997, we did not have historical data upon which to estimate with certainty the demand for services in the initial months of the support mechanisms.⁶ As a result, the Federal-State Joint Board on Universal Service (Joint Board) and the Commission relied on the figures submitted on the record in the universal service proceeding to project demand for the schools and libraries and rural health care support mechanisms.⁷ Based on extensive public comment and the unanimous recommendation of the Joint Board,⁸ the Commission instituted annual caps on both support mechanisms -- \$2.25 billion for the schools and libraries support mechanism,⁹ and \$400 million for the rural health care support mechanism.¹⁰ On December 16, 1997, the Commission adopted the *Third Reconsideration Order*, in which it revised the collection amounts for the first six months of 1998. The Commission directed the Administrator to collect only as much is required by demand, but in no event more than \$625 million for the first six months of 1998 to support the schools and libraries universal service support mechanism, and no more than \$50 million for the first six months of 1998 to support the rural health care universal service support mechanism.¹¹

4. In May of 1998, the Administrator estimated that \$2.02 billion in discounts had been requested by applicants that had filed for schools and libraries discounts for the first

⁶ *Universal Service Order*, 12 FCC Rcd at 9054-56, 9140-41, paras. 529-33, 704-05.

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 368-71, paras. 552-56 (1996) (*First Recommended Decision*); *Universal Service Order*, 12 FCC Rcd at 9054-57, paras. 529-33.

⁸ See *Recommended Decision*, 12 FCC Rcd at 368-71, paras. 552-56.

⁹ *Universal Service Order*, 12 FCC Rcd at 9054, para. 529.

¹⁰ *Universal Service Order*, 12 FCC Rcd at 9141, para. 705. In addition, the Commission specified that the Administrator should collect \$100 million per month for the first three months of 1998 for the schools and libraries support mechanism, and held that, between January 1, 1998 and June 30, 1998, the Administrator "will only collect as much as required by demand, but in no case more than \$1 billion." For the rural health care support mechanism, the Commission directed the Administrator to collect \$100 million for the first three months of 1998. *Id.* at 9145, para. 715.

¹¹ *Third Order on Reconsideration*, 12 FCC Rcd 22801, para. 1 (1997).

funding year.¹² The Administrator also projected that the rural health care support mechanism required \$25 million for the third and fourth quarters of 1998.¹³ The *Fifth Reconsideration Order*, adopted on June 22, 1998, amended the collection amounts, directing the Administrator to collect and disburse only as much money as is required by demand, but in no event more than \$25 million per quarter for the third and fourth quarters of 1998 to support the rural health care universal service support mechanism, and no more than \$325 million for each of the third and fourth quarters of 1998 and the first and second quarters of 1999 to support the schools and libraries universal service support mechanism.¹⁴ Thus, the total collection amount for the first 18-month funding cycle of the schools and libraries universal service support mechanism was increased to \$1.925 billion.¹⁵ In addition, the *Fifth Reconsideration Order* directed the Administrator neither to commit nor disburse more than \$100 million during 1998 for the rural health care support mechanism, or more than \$1.925 billion for the schools and libraries support mechanism during 1998 and the first two quarters of 1999.¹⁶ The Commission determined that the revised collection rates would ensure full support for telecommunications services and Internet access, and would provide support for internal

¹² See Letter from Ira Fishman, CEO, Schools and Libraries Corporation, to the Honorable William E. Kennard, Chairman, Federal Communications Commission, dated May 7, 1998.

¹³ On May 13, 1998, the Common Carrier Bureau released a Public Notice seeking comment on a proposed revision of the 1998 collection amounts for the schools and libraries and rural health care universal service support mechanisms. See *Common Carrier Bureau Seeks Comment on Proposed Revision of 1998 Collection Amounts for Schools and Libraries and Rural Health Care Universal Service Support Mechanisms*, CC Docket No. 96-45, Public Notice, DA 98-872 (rel. May 13, 1998) (*Collection Public Notice*). In the *Collection Public Notice*, the Common Carrier Bureau sought comment on a proposal to direct USAC to collect only as much money as is required by demand, but in no event more than \$25 million per quarter for the third and fourth quarters of 1998 to support the rural health care universal service support mechanism, and no more than \$524 million per quarter for the third and fourth quarters of 1998 to support the schools and libraries universal service support mechanism. The Common Carrier Bureau also sought comment on whether to direct the administrative corporations neither to commit nor disburse more than \$100 million for the rural health care support mechanism and \$1.67 billion for the schools and libraries support mechanism during the 1998 funding year. *Id.*

¹⁴ *Fifth Reconsideration Order*, 13 FCC Rcd at 14933, para. 29. The *Fifth Reconsideration Order* changed the funding year for the schools and libraries support mechanism from a calendar year cycle (January 1 - December 31) to a fiscal year cycle (July 1 - June 30). To facilitate the change, the Commission concluded that the first funding period should run from January 1, 1998 through June 30, 1999. As a result, the Commission found that applications submitted during the initial 75-day filing window (January 30, 1998 - April 15, 1998) should be funded through June 30, 1999. *Id.* The *Fifth Reconsideration Order* also established new rules to govern how funding will take place in situations where available funding is less than total demand; see n.3, *supra*. The rules of priority provide that requests for telecommunications services and Internet access for all discount categories shall receive first priority for the available funds. See 47 C.F.R. § 54.507(g)(1)(i).

¹⁵ This increase reflected the extension of the first funding year from 12 months to 18 months; see n. 14, *supra*.

¹⁶ *Fifth Reconsideration Order*, 13 FCC Rcd at 14916, para. 3.

connections for the neediest applicants.¹⁷ The Commission reasoned that funding collections for the new support mechanisms should be set at reduced levels in light of both the need to implement the necessary administrative processes and the need to make the fund sufficiently flexible to respond to demand.¹⁸ In addition, the Commission concluded that the collection rate for the rural health care support mechanism, \$25 million for the last two quarters of 1998, was consistent with demand and that it was unlikely that eligible health care providers would require additional funding.¹⁹

5. On February 27, 1999, the Schools and Libraries Division (SLD) of USAC completed the issuance of funding commitment letters, which advised schools and libraries of the amount of discounts for which they are eligible for the first funding year. Collectively, eligible schools and libraries were found eligible to receive more than \$1.6 billion in discounts for the first funding year.²⁰ For those applications submitted during the initial filing window period, SLD granted all approved requests for discounts on priority one services (telecommunications services and Internet access) and granted all approved requests for internal connections down to the 70 percent discount level.

6. The filing window for second year applications for the schools and libraries support mechanism opened on December 1, 1998 and closed on April 6, 1999. As of April 16, 1999, the Schools and Libraries Division estimated that schools and libraries have requested discounts in the amount of \$2.435 billion.²¹

7. Collections for the rural health care support mechanism prior to the first quarter of 1999 exceeded disbursements and USAC has reported that the support mechanism had a balance of \$87 million at the end of 1998.²² The Commission directed that excess contributions be credited back to contributors.²³ Specifically, the Commission proposed that the excess contributions for the rural health care support mechanism be applied to the other

¹⁷ *Fifth Reconsideration Order*, 13 FCC Rcd at 14938, paras. 3, 37-8.

¹⁸ *Fifth Reconsideration Order*, 13 FCC Rcd at 14928, para. 19. *See also Universal Service Order*, 12 FCC at 9054, para. 529.

¹⁹ *Fifth Reconsideration Order*, 13 FCC Rcd at 14928, para. 21.

²⁰ This amount does not reflect funds set aside for administrative expenses and appeals.

²¹ *See Letter from Kate L. Moore, President, Schools and Libraries Division, to the Honorable William E. Kennard, Chairman, Federal Communications Commission, dated April 16, 1999.*

²² *See Second Quarter 1999 Universal Service Contribution Factors*, CC Docket No. 96-45, Public Notice, DA 99-455 (rel. March 4, 1999).

²³ *Id.*

support mechanisms with the same contribution base, i.e., the support mechanisms based upon interstate, intrastate, and international end-user telecommunications revenues.²⁴ USAC reported that no more than \$2.0 million would be necessary to fund completed applications for the second quarter of 1999.²⁵ USAC therefore requested that no contributions be collected for the second quarter of 1999 because the funding requirements would be satisfied by the remaining balance in the rural health care account.²⁶

8. The filing window for the rural health care support mechanism opened on March 1, 1999 and is scheduled to close on May 14, 1999. The Administrator projected that demand for the rural health care support mechanism likely would not exceed \$12 million for the second funding year.²⁷

B. DISCUSSION

9. The Commission is committed to setting collection levels for the second funding year at an amount that will ensure that the Administrator is able to allocate support to schools and libraries at a level that is equal to or greater than the level of support that was allocated in the first funding year. Accordingly, given this commitment and estimated demand at \$2.435 billion, we believe that the collection level should be set at the \$2.25 billion cap recommended by the Joint Board on Universal Service in the *First Recommended Decision*²⁸ and adopted by the Commission in the *Universal Service Order*.²⁹ Consistent with the Commission's conclusion in the *Universal Service Order*, we believe that setting the collection level at \$2.25 billion reasonably balances the desire to provide support to eligible schools and libraries against the costs associated with establishing larger support mechanisms.³⁰ While we recognize that some applicants' needs will not be met in full (i.e., for funding of all internal connection requests), a collection rate of \$2.25 billion will be sufficient to fund fully all requests for priority one services (telecommunications services and Internet access) and to fund fully requests by the neediest schools and libraries for internal

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See USAC May 17 Letter.

²⁸ *First Recommended Decision*, 12 FCC Rcd at 370, para. 556.

²⁹ *Universal Service Order*, 12 FCC Rcd at 9054, para. 529.

³⁰ See *Universal Service Order*, 12 FCC Rcd at 9056, para. 533.

connections to the same level of discount as was funded in the first program year.³¹ This approach is consistent with the Commission's commitment to ensuring that support will be directed toward the most economically disadvantaged schools and libraries, as well as those located in rural areas. Accordingly, we direct USAC to collect only as much as required by demand, but in no event more than \$562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism. We also direct the Administrator to commit to applicants no more than \$2.25 billion for disbursement during the second half of 1999 and the first half of 2000 to support the schools and libraries support mechanism.

10. We have determined that demand for funding will not increase significantly during the second funding year of the rural health care support mechanism. As projected by USAC, we anticipate that demand is not likely to exceed \$12 million total annual support for the second funding year.³² We conclude therefore that we should establish a maximum collection level at \$12 million for the third and fourth quarters of 1999 and the first and second quarters of 2000.³³ This collection level is consistent with projected demand, and there is no evidence that eligible health care providers will require funding beyond this level for the second funding year. Accordingly, we direct USAC to limit collections to no more than \$3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care universal service support mechanism. We also direct USAC to commit to applicants no more than \$12 million for disbursement during the second half of 1999 and the first half of 2000 to support the rural health care support mechanism.

III. CONCLUSION

11. We find that it serves the public interest to direct USAC to collect only as much as required by demand, but in no event more than \$562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism. We direct USAC to limit collections to no more than \$3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care universal service support mechanism. We also direct the Administrator to commit to applicants no more than \$2.25 billion for disbursement during the second half of 1999 and the first half of 2000 to support the schools and libraries support mechanism and no more than \$12 million for disbursement during the second half of 1999 and the first half of 2000 to support the rural health care

³¹ See para. 5, *supra*. Some funds must be set aside for administrative expenses and appeals and, therefore, the total collection amount would not be available to fund requests for discounts.

³² See n. 27, *supra*.

³³ See n. 31, *supra*.

support mechanism.

12. We find good cause, pursuant to section 553(d)(3) of the Administrative Procedure Act,³⁴ to make the rules adopted in this Order effective upon publication in the Federal Register. The rules adopted herein are necessary for the Commission to calculate the universal service contribution factors for the second funding year of the federal support mechanisms for schools, libraries, and rural health care providers. The contribution factors must be published via Public Notice in early June³⁵ to provide sufficient advance notification to industry representatives and service providers before USAC uses the factors in preparing to bill service providers, beginning July 1, for their third quarter contributions. Early effectiveness of the rules will thus enable the Commission and USAC to promptly complete these tasks. In addition, certain service providers must file tariffs in mid-June that reflect the contribution factors. Thus, we find that good cause exists to make the rules adopted herein effective upon publication in the Federal Register.

IV. Regulatory Flexibility Analysis

A. Final Regulatory Analysis

13. In compliance with the Regulatory Flexibility Act (RFA),³⁶ this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order*,³⁷ and the Supplemental Final Regulatory Flexibility Analyses in the *Fifth Reconsideration Order*³⁸ and the *Eighth Order on Reconsideration*,³⁹ only to the extent that changes to the Order adopted here on

³⁴ 5 U.S.C. § 553(d).

³⁵ The contribution factors become effective 14 days later absent further Commission action. *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., and Federal-State Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, FCC 97-253, Report and Order and Second Order on Reconsideration (rel. July 18, 1997).

³⁶ *See* 5 U.S.C. § 604. The Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, was amended by the Small Business Regulatory Enforcement Act of 1996 (SBREFA), Title II of the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996).

³⁷ *Universal Service Order*, 12 FCC Rcd at 9219-9260, paras. 870-983.

³⁸ *Fifth Reconsideration Order*, 13 FCC Rcd at 14948.

³⁹ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, FCC 98-306 (rel. November 20, 1998).

reconsideration require changes in the conclusions reached in the FRFA and the two previous Supplemental FRFAs. In the previous analyses, we sought written public comment on the potential economic impact on small entities.

1. Need for and Objectives of This Order

14. The Commission is required by section 254 of the Act to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principle goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider one aspect of those rules. We reconsider, on our own motion, the amounts that will be collected during the second six months of 1999 and the first six months of 2000 for the schools and libraries and rural health care support mechanisms.

2. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Order will Apply

15. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴⁰ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴¹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴² A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁴³ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁴⁴

⁴⁰ 5 U.S.C. § 603(b)(3).

⁴¹ 5 U.S.C. § 601(6).

⁴² 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

⁴³ Small Business Act, 15 U.S.C. § 632 (1996).

⁴⁴ 5 U.S.C. § 601(4).

16. In the FRFA of the *Universal Service Order*, we estimated and described in detail the number of small entities that might be affected by the new universal service rules.⁴⁵ The rules adopted in this Order, however, would affect primarily schools, libraries, and rural health care providers. Moreover, the adopted rules will allow schools, libraries, and rural health care providers to benefit more fully from the schools and libraries and rural health care universal service support mechanisms, constituting a positive economic impact on these small entities.

17. As noted above, small entities includes "small businesses," "small organizations," and "small governmental jurisdictions." All three types of small entities may also constitute schools, libraries, or rural health care providers for the purpose of this analysis. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."⁴⁶ As of 1992, there were approximately 85,006 such jurisdictions in the United States.⁴⁷ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.⁴⁸ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. As for "small organizations," as of 1992, there were approximately 275,801.⁴⁹

18. Also, as the Commission specifically noted in the *Universal Service Order*, the SBA defined small elementary and secondary schools and small libraries as those with under \$5 million in annual revenues.⁵⁰ The Commission has further estimated that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in the *Universal Service Order*.⁵¹ We believe that these same small entities may be affected potentially by the rules adopted in this Order.

19. In addition, the Commission noted in the *Universal Service Order* that neither

⁴⁵ See *Universal Service Order*, 12 FCC Rcd at 9242, para. 925.

⁴⁶ 5 U.S.C. § 601(5).

⁴⁷ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

⁴⁸ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

⁴⁹ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁵⁰ See *Universal Service Order*, 12 FCC Rcd at 9242, para. 925.

⁵¹ See *Universal Service Order*, 12 FCC Rcd at 9243, para. 925.

the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term "health care provider" and sets forth the seven categories of health care providers eligible to receive universal service support.⁵² We estimated that there are fewer than 12,296 health care providers potentially affected by the rules in the *Universal Service Order*.⁵³ We note that these small entities may potentially be affected by the rules adopted in this Order.

3. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The modifications to the Commission's rules that are set forth in this Order relate only to actions that need to be taken by the Administrator of the universal service support mechanisms. As a result, we do not anticipate any additional burdens or costs associated with these proposed rules on any entities, including on small entities.

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

21. In the FRFA to the *Universal Service Order*, the Commission described the steps taken to minimize the significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order*.⁵⁴ As described above, our current action to amend our rules will benefit schools and libraries by ensuring that funds are allocated first to the neediest schools and libraries. We believe that these amended rules fulfill the statutory mandate to enhance access to telecommunications services for schools, libraries, and rural health care providers, and fulfill the statutory principle of providing quality services at "just, reasonable, and affordable rates,"⁵⁵ without imposing unnecessary burdens on schools, libraries, rural health care providers, or service providers, including small entities.

22. *Report to Congress.* The Commission will send a copy of the Twelfth Order on Reconsideration in CC Docket No. 96-45, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the Twelfth Order

⁵² See 47 U.S.C. § 254(h)(5)(B).

⁵³ See *Universal Service Order*, 12 FCC Rcd at 9242, para. 924.

⁵⁴ See *Universal Service Order*, 12 FCC Rcd at 9242, para. 924.

⁵⁵ 47 U.S.C. § 254(b)(1).

on Reconsideration in CC Docket No. 96-45, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Twelfth Order on Reconsideration in CC Docket No. 96-45, and FRFA (or summaries thereof) will also be published in the Federal Register. See 5 U.S.C. § 604(b).

V. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 218-220, 254, 303(r), 403, and 405, section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, and section 553 of the Administrative Procedure Act, 5 U.S.C § 553, Part 54 of the Commission's rules, 47 C.F.R. Part 54, is revised as set forth in Appendix A hereto, effective upon publication in the Federal Register.

24. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this TWELFTH ORDER ON RECONSIDERATION, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

Appendix A -- Rule Changes**§ 54.507** **Cap.**

1. Revise paragraph 54.507(a)(1) to read as follows:

(1) No more than \$562.5 million shall be collected or spent per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism. No more than \$2.25 billion shall be collected or disbursed during the twelve month period from July 1, 1999 through June 30, 2000.

§ 54.623 **Cap.**

2. Revise paragraph 54.623(a) to read as follows:

(a) Amount of the annual cap. The annual cap on federal universal service support for health care providers shall be \$400 million per funding year, with the following exceptions. No more than \$3 million shall be collected or spent per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care universal service support mechanism. No more than \$12 million shall be committed or disbursed during the twelve month period from July 1, 1999 through June 30, 2000.

Statement of
Chairman William E. Kennard
on
Funding for the Second Year of the Schools
and Libraries and Rural Health Care
Universal Support Mechanisms

As members of the FCC, sometimes we have the occasion to witness events and even make decisions that will shape the communications revolution for years to come, decisions that will impact how technology can and does affect people's homes, businesses, families, and lives.

Today is one such occasion. I will be voting to fund the e-rate – a program to wire schools and libraries to the Internet – to its cap of \$2.25 billion for its second year.

Before the e-rate, only 39 percent of classrooms in poor school districts in rural and urban America had any Internet connections compared to 62 percent of classrooms in wealthier districts. The on-ramps to the Information Superhighway were bypassing the communities that needed access to opportunity the most.

After one year, though, we find that the digital divide is narrowing. Over 80,000 schools and libraries – and more than 38 million kids -- have been helped by the e-rate program. Because of the e-rate, more than half of the unconnected classrooms will now be linked to the Internet, the bulk of which are found in schools where over half of the students live in poverty.

And according to Forrester Research, Internet access among African-Americans is expected to increase 42 percent, and among Hispanics 20 percent – two phenomena that Forrester chalks up to the e-rate program and its ability to bring this technology into every community.

By funding to the cap, we'll be able to wire 528,000 public school classrooms to the Internet. If we meet this high demand, we will be able to help schools that teach 40 million American children. We'll allow libraries and schools that never would have been able to pay for these services the chance to connect to the Internet. We'll be able to connect communities throughout rural America.

The funding that we authorize today will be sufficient to ensure fully-funded discounts for all telecommunications services and Internet access and to fully fund discounts for the neediest schools and libraries for internal connections to the same level of discount as was funded in the first program year. Unfortunately, some applicants' needs will not be met in full, but we have acted to ensure that support will be directed to rural areas and the most economically disadvantaged schools and libraries. Based on the record, we believe that the funding rates we have established today reasonably balance the need to provide support with the costs associated with a larger support program.

Moreover, funding at this level is the only way in which we can reach those schools and

libraries in rural America. In fact, by funding the e-rate to its cap, we'll be able to connect one-third of public schools throughout rural America.

If you have ever traveled through our nation's countryside and spoken to the people who live in its small towns and on its farms, you will hear firsthand how important these connections are to them. With links to the on-line world, students won't have to travel far distances to take courses not offered in their schools. More time can be spent in the community giving a child the nurturing and support that they need. And with the "death of distance," educational and economic opportunities will become available locally and families will be able to comfortably stay on the land on which they've lived for generations.

To further help families in our nation's small towns and farms, we are also directing the Universal Services Administrative Company to collect the funds required to meet projected demand up to \$12 million over the next year for the rural health care support mechanism.

Over 200 years ago, Benjamin Franklin – who incidentally helped found a great university, the University of Pennsylvania, and a great library, the Philadelphia Free Library – once remarked that "If a man empties his purse into his head, no one can take it away from him. An investment in knowledge always pays the best interest."

The e-rate is one such investment. It's a down payment on the future of our kids and of our economy. By exposing more and more of our children to the Internet and information technology, they will learn the skills needed to gain the high-paying jobs of our Information-Age economy. They will be linked into our national community. They will be given the digital tools needed to fulfill the promise of American life in the Information Age.

**Separate Statement
of
Commissioner Susan Ness**

Re: Funding for the Second Year of the Schools and Libraries and Rural Health Care Universal Service Support Mechanisms (Federal-State Joint Board on Universal Service, CC Docket No. 96-45).

The Telecommunications Act of 1996 embraces universal service as one of its fundamental goals – that all Americans should have access to telecommunications and information services at affordable and reasonably comparable rates.

Based upon the recommendations of a bipartisan federal-state joint board, the Commission, in May 1997, adopted an order that: (1) approved a plan that preserved existing explicit funding for rural carriers serving high cost areas; (2) established a forward-looking cost model and national-benchmark regime for determining the cost of service and subsidy necessary for large carriers serving high cost areas; (3) expanded the Lifeline and Link Up programs to enable low income residents in states that did not have a matching program to qualify for this funding; and (4) pursuant to the Snowe-Rockefeller-Exon-Kerrey provisions of the Act, established a schools and libraries support mechanism to provide discounts for telecommunications services and internal connections to link classrooms and libraries to the Internet, as well as a program to provide rates for telecommunications services for rural health care providers that are comparable to those paid by urban providers.

The high cost and low income programs were on-going and were sufficiently funded; the schools and libraries and rural health care funds were new tiles in the universal service mosaic.

Last year Congress raised very legitimate concerns about the structure and priorities of the schools and libraries program. After streamlining the structure of the schools and libraries and rural health care programs, reprioritizing schools and libraries to benefit institutions in the most economically disadvantaged and rural areas first, and undergoing exhaustive audits by the GAO and an outside accounting firm to ensure that adequate procedures are in place to deter and detect waste, fraud, and abuse – all to address Congressional concerns – the two programs finally began to fund applications late last year.

The benefits to date from this funding are readily apparent. Over the past year the number of classrooms connected has more than doubled.

For the schools and libraries program, the demand for telecommunications discounts has well exceeded the level of approved funding. Today, I vote to increase that funding level not to exceed \$2.25 billion – the cap recommended by the original bipartisan joint board and adopted by the Commission in 1997 – to enable schools and libraries serving some of the most economically disadvantaged and rural areas of the country to connect their classrooms and

facilities to the Internet.

Section 254 of the Act wisely and specifically provides for classrooms to have access to advanced telecommunications services. It is in the classroom where the students and teachers assemble for learning. It is in the classroom where distance learning can offer students advanced courses taught by teachers located many miles away. And it is in the classroom where student forays on the Internet can best be protected.

Moreover, the schools and libraries program will help to jumpstart the provision of advanced telecommunications and information services to rural America. In areas where individual households do not yet have access to advanced services, a high-speed Internet connection to a school or library is a tremendous resource for the whole community. It is noteworthy that Section 706 also focuses specifically on providing "advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms)."

In an increasingly global economy, it is essential that we prepare our children and our communities now for the 21st century. Every day, more jobs require computer skills. Providing our children and communities with Information Age tools is key to our future success as a prosperous nation. We cannot afford to wait.

**STATEMENT OF COMMISSIONER MICHAEL K. POWELL
CONCURRING IN PART AND DISSENTING IN PART**

Re: *Twelfth Order on Reconsideration, Federal-State Joint Board on Universal Service, CC Docket No. 96-45*

Giving all our children access to the world of information is unassailably a worthy and noble objective. Few, and certainly not I, dispute its value or its importance. I sincerely respect the depth of my colleagues' support and commitment to this program as well as that of other proponents and supporters. As the father of two children, I have seen first hand the advantages of Internet access and computer literacy.

Regrettably, however, I remain uncomfortable with much of the program's structure and parameters. And, today, I am uncomfortable with the funding increase that the majority will adopt. Because I am unsure that the funding increase is actually needed as opposed to just wanted, I must respectfully dissent from increasing funding to \$2.25 billion (though I would have supported a more modest increase in funding).

We are told that the demand for the program is extraordinarily high and we should continue to provide support to the neediest schools. But what information, data, or even mechanisms do I, or we, have as regulators to distinguish between need and want in picking the "right" amount? Demand certainly should be taken into account, but it is unremarkable that demand is high, for like in the movie "Field of Dreams," if you build it, they will come. And, as one would expect, we built a large federal program and they have come. Indeed, shame on any school that has not acted aggressively to take advantage of this federal generosity. But, how do we know or distinguish, within that infinite demand, real need from want, even for the poorest schools?

Part of the problem is that the distinction or choice involves questions of educational policy and priorities, as well as social judgments about worthiness among school demographics. For the Schools and Libraries program, these judgments uncomfortably rest with telecom policy experts at a federal agency. In fact, perhaps recognizing that we are fish out of water, we do not really attempt in our decision today to make these judgments and instead leave much of it in the hands of local officials who have the expertise, but who likely also have insatiable appetites.

Passionate support of the objectives and commitment to the program alone should not and cannot determine the appropriate amount of funding. Nor can a lack of support or more modest commitment determine this amount. Yet, if there is going to be such a large and significant federal program as this, it must have some basis for fiscal discipline and restraint, some basis for picking the "right" funding level. But, as structured, I have no real idea how to do that without simply checking the political winds and aligning myself with one current or

the other.

Passionate support in implementing federal programs is admirable. But, it can lead to over-aggressive driving. In fact, this program often feels like we are driving fast along a dark road without headlights and we keep pushing harder on the accelerator. But, this road has twists and turns. Our aggressiveness may have consequences:

- I worry that our aggressive interpretation of the statute will be arrested by the courts. Indeed, a decision is expected any day out of the Fifth Circuit with respect to some of our statutory interpretation maneuvers, that may severely constrain this program, yet we stay resolutely on the accelerator.
- I worry that we cannot actually handle the speed of our aggressive funding—today, an increase of 80%, on average, on a monthly, quarterly and annual basis. We insist we can handle it, by covering the cost of the program through savings we hope to engineer. Yet, we really do not have complete control over such savings. Carriers in their business judgment will allocate savings in different ways, depending on how they choose to serve their customers. At present, we can't ultimately make carriers do it as we might like, and should be careful how far we go in trying to pressure or coerce them into doing so. Thus, the "savings" we tout may or may not be fully realized, and bill paying consumers may pay the price for the increase.

Similarly, we bet on the off-sets of access reductions. Yet, the price cap formula that we have been counting on for off-setting this increase has been overturned by the D.C. Circuit. We may get that decision stayed, but it places a long shadow of doubt over our ability to balance the costs of the program. Moreover, we still have before us in the road, not behind us, the access charge reform proceeding. And, we still are unsure what the ultimate price tag for universal service will be—what it will cost consumers—yet we push ahead with this increase. I have always preferred a more comprehensive and coordinated approach to implementing universal service for just this reason.

I fear all of this haste could lead to missteps that result in a collapse of political will to continue this program. But just as importantly, it could lead to a collapse of political will to support funding or reallocating other costs which are equally important exercises for the good of consumers and the general public. I hope we can handle it, but I have my doubts.

As the cop in the movies always says, "Why are you in such a hurry?" I cannot say that I understand the urgency. The rhetoric is powerful: "A digital divide," "information haves and have nots," affluent suburbs versus poor urban children. They certainly are powerfully emotional sound bites that give the intended sense of urgency and crisis.

But, is this rhetoric warranted if we are not talking about eliminating, but rather limiting, the program, at least while we attend to other, languishing aspects of universal service? More modest funding would not stop the program, it would not jeopardize the well-being of our children. It would not condemn us to a world of haves and have nots. Modest funding would merely mean that all of the benefits of the program will not arrive immediately. It means all will still get wired over the next couple of years, but perhaps not by year 2000. Why would that be tragic?

We are told only 51% of classrooms are wired—a bare majority. It is difficult to see how our global competitiveness somehow will be irreversibly lost if it is not 100% immediately? I doubt seriously that many countries around the world actually have anything approaching this level of connectivity in the classroom.

Moreover, nearly 90% of schools are already wired. Those students still have access. Surely not as much direct and instantaneous access as they may want, but they are not shut out. Plus, we really do not know where else they may get access: home, church, boys and girls clubs, and other public and private initiatives. Yet, without taking any of that into consideration, we speed ahead as if racing a dying child to the emergency room.

I dismiss any suggestion that interjecting a note of caution into the administration of a popular program is uncaring or hard-hearted. This all troubles me precisely because I care about the program and support it. The program simply must not get to the point where its rhetoric exceeds its fundamentals.

I would have supported pegging funding levels at the current \$1.9 billion, a more moderate increase given this funding year is six months shorter than the last. No, I don't know if that is the right number either. But if we are going to travel a fairly dim-lit road, it seems driving a little slower is more likely to ensure a safe arrival at our destination.

Separate Statement of Commissioner Gloria Tristani

Re: Federal-State Joint Board on Universal Service; Twelfth Order on Reconsideration. CC Docket No. 96-45.

I strongly support the Commission's decision today setting the collection level for the schools and libraries support mechanism (the "e-rate") at the \$2.25 billion cap. I support fully funding the e-rate because it is a sound investment in the future of our children and our country. By funding Internet connections to classrooms, we bring the enormous educational resources of the Internet directly to teachers and students.

Although 89 percent of public schools have some Internet access today, only 51 percent of our nation's classrooms are connected to the Internet. Only 39 percent of high-poverty classrooms are connected, compared to 62 percent of classrooms in wealthier schools. The e-rate is especially critical for ensuring that minority and low income children – those who are less likely to have access to computers and the Internet at home – are able to participate in the telecommunications revolution. It will help ensure that this country's troubling digital divide does not become an unbridgeable chasm.

Moreover, the e-rate is sound competition policy for the United States. Today, technology companies in the United States cannot fill jobs because young people in the workforce lack the necessary skills. If companies do not fill those jobs with American workers, they will fill them with foreign workers. Any significant export of high technology jobs to other countries far outweighs the cost of the Schools and Libraries Program. Thus, we can make the relatively small investment now, or we can pay in countless ways later. I am committed to seeing this vital program move forward and to seeing all our students reap the benefits.