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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
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Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
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NOTICE OF PROPOSED RULE MAKING AND ORDER

Adopted: January 16, 2002 **Released:** January 25, 2002

Comment Date: 45 days after publication in Federal Register
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By the Commission: Commissioner Copps approving in part, dissenting in part, and issuing a statement.

TABLE OF CONTENTS

Paragraph

I. INTRODUCTION 1

II. BACKGROUND 8

III. NOTICE OF PROPOSED RULEMAKING 12

A. Application Process 13
1. Eligible Services 13
2. Discounts for Internet Access When Bundled with Content 23
3. Review of Requests Including Eligible and Non-Eligible Services 26
4. Compliance with the Americans with Disabilities Act 28
5. Consortia 30

B. Post Commitment Program Administration 33
1. Choice of Payment Method 33
2. Equipment Transferability 37
3. Use of Excess Services in Remote Areas 41

C. Appeals 48
1. Appeals Procedure 48
2. Funding of Successful Appeals 53

D. Enforcement Tools 58

1. Independent Audits 58
2. Prohibitions on Participation 60

E. Unused Funds 63
1. Overview 63
2. Reduction of Unused Funds 67
3. Treatment of Unused Funds 69

IV. ORDER ON RECONSIDERATION 71
1. Background 71
2. Discussion 78

V. REVISING OR ELIMINATING OUTMODED RULES 81

VI. PROCEDURAL MATTERS 82

A. Paperwork Reduction Act Analysis 82

B. Initial Regulatory Flexibility Analysis 83
1. Need for, and Objectives of, the Proposed Rules 84
2. Legal Basis 87
3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply 88
4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements 99
5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered 100
6. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules 107

C. Comment Due Dates and Filing Procedures 108

V. ORDERING CLAUSES 114

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking and Order (Notice), we initiate a focused review of certain of our rules governing the schools and libraries universal service support mechanism. We initiate this review to ensure the continued efficient and effective implementation of Congress's goals as established in the statute, and to explore a variety of suggestions for improvement offered by schools and libraries, service providers, state and local governments, and other interested parties.

2. The Federal Communications Commission (Commission) implemented the schools and libraries universal service support mechanism based on the requirement in the Telecommunications Act of 1996 (1996 Act) that "[a]ll telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the

definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties."[1] The schools and libraries community and the participating service providers have now had four years of experience with the program. As of July 2001, the Universal Service Administrative Company (USAC or the Administrator)[2] had committed over $5.958 billion in funds for the first three funding years.[3] Over this period, the schools and libraries mechanism has provided discounts enabling millions of school children and library patrons, including those in many of the nation's poorest and most isolated communities, to obtain access to modern telecommunications and information services for educational purposes, consistent with the statute.[4]

3. During the last four years, numerous parties, including schools and libraries, service providers, and representatives of local and state governments, have approached the Commission with a variety of proposals that they believe will improve the program. In this proceeding, we present those ideas for public comment in order to explore whether these ideas, as well as any additional ideas presented by the public, will help to achieve our stated goals. We continue to seek ways to ensure that the program funds are utilized in an efficient, effective, and fair manner, while preventing waste, fraud, and abuse. We conclude that it is appropriate at this time to ask whether the various suggestions from the public will streamline and improve the program in a manner consistent with section 254. We determine that it is appropriate to review the overall program by reaching out to the constituents of the program and other interested parties for their input. We seek comment from USAC on the operational and administrative impact of possible changes discussed in this Notice. We also encourage input from the State members of the Federal-State Joint Board on Universal Service (Joint Board), and commit to ongoing informal consultations with the Joint Board on these issues.

4. Our goals in undertaking this proceeding, consistent with the statute, are three-

[1] Pub. L. No. 104-104, Section 254(h)(1)(B), 110 Stat. 56, codified at 47 U.S.C. § 254(h)(1)(B). The 1996 Act amends the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* (Act).

[2] The Schools and Libraries Division (SLD) of the Universal Service Administrative Company administers the schools and libraries support mechanism under the direction of the Federal Communications Commission. *See* Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, *CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45,* 13 FCC Rcd 25058 *(1998)* (*Eighth Order on Reconsideration*).

[3] *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter, available at <http://www.universalservice.org/overview/ filings/default.asp> (filed by USAC Aug. 2, 2001) (*USAC Filing for Fourth Quarter 2001 Projections*).

[4] More than 38 million children attend schools that have received discounts since the program's inception four years ago. Eighty-two percent of public schools receive universal service discounts, as do 18 percent of private and Catholic schools, and 59 percent of public libraries. By the end of 2000, 98 percent of public schools were connected to the Internet, whereas only 65 percent were connected just three years earlier. National Center for Education Statistics, U.S. Department of Education, *Internet Access in U.S. Public Schools and Classrooms: 1994-2000* (May 2001) (NCES), at 1.

fold: (1) to consider changes that would fine-tune our rules to improve program operation; (2) to ensure that the benefits of this universal service support mechanism for schools and libraries are distributed in a manner that is fair and equitable; and (3) to improve our oversight over this program to ensure that the goals of section 254 are met without waste, fraud, or abuse. We intend to build on the solid foundation we have established.

5. With these goals in mind, in this Notice, we seek comment on several changes to the schools and libraries universal service support mechanism. First, with respect to the application process, we seek comment on (1) issues related to the process for determining eligible services, and the eligibility for schools and libraries universal service support of such services as Wide Area Networks, wireless services, and voice mail;[5] (2) permitting schools and libraries to receive discounts for Internet access that may in certain limited cases contain content, as long as it is the most cost-effective form of Internet access;[6] (3) the 30 percent processing benchmark for reviewing funding requests that include both eligible and ineligible services;[7] (4) whether to require a certification by schools and libraries acknowledging their compliance with the requirements of the Americans With Disabilities Act and related statutes;[8] and (5) modifying our rule governing when members of a consortium may receive service from a tariffed service provider at below-tariff rates.[9]

6. Second, we also seek comment on several issues that arise once discounts have been committed to applicants: (1) providing schools and libraries the flexibility either to make up-front payments for services and receive reimbursement via the Billed Entity Applicant Reimbursement (BEAR) form process, or be charged only the non-discounted cost by the service providers, and require that service providers remit BEAR reimbursements to applicants within twenty days;[10] (2) limiting transferability of equipment obtained with universal service discounts;[11] and (3) allowing members of rural remote communities to use excess capacity from services obtained through the universal service support mechanism in certain limited situations.[12]

7. Third, with respect to the appeals process, we seek comment on increasing time limits for filing appeals to 60 days, and considering appeals filed as of the day they are post-

[5] *See* paras. 13-22.

[6] *See* paras. 23-25.

[7] *See* paras. 26-27.

[8] *See* paras. 28-29.

[9] *See* paras. 30-32.

[10] *See* paras. 33-36.

[11] *See* paras. 37-40.

[12] *See* paras. 41-47.

marked,[13] and on procedures for funding successful appeals.[14] Fourth, we seek comment on measures to strengthen our existing enforcement tools, including adopting a rule explicitly authorizing independent audits,[15] and barring from the program certain applicants, service providers, and others that engage in willful or repeated failure to comply with program rules.[16] Fifth, on the issue of unused program funds, we seek comment on the reasons for unused funds,[17] and on how the Commission should treat unused funds.[18] We also deny certain petitions for reconsideration relating to unused funds,[19] and seek comment on revising or eliminating outmoded administrative or procedural rules or policies relating to the schools and libraries universal service support mechanism.[20]

II. BACKGROUND

8. In the 1996 Act, Congress directed the Commission to take steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including low-income consumers, rural health care providers, and eligible schools and libraries.[21] Based on a recommended decision from the Federal-State Joint Board on Universal Service, the Commission implemented section 254(h) in its *Universal Service Order* by establishing the federal universal service support mechanism for schools and libraries.[22] Under the schools and libraries support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.[23] Discounts on eligible services range from 20 percent to 90 percent, depending on economic need and whether the applicant school or

[13] *See* paras. 48-52.

[14] *See* paras. 53-57.

[15] *See* paras. 58-59.

[16] *See* paras. 60-62.

[17] *See* paras. 63-68.

[18] *See* paras. 69-71.

[19] *See* paras. 71-80.

[20] *See* para. 81.

[21] 47 U.S.C. § 254.

[22] *Id.; Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S.Ct. 423 (November 2, 2000).

[23] 47 C.F.R. §§ 54.502, 54.503.

library is located in an urban or rural area.[24]

9. Pursuant to § 254(h)(1)(B), the Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,[25] which is posted to the Administrator's website for all potential competing service providers to review.[26] After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering into an agreement for services and submitting an FCC Form 471, which requests support for eligible services.[27] All applications received within a specified time period, or window, are deemed to be filed simultaneously for purposes of applying rules of priority when requests for funding exceed the funding cap.[28] The Administrator reviews the FCC Forms 471 that it receives and issues funding commitment decisions indicating discounts the applicant may receive in accordance with the Commission's rules. The school or library then pays the non-discount portion of the service cost to the service provider, which is, in turn, reimbursed by the Administrator for the costs of the approved discounts. It is also possible for the school or library to pay such bills in full, and be reimbursed for the discounted amount through the filing of an FCC Form 472, the Billed Entity Applicant Reimbursement (BEAR) form, with the Administrator.[29] Under this method, the Administrator issues payment of the discounted amount to the provider and requires the provider to remit that payment to the school or library.

10. If the Administrator denies a request for funding, the applicant may either appeal directly to the Commission, or appeal to the Administrator. If rejected on appeal by the Administrator, the applicant may appeal to the Commission.[30]

11. Oversight of such a far-reaching program is necessarily intensive and complex. The Commission has established rules governing the operation of the schools and libraries discount mechanism in a series of orders.[31] The Administrator, in consultation with Commission

[24] *See* 47 C.F.R. § 54.505.

[25] Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

[26] 47 C.F.R. § 54.504(b); *Universal Service Order*, at para. 575.

[27] 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

[28] The funding cap is set at $2.25 billion. 47 C.F.R. § 54.507.

[29] Schools and Libraries Universal Service, Billed Entity Applicant Reimbursement Form, OMB 3060-0856 (October 1998) (FCC Form 472 or BEAR Form).

[30] *See* 47 C.F.R. § 54.719.

[31] *See, e.g., Universal Service Order; Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-149423, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 18598 (2000) (*Brooklyn Order*); *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the* (continued....)

staff, has further refined its procedures over the course of the last three funding years in response to Commission directions, decisions on appeal, audits, and internal review. Along with the rapid growth in the number of applicants and recipients, both the Commission and the Administrator have experienced increased numbers of appeals by applicants whose requests for discounts have been denied. Although the Administrator's administrative costs remain small as a percentage of total program costs, particularly in comparison to other federal programs,[32] the Commission continues to seek ways to minimize administrative costs while achieving the goals of the statute in the most effective manner possible.

III. NOTICE OF PROPOSED RULE MAKING

12. By initiating this inquiry, we seek to further three goals. First, we seek to streamline and improve the program. Second, we seek to ensure fair and equitable distribution of funds. Third, we seek to protect the schools and libraries mechanism against waste, fraud, and abuse consistent with our goals. In the discussion that follows, we seek comment on ways in which these goals may be achieved through specific changes to various stages of the application and funding process. We frame the discussion in the context of the yearly program cycle to help commenters understand the changes to the program on which we seek comment. At each stage of the process, we invite parties to address whether and how our specific goals can be met by the changes discussed and to suggest other ways to further these goals.

A. Application Process

1. Eligible Services

13. Applicants under the universal service discount mechanism for schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.[33] The Commission currently directs the Administrator to determine whether particular services fall within the eligibility criteria established under the 1996 Act and the Commission's rules and policies. The Administrator evaluates, on an on-going basis, particular services offered by service providers, and determines their eligibility. In order to provide applicants with general guidance, the Administrator makes available on its website a list of categories of service that are eligible or ineligible, though not specific brands or items.[34]

(Continued from previous page)

Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734 (1999) (*Tennessee Order*).

[32] The Administrator's administrative costs for 1997-1999 were 2.4 percent of total costs program costs, compared to other federal programs, for which administrative expenses range from 1 percent to 15 percent. *See* "Schools and Libraries Program, Report to the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, Committee on Appropriations, U.S. Senate," General Accounting Office, GAO-01-105, (*GAO Report*), December 2000, at 28.

[33] 47 C.F.R. §§ 54.502, 54.503.

[34] *See* SLD web site, Eligible Services List (October 17, 2001) <http://www.sl.universalservice.org/reference/eligible.asp>.

Applicants or service providers can appeal a determination by the Administrator that a given service is ineligible for discounts only after a requested service is rejected. Accordingly, in this section, we seek comment on changes in the application process that relate to eligible services and that will serve to improve program operation and our oversight of the program. We emphasize that, in this section of the Notice, we seek comment on changes to eligible services only as they relate to applications under the universal service support mechanism for schools and libraries.

14. Many parties, including schools and libraries as well as service providers, have recommended that we seek comment on the efficiency and fairness of this process for determining the eligibility of particular products and services. In response, we invite parties to submit proposals for changes that will improve the operation of the eligibility determination process in terms of efficiency, predictability, flexibility, and administrative cost. We note that GAO has recommended that the Administrator implement stronger measures to ensure that applicants receive funding only for eligible services, and that the Administrator has already implemented changes in response to that recommendation.[35] One possible alternative approach that has been suggested would be to establish a computerized list accessible online, whereby applicants could select the specific product or service as part of their FCC Form 471 application.[36] Because applicants would only select from pre-approved products and services, this presumably would decrease the number of instances in which applicants seek funding for ineligible services. It has also been suggested that such a process would considerably simplify the application review process. Further, by helping to avoid accidental funding of ineligible services, it would further the Commission's goal of preventing fraud and abuse. We seek comment on whether this approach is desired, consistent with our goals, and on the feasibility of such a system. We seek comment on how often such a list would be updated. We also seek comment on how we could ensure that maintaining such a list does not inadvertently limit applicants' ability to take advantage of products and services newly introduced to the marketplace. In addition, we seek comment on how interested parties could best provide input to the Administrator on an ongoing basis regarding what specific products and services should be eligible. Additionally, we seek comment on how to handle services and equipment that are eligible only if used in certain ways.[37]

15. We seek comment on whether we need to reconsider or modify the current selection of products and services eligible for support under the schools and libraries mechanism. In particular, we seek comment on whether the mechanism could be improved by changes in our current eligibility policies regarding (a) Wide Area Networks, (b) wireless services, and (c) voice mail.

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[35] *See GAO Report.*

[36] *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

[37] For example, cellular telephone service is currently eligible only when used at a place of instruction and for educational purposes. *See* SLD web site, Eligible Services List (October 17, 2001) <<http://www.sl.universalservice.org/data/pdf/EligibleServicesList_10_17_01.pdf>>.

16. We seek comment on whether to change our current policy, as set forth in our rules and decisions, regarding Wide Area Networks (WANs). In the *Fourth Order on Reconsideration*, the Commission concluded that the building and purchasing of WANs to provide telecommunications is not eligible for discounts. The Commission first concluded that the building and purchasing of WANs themselves does not constitute telecommunications services or internal connections. The Commission further found that WANs built and purchased by schools and libraries do not appear to fall within the narrow provision that allows support for access to the Internet because WANs provide broad-based telecommunications.[38] The Commission noted, however, that schools and libraries may receive universal service discounts on WANs provided over leased telephone lines, because such an arrangement constitutes a telecommunications service.[39]

17. In the *Tennessee Order*, the Commission established that universal service funds may be used to fund equipment and infrastructure build-out associated with the provision of eligible services to eligible schools and libraries.[40] The Commission subsequently affirmed this principle in the *Brooklyn Order*, but expressed its concern that "by authorizing unrestricted up-front payments for multiple years of telecommunications service when there is significant infrastructure build-out, [the Commission] could create a critical drain upon the universal service fund, and reach the annual spending caps quickly."[41] In attempting to strike a fair and reasonable balance between the desire not to unnecessarily drain available universal service funds by committing large amounts annually to a limited number of applicants, and the desire to ensure that eligible schools and libraries receive supported services, the Commission determined that recipients may receive discounts on the non-recurring charges associated with capital investment in an amount equal to the investment prorated equally over a term of at least three years.[42]

18. Certain state government representatives have suggested that we reconsider whether our policies regarding WANs have resulted in an efficient use of program funds, and, in particular, whether providing discounts on the cost of telecommunications service utilizing WANs has indeed caused a "critical drain" on program resources. Leased WAN service is, under our rules, a Priority One service.[43] The costs of leasing WANs therefore decreases funds

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[38] *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5430 para. 193 (1997) (*Fourth Order on Reconsideration*); *see also* 47 C.F.R. § 54.518 ("[T]o the extent that states, schools or libraries build or purchase a wide area network to provide telecommunications services, the cost of such wide area networks shall not be eligible for universal service discounts . . . .")

[39] *Fourth Order on Reconsideration,* 13 FCC Rcd at 5431 para. 193 n.585.

[40] *Tennessee Order.*

[41] *See Brooklyn Order,* 15 FCC Record at 18606.

[42] *Id.* at 18606-18607.

[43] Leased WAN service is currently eligible under Priority One. *See Brooklyn Order; Tennessee Order.*

available for other Priority One services. We seek comment on the effectiveness and fairness of our WAN policy, and on whether other policies could result in a more equitable distribution of discounts in the program.

19. One possible approach would be to increase the three-year period of time over which WAN-related capital expenses must be recovered through telecommunications service charges, so that the annual burden on available program funds is reduced. We seek comment on this and other possible approaches.

20. Similarly, we seek comment on whether our decision in the *Tennessee Order* to consider leased WANs as a Priority One service has led to a fair and equitable distribution of funds.[44] Some parties have suggested that the marked increase in demand for Priority One services arises from applicants leasing equipment from telecommunications providers for which they are likely to receive discounts rather than purchasing the equipment as internal connections, which have a high likelihood of not being funded under the current priority rules. We seek comment on whether a change in our approach to WAN-related expenses is warranted by this increase in demand, and if so, what changes consistent with the statutory restrictions of section 254 of the Act should be adopted to meet the program's goals of improved operation, a fair and equitable distribution of funds, and effective oversight to prevent waste, fraud and abuse.[45]

21. As wireless service has become more commonplace, we have received numerous recommendations that we reconsider our policies regarding the eligibility of wireless services. Wireless telephone service, for example, is not currently eligible when used by school bus drivers or other non-teaching staff of a school, including security personnel, because we have interpreted the statutory requirement that universal service discounts be provided only for "educational purposes" to exclude use by such support staff.[46] We seek comment on whether broadening eligibility for wireless services under the schools and libraries mechanism, consistent with the statute, would improve the application review process and whether it would increase opportunities for fraud and abuse. In addition, in light of changing wireless technologies, we seek comment on whether we need to modify any rules or policies regarding the eligibility of wireless services for support under the schools and libraries mechanism so that distribution of funds is consistent with our principle of competitive neutrality and does not favor wireline technology over wireless technology.[47]

22. Many parties have recommended that the Commission reconsider its initial

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[44] *Tennessee Order*, 14 FCC Rcd 13734.

[45] 47 U.S.C. § 254.

[46] 47 U.S.C. § 254(h)(1)(B)(stating that services shall be provided "for educational purposes."; 47 C.F.R. § 54.504(b)(2)(ii)(requiring certification that services requested will be used "solely for educational purposes."); SLD website, Eligible Services List (October 17, 2001) <http://www.sl.universalservice.org/reference/eligible.asp>.

[47] *See Universal Service Order,* 12 FCC Rcd at 8801-20, paras. 47-49 (citing competitive neutrality, including technological neutrality, as a guiding principle of section 254).

determination regarding the eligibility of voice mail for support under the schools and libraries mechanism. In the *Universal Service Order*, the Commission determined that voice mail would not "at [that] time" be eligible, based, in part, on the recommendation of the Federal-State Joint Board on Universal Service that such information services not be eligible.[48] The increasing need for, and prevalence of, voice mail as a way of communicating with school and library staff for educational purposes raises the issue of whether voice mail, which serves a similar purpose as email (which is eligible for support under the schools and libraries mechanism), should also be eligible. We also note that making voice mail eligible may streamline the application review process, by reducing administrative effort and costs associated with determining what portion of a school or library's telecommunications costs are related to voice mail, and ensuring that the school or library does not receive discounts for those costs. Accordingly, we seek comment on whether a change in voice mail eligibility would improve the operation of the program or otherwise further our goals of preventing fraud, waste and abuse and promoting the fair and equitable distribution of the program's benefits.

2. Discounts for Internet Access When Bundled with Content

23. In the *Universal Service Order,* the Commission concluded that schools and libraries may receive discounts on access to the Internet, but not on separate charges for particular proprietary content or other information services.[49] The Commission held that if it is more cost-effective for a school or library to purchase Internet access provided by a telecommunications carrier that bundles a minimal amount of content with such Internet access, a school or library may obtain discounts on that bundled package.[50] If the telecommunications carrier provides bundled Internet access with proprietary content to a school or library, and also offers content separate from Internet access, the school or library may only obtain discounts on the price of the Internet access, as determined by the price of the bundled access and content less the price of the separately-priced content.[51] Thus, if the only Internet access a provider offers is bundled with content for a total of $50.00 per month, and that provider sells the content separately for $30.00 per month, a school or library purchasing the bundled package would currently be eligible for discounts on $20.00 per month.[52]

24. Various affected applicants have suggested, both to us and to the Administrator, that Internet access that includes content from one provider may provide more cost-effective access to the Internet than another provider's Internet access containing minimal or no content. For example, an applicant may receive bids for Internet access from two providers, each offering service at $50.00 a month. One provider offers access and content bundled together, and

[48] *Id.* at 9013, para. 444; *see* Federal-State Joint Board on Universal Service, CC Docket 96-45, *Recommended Decision*, 12 FCC Rcd 87, 323-324 (1996).

[49] *Universal Service Order* at 9014, para. 445.

[50] *Id.* at 9014, paras. 446-447.

[51] *Id.* at 9014, para. 447.

[52] *Id.*

separately offers content alone for $30.00, while the second provider just offers Internet access. An applicant might find that the bundled access and content may provide more cost-effective Internet access when considering cost, reliability, and other factors than Internet access without content from the other provider. Under our current rules, a recipient would be eligible for discounts on only $20.00 per month for the package of access and content, but could obtain discounts on the full $50.00 for Internet access without content from the second provider. In such a case, our rules may create undesirable incentives for an applicant to choose a provider with a similar price but poorer service and reliability.

25. We seek comment on whether a modification of our rules governing funding of Internet content would improve program operation consistent with our other goals of ensuring a fair and equitable distribution of benefits and preventing waste, fraud and abuse. Specifically, we seek comment on whether, if the only Internet access a provider offers is bundled with content but the provider also offers the content separately without Internet access, an applicant may receive full discounts on that Internet access package (including content) if that package provides the most cost-effective Internet access. Such a modification to our rules may also increase administrative efficiencies, for both applicants and the Administrator, by eliminating effort and costs associated with ensuring that applicants receive no discounts for bundled content.[53] We seek input on the costs and benefits of such a change, including whether providers might take advantage of this approach by adding content to Internet access in order to maximize revenues. We also seek comment on whether, in keeping with our current rules, universal service discounts would continue to be available for a provider only for the cost of access without content, if a service provider offers Internet access to consumers both with and without content.

3. Review of Requests Including Eligible and Non-Eligible Services

26. Currently, acting pursuant to Commission oversight, the Administrator utilizes a 30 percent processing benchmark when reviewing funding requests that include both eligible and ineligible services.[54] If less than 30 percent of the request seeks funding of ineligible services, the Administrator normally will consider the request and issue a funding commitment for the eligible services, denying funding only of the ineligible part. If 30 percent or more of the request is for funding of ineligible services, the Administrator will deny the funding request in its entirety. The 30 percent policy allows the Administrator to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants to determine what part of the discounts requested is

[53] Should we adopt such a rule, we will need to consider the best manner in which it should be implemented. Thus, the determination of the cost-effectiveness of Internet access should, consistent with applicable state and local procurement rules, consider price as the primary factor, but may also include other factors such as technical excellence. *See id.* at 9029-30, paras. 480-482.

[54] *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998); *Brooklyn Order*, 15 FCC Rcd 17931, nn. 23, 46.

associated with eligible services. It also provides an incentive to applicants to eliminate ineligible services from their requests before submitting their applications, further reducing the Administrator's administrative costs. For example, without the procedure, an applicant who has contracted for the construction of a new school for a lump sum might submit a request for the entire amount knowing that the Administrator must then perform the necessary work to identify the costs of any eligible components, such as the telecommunications wiring. Because the Administrator's annual administrative costs are drawn from the same $2.25 billion that supports the award of discounts, an increase in the administrative costs of eligibility review would directly reduce the amount of funds available for actual discounts.

27. We seek comment on the operational benefits and burdens of this procedure to applicants and to the Administrator. We specifically seek input on whether there are alternatives that would improve program operation or otherwise further the other two goals of preventing fraud, waste, and abuse and promoting the equitable distribution of the program's funds, while still providing appropriate incentives to applicants to seek discounts only for eligible services.

4. Compliance with the Americans with Disabilities Act

28. The Americans With Disabilities Act (ADA) provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications.[55] Related statutes, which are referenced by the ADA, include the Rehabilitation Act of 1973, and the Individuals with Disabilities Education Act.[56] The current FCC Form 471, on which entities apply for universal service discounts, contains the following notice: "The Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act, and the Rehabilitation Act may impose obligations on entities to make the services purchased with these discounts accessible to and usable by people with disabilities."[57] We do not, however, explicitly require compliance with these statutory requirements as a condition of receipt of universal service discounts.

29. Some parties have suggested that we require applicants to certify that the services for which they seek discounts will be used in compliance with these acts.[58] We seek comment on whether we should adopt such a certification requirement. In commenting on such a change, parties should comment on the language of any ADA certification, and on the timing for the ADA certification in the application process.[59] To the extent that we would adopt such a change,

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[55] 42 U.S.C. §§ 12101 *et seq.*

[56] 29 U.S.C. §§ 701 *et seq.*; 20 U.S.C. §§ 1400 *et seq.*

[57] Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (Form 471).

[58] *See, e.g.*, National Council on Disability, *National Disability Policy: A Progress Report* 63-64 (2001).

[59] Such a certification could, for example, be made on a modified FCC Form 486. *See* Schools and Libraries Universal Service, Receipt of Service Confirmation Form, OMB 3060-0853 (April 2000) (FCC Form 486). To implement newly enacted statutory requirements, the Commission recently modified FCC Form 486 to include certifications that schools and libraries are in compliance with the Children's Internet Protection Act. *See Federal-*
(continued....)

we also solicit comment on whether any rule changes are needed to ensure that applicants that fail to comply with the certification no longer receive discounts. We further seek comment on whether, and how, the Administrator and the Commission would verify and enforce compliance, and the extent that such actions promote our three goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

5. Consortia

30. Section 54.501(d)(1) implements the Commission's determinations in the *Universal Service Order* as to when eligible entities seeking discounts as part of a consortium can obtain interstate telecommunications services at prices below tariffed rates.[60] The Commission found that there was congressional support for allowing eligible schools and libraries to obtain services at pre-discount prices below tariffed rates.[61] However, it concluded that where such eligible entities sought services as members of a consortium including private sector non-eligible members, allowing the private non-eligible businesses to obtain below-tariff rates would compromise federal and state policies of non-discriminatory pricing.[62] The Commission therefore concluded that a consortium that included private sector ineligible members could obtain tariffed services only if "the pre-discount prices of [the tariffed services] are generally tariffed rates."[63]

31. We seek comment on whether a change to section 54.501(d)(1), recommended by consortia members and service providers working with consortia, would improve program operation. We also invite comment on whether changes to other consortia rules might achieve a greater consistency or fairness in our approach to the participation of consortia in the program. The language in the current rule provides that "[w]ith one exception, eligible schools and libraries participating in consortia with ineligible private sector members shall not be eligible for discounts for interstate services."[64] Parties have argued that this language is unclear and could be construed to prohibit such consortia from obtaining services other than tariffed services. We seek comment on whether to clarify the rule to establish clearly that only ineligible private sector members seeking services as part of a consortium with eligible members are prohibited from obtaining below-tariffed rates from providers that offer tariffed services (tariffed providers). In particular, we seek comment on this proposed modification:

§ 54.501(d)(1). For purposes of seeking competitive bids for telecommunications

(Continued from previous page)
State Joint Board on Universal Service, Children's Internet Protection Act, CC Docket No. 96-45, Report and Order, FCC 01-120 (rel. Apr. 5, 2001).

[60] 47 C.F.R. § 54.501(d)(1); *Universal Service Order*, 12 FCC Rcd at 9027-28, paras. 476-478.

[61] *Universal Service Order*, 12 FCC Rcd at 9028, para. 477.

[62] *Id.* at 9028, para. 478.

[63] *Id.*

[64] 47 C.F.R. § 501(d)(1).

> services, Internet access and internal connections, schools and libraries eligible for support under this subpart may form consortia with other customers. When ordering telecommunications and other supported services under this subpart, the consortium may even seek to negotiate for pre-discount prices below tariffed interstate rates on behalf of members that are eligible schools or libraries, health care providers eligible under subpart G, or public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties and municipalities. However, eligible schools and libraries may only receive support for their share of services as part of a consortium that includes ineligible private sector entities if the pre-discount prices of any interstate tariffed services that such ineligible private sector members of the consortium receive are at the tariffed rates.

We specifically request comment on the impact of this rule on program operation, whether administrative costs would result from the proposed change, what these costs would be, and whether these costs would outweigh the benefits of the change.

32. We also seek comment on any proposals as to how we might clarify, change or reorganize the other rules and requirements relating to consortia, to help ensure that these rules and requirements reflect a fair and consistent approach to the role and obligations of consortia leaders and the consequences to consortia members of violations by leaders and other members. We seek comment on how we might improve program operation or otherwise further our interest in fairly distributing benefits of the program and limiting fraud, waste, and abuse, by making consortia application and participation requirements more transparent, so that it is clear what consortia may do and what their responsibilities are.

B. Post Commitment Program Administration

1. Choice of Payment Method

33. Under existing law and Commission procedure, the Administrator of the universal service support mechanism does not provide funds directly to schools and libraries, but rather, provides funds to eligible service providers, who then offer discounted services to eligible schools and libraries.[65] Under existing Administrator's procedures, service providers and applicants are advised to work together to determine whether the applicant will either (1) pay the service provider the full cost of services, and subsequently receive reimbursement from the provider for the discounted portion, after the provider receives reimbursement through the Billed Entity Applicant Reimbursement (BEAR) process, or (2) pay only the non-discounted portion of the cost of services, with the service provider seeking reimbursement from the Administrator for

[65] *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service,* CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291, paras. 8-9 (rel. October 8, 1999) (*reconsideration pending*); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service,* CC Docket Nos. 97-21 and 96-45, Order, FCC 00-350 (rel. October 26, 2000) (*appeal pending*), *United States Telecommunications Association v. Federal Communications Commission,* No. 00-1500, filed November 27, 2000.

the discounted portion.[66] Because it is not clear in our rules whether the provider or the applicant may make the final determination of which of the two payment processes to pursue, the potential exists for service providers to insist that applicants to whom they provide services use the first method of paying the up-front costs, and later seeking reimbursement. Indeed, some large providers require recipients to use the BEAR form.

34. We seek comment on whether our rules should specify that service providers must offer applicants the option of either making up-front payments for the full cost of services and being reimbursed via the BEAR form process, or paying only the non-discounted portion up-front. We seek comment on the costs and benefits of our proposal to all affected parties and whether it would improve program operation overall.

35. We also seek comment on whether, to further improve program operation and prevent fraud and abuse, we should incorporate enforcement measures regarding remittal of BEAR payments into our rules. Under current Administrator procedure, service providers reimbursing billed entities via the BEAR process must remit to the billed entity the discount amount authorized by the Administrator to the billed entity within ten days of receiving the reimbursement payment from the Administrator and prior to tendering or making use of the payment from the Administrator.[67] The Administrator has implemented this procedure pursuant to ongoing Commission oversight of the program, but this procedure has not been formally codified in our rules. We have received reports from both the Administrator and from affected schools and libraries that, in certain cases, service providers have failed to remit these payments to applicants until well past the ten-day limit. In order to address this problem, we seek comment on whether service providers should be required to remit these payments to the applicants within twenty days of having received them, and that failure to do so will constitute a rule violation potentially subjecting the service provider to fines and forfeitures under section 503 and/or other law enforcement action.[68]

36. We seek comment on whether this proposed twenty-day period imposes a significant economic burden on small entity providers (as defined below in paragraphs 88 through 98 of this Order). We welcome any suggestions as to how the remittance process might be modified to minimize such impact. We also seek comment on the extent to which a modification such as lengthening the remittance period would have a deleterious impact on eligible schools and libraries that is inconsistent with our three goals of improving program operation, ensuring that the benefits of the program are equitably distributed, and preventing fraud, waste, and abuse.

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[66] *See* SLD web site, Form 472 BEAR Filing Guidance (April 27, 2001) <http://www.sl.universalservice.org/reference/8bear.asp>; FCC Form 472.

[67] *See* FCC Form 472 at 4.

[68] 47 U.S.C. § 503.

2. Equipment Transferability

37. Our rules provide that eligible services purchased at a discount "shall not be sold, resold, or transferred in consideration for money or any other thing of value."[69] Nothing in our rules, however, prevents transferring equipment obtained with universal service discounts from the eligible recipient to another entity without consideration for money or anything of value. We have received reports from state authorities, schools and libraries, and the Administrator that some recipients are replacing, on a yearly or almost-yearly basis, equipment obtained with universal service discounts, and transferring that equipment to other schools or libraries in the same district that may not have been eligible for such equipment.[70]

38. Although we recognize that schools and libraries may legitimately desire to upgrade their equipment frequently as a result of the rapid pace of technological change, we seek comment on whether it is appropriate to balance this desire against the impact of such action on other parties seeking discounts under the program. We seek comment on whether the program's goals would be improved by requiring that schools and libraries make significant use of the discounted equipment that they receive, before seeking to substitute new discounted equipment. In particular, we seek comment on whether there may be insufficient incentives in the schools and libraries mechanism to prevent wasteful or fraudulent behavior, without imposing restrictions on these transfers of equipment. We specifically seek comment on whether, as a condition of receipt of universal service discounts, we should adopt measures to ensure that discounted internal connections are used at the location and for the use specified in the application process for a certain period of time.

39. One option could be to adopt a rule limiting transfers for three years from the date of delivery and installation of equipment for internal connections other than cabling, and ten years in the case of cabling. Under this option, an applicant could replace only ten percent of its old cabling per year with new discounted internal connections (such as upgrading from copper wire to fiber optics). Otherwise, an applicant seeking discounts on new equipment to replace universal service-funded equipment that has been in place for less than the specified time periods could do so only if it traded the existing equipment to its service provider for a credit toward the purchase of the cost of the new discounted equipment.[71] We seek comments on whether this option would achieve the goals of efficient and equitable use of the mechanism's funds, and whether this approach would prevent both waste and fraud. We also seek comment on how this

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[69] 47 C.F.R. § 54.617.

[70] For example, in Funding Year 3, schools that were not eligible for at least an 82 percent discount did not receive discounts for internal connections due to limited program funds. However, a school eligible for a 90 percent discount in Funding Year 3 that received internal connections could have transferred that equipment to another school in the same school district that was ineligible for Funding Year 3 discounts for internal connections due to its lower discount rate. *See* 47 C.F.R. § 54.507(g) (describing rules of priority); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 01-143 (rel. April 30, 2001) (describing funding priorities for Funding Year 3).

[71] We note that these rules would affect only the transferability of equipment in the schools and libraries support mechanism, and therefore would not affect any Commission rules or policies governing depreciation.

change might most effectively be implemented, and on attendant benefits and costs.

40. An alternate approach could be to deny internal connections discounts to any entity that has already received discounts on internal connections within a specified period of years regardless of the intended use of the new internal connections. We seek comment on whether we should adopt such a rule, on the appropriate time frame for such a rule, and whether we should impose this limitation only in situations where the applicants have previously received discounts above a specified threshold in the relevant time period. We also seek comment on the administrative costs that would be incurred, both in the application process and in post-disbursement auditing, to ensure compliance with a rule prohibiting an entity from receiving discounts on internal connections if it previously had received such discounts. We seek comment on these and any other proposals to address this issue and thus give us further insight on how, with regard to equipment issues, we might further our goals of improving program operation, ensuring that the mechanism's benefits are fairly and equitably distributed, and eliminating fraud, waste, and abuse.

3. Use of Excess Services in Remote Areas

41. The Act requires that discounts on services be provided for educational purposes to schools and libraries.[72] In the *Universal Service Order*, the Commission implemented this provision by requiring schools and libraries to certify that the services obtained through discounts from the schools and libraries mechanism will be used solely for educational purposes.[73] The Commission determined that the certification rules, including the educational purposes rule, were reasonable and not unnecessarily burdensome, especially in light of the Commission's goals to reduce fraud, waste, and abuse.[74]

42. In some instances, the discounted services received by schools and libraries through the schools and libraries program are provided on a non-usage sensitive basis and are used for educational purposes during hours when the schools and libraries are open, but remain unused during off-hours when the entities are closed. As a result, due to the non-usage sensitive nature of the services, services that could be used after the operating hours of schools and libraries presently go unused.

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[72] 47 U.S.C. § 254(h)(1)(B).

[73] *See Universal Service Order*, 12 FCC Rcd at 9079-9080, para. 577-578. The Commission requires schools and libraries to certify that the services requested will be used solely for educational purposes. The Commission declined to establish guidelines to identify educational purposes in order to prevent fraudulent use of discounted services. *See also* 47 C.F.R. § 54.504(b)(2)(ii).

[74] *See Universal Service Order*, 12 FCC Rcd at 9076, para. 570 ("We concur with the Joint Board's finding that Congress intended to require accountability on the part of schools and libraries and, therefore, we concur with the Joint Board's recommendation and the position of most commenters that eligible schools and libraries be required to: (1) conduct internal assessments 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."). By taking steps to require accountability from applicants, the Commission was reducing the likelihood of fraud, waste, and abuse.

43. The State of Alaska recently requested a waiver of the restriction in section 54.504(b)(2)(ii) that requires applicants to certify that the services obtained from the schools and libraries mechanism would be used for solely educational purposes.[75] In many communities in Alaska, services from the schools and libraries program have provided the only means to deliver Internet access to communities in rural remote areas. Specifically, the State of Alaska asked to use the telecommunications and Internet access services as an Internet "point of presence" in rural remote communities.[76] To the extent that a school or library will not be fully utilizing the services it ordered for educational purposes, and these services would otherwise be wasted, the State of Alaska requested that others in the community be allowed to use these services for non-educational purposes.[77]

44. On December 3, 2001, the Commission granted the State of Alaska a limited waiver of section 54.504(b)(2)(ii) of the Commission's rules.[78] In the *Alaska Order*, the Commission concluded that there is nothing in section 254(h)(1)(B) that prohibits the Commission from granting a waiver of section 54.507(b)(2)(ii) of its rules to expand the use of such services, so long as in the first instance they are used for educational purposes.[79] The Commission further determined that based on the special circumstances outlined in Alaska's petition, there was good cause to waive section 54.504(b)(2)(ii) of the Commission's rules for rural remote communities in Alaska who lack local or toll-free dial-up access to the Internet.[80]

45. We seek comment more broadly on the types of situations that might warrant utilization of excess service obtained through the universal service mechanism for schools and libraries when services are not in use by the schools and libraries for educational purposes.[81] Although we believe the Commission's current rule relating to educational purposes is appropriate in the overwhelming majority of circumstances, we seek comment on whether the Commission should revise its rules in order to expressly address such situations, and whether

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[75] *Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling,* CC Docket No. 96-45, Request for Waiver and Declaratory Ruling, filed January 29, 2001 (Alaska Petition). *See also State of Alaska Seeks a Declaratory Ruling and Waiver of Section 54.504(b)(2)(ii) of the Commission's Rules Pleading Cycle Established,* CC Docket No. 96-45, Public Notice, DA 01-584 (rel. Mar. 7, 2001).

[76] *See* Alaska Petition at 2. The State of Alaska asked the Commission to waive section 54.504(b)(2)(ii) as long as the services were not usage sensitive, the use was limited to hours in which the school or library was not in operation, and no toll-free or local dial-up Internet access was otherwise available.

[77] *See* Alaska Petition at 20.

[78] *Federal-State Joint Board on Universal Service, Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling*, CC Docket No. 96-45, Order, FCC 01-350 (rel. Dec. 3, 2001) *(Alaska Order).*

[79] *Alaska Order.*

[80] *Id.*

[81] *See* 47 U.S.C. § 254(h)(1)(B); 47 C.F.R. § 54.504(b)(2)(ii).

such revisions would further the goals of improving program operation, ensuring a fair and equitable distribution of benefits and preventing waste, fraud, and abuse.

46. If we were to modify our rules expressly to address the use of excess services in limited circumstances, we seek comment on whether to consider conditioning such use on several criteria: (1) that the school or library request only as much discounts for services as are reasonably necessary for educational purposes; (2) the additional use would not impose any additional costs on the schools and libraries program; (3) services to be used by the community would be sold on the basis of a price that is not usage sensitive; (4) the use should be limited to times when the school or library is not using the services; and (5) the excess services are made available to all capable service providers in a neutral manner that does not require or take into account any commitments or promises from the service providers. With respect to the fifth condition, we previously found that such a condition was "consistent with the Act, which prohibits any discounted services or network capacity from being sold, resold, or transferred by such user in consideration for money or any other thing of value."[82] We seek comment on the legal, operational, and enforcement issues raised by this approach.

47. We believe that, to the extent we should adopt any such change, the resulting policy would need to be carefully circumscribed to prevent fraud, waste, and abuse. In light of these concerns, and our desire to ensure that the appropriate safeguards are in place, we also seek comment regarding how such an arrangement would function. In particular, we seek comment on how to ensure that any revised rule would not indirectly impose costs on the schools and libraries program or that applicants would not request more service than is necessary for educational purposes.

C. Appeals

1. Appeals Procedure

48. In the *Eighth Order on Reconsideration*, the Commission established a process by which aggrieved parties could seek review from the Commission of decisions of the Administrator.[83] As of January 1, 2002, the Commission has reviewed 740 appeals from the Administrator's decisions. Of these, 592 were denied or dismissed, 135 were granted, and 13 were granted in part. Of those appeals granted, a number involved situations where the Commission concluded that a close examination of the rules and policies applicable to the underlying request was warranted.[84] Our history to date thus leads us to conclude that the Administrator is applying existing rules and policies correctly in the vast majority of cases. Nevertheless, the opportunity for Commission review remains an important method by which we

[82] *Alaska Order*, para. 17.

[83] *Eighth Order on Reconsideration.*

[84] *See, e.g., Request for Review by Copan Public Schools of the Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-26231, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd. 5498 (2000).

provide effective oversight of the Administrator's activities.

49. Our current rules provide that any person aggrieved by a decision of any Division of the Administrator may file an appeal directly with the Commission within 30 days of the date of the issuance of the decision.[85] Alternately, the person may appeal the decision of a Division within 30 days of the date of the decision to the relevant Committee governing that Division, in which case the time for filing an appeal with the Commission is tolled during the pendency of the appeal before the Committee.[86] Once the Committee has issued a decision on the appeal, the person then has up to 30 days to appeal that decision to the Commission.[87] In each case, an appeal is deemed filed on the date that it is received, not the date it is postmarked.[88]

50. Appeals to the Commission are decided by the Common Carrier Bureau, unless they raise novel issues of fact, law, or policy, in which case, they are decided by the full Commission.[89] Whether an appeal is before the Common Carrier Bureau or the full Commission, the standard of review is *de novo*.[90] This review process applies equally to decisions made by the three divisions of the Administrator defined in our regulations, the Schools and Libraries Division, the Rural Healthcare Division, and the High Cost and Low Income Division.[91]

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[85] 47 C.F.R. §§ 54.719(c), 54.720(a).

[86] 47 C.F.R. §§ 54.719(a), 54.720(b). In October 1998, the Board of Directors (Board) of the predecessor corporation to USAC with responsibility for the schools and libraries universal service support mechanism authorized staff to process appeals in accordance with principles set forth by the Board and by the Schools and Libraries Committee of the Board.

[87] 47 C.F.R. §§ 54.719(c), 54.720(a). We note that, due to recent disruptions in the reliability of the mail service, the period of appeal has been extended on an emergency, temporary basis to 60 days for requests seeking review of decisions issued on or after August 13, 2001. *See Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. December 26, 2001; erratum rel. December 28, 2001; second erratum rel. January 4, 2002).

[88] 47 C.F.R. § 54.720.

[89] 47 C.F.R. § 54.722(a).

[90] 47 C.F.R. §§ 54.722, 54.723. For further description of the procedures for seeking review of the Administrator's decisions specifically, *see* SLD Web Site, <http://www.sl.universalservice.org/reference/AppealsProcedureYR4.asp>.

[91] *Eighth Order on Reconsideration,* 13 FCC Rcd 25058, 25091-25094, paras. 66-71. USAC's operations include three divisions created pursuant to the Commission's regulations: the High Cost and Low Income Division, the Schools and Libraries Division, and the Rural Health Care Division, each of which is responsible for its respective universal service support mechanism. 47 C.F.R. § 54.701(g)(1). For each of these three divisions, there is a committee of the USAC Board of Directors (the Board) that directs and oversees its actions. 47 C.F.R. § 54.701(f). Any action taken by a committee with regard to its respective support mechanism is binding on the Board, unless the USAC Board disapproves of such action by a two-thirds vote of a quorum of directors. 47 C.F.R. § 54.705(d)(1). USAC has also created a fourth division, the Operations Division, which is responsible for billing and to which USAC has applied the same appeals procedures and deadlines as are applicable to the other divisions.

51. Numerous parties have recommended that we increase the time limit for filing an appeal with the Committee of the Schools and Libraries Division and the time limit for filing an appeal with the Commission. As noted above, the time limit in both cases is 30 days, which commences on the date of the decision and runs until the filing of the appeal.[92] The parties have proposed increasing this period to 60 days. In the *Eighth Order on Reconsideration*, the Commission established the 30 day period partly in response to commenters' requests for a streamlined approach.[93] Experience suggests, however, that this time period may be inadequate for parties wishing to appeal an adverse decision. To date, we have dismissed appeals as untimely approximately 22 percent of the time. Parties have suggested that some extension of time for filing appeals will provide aggrieved schools and libraries a greater opportunity to review the relevant decisions, and determine whether there are valid bases for appeal in light of the governing rules and Commission precedent. Moreover, they suggest, additional time would enable applicants to consult with the e-rate assistance offices that many States have now established to advise constituents who are seeking such funding. Nothing in this suggested change would prevent participants from filing appeals before the end of the appeals period.

52. We therefore invite comment on whether this modification to our rules would improve program operation. In addition, we seek comment on the suggestion that we should treat appeals to the Administrator or to the Commission as having been received on the date they are post-marked rather than the date they are filed. This would depart from the Commission practice for filings in general.[94] Such a change, however, would make the appeal procedure consistent with the Administrator's practice of treating FCC Form 471 applications as having been filed as of the post-mark date. Further, it could better ensure that rural and remote applicants will not be disadvantaged if it takes longer to mail an appeal to the Commission. We therefore seek comment on whether we should adopt this modification. Finally, we seek comment on any other changes to our rules or policies concerning the appeals procedure of the Administrator or the Commission that might further the goals of improving program operation, ensuring a fair and equitable distribution of benefits and preventing waste, fraud, and abuse consistent with the 1996 Act.

2. Funding of Successful Appeals

53. Each funding year, the Administrator sets aside a portion of the funds available that year for the schools and libraries universal service mechanism to ensure that sufficient funds will be available for any appeals that may be granted by the Administrator or the Commission.[95]

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[92] 47 C.F.R. § 54.720.

[93] *Eighth Order on Reconsideration*, 13 FCC Rcd 25058, 25093-94, para. 70.

[94] *See* 47 C.F.R. § 1.7 ("Unless otherwise provided in this Title, by Public Notice, or by decision of the Commission or of the Commission's staff acting on delegated authority, pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.")

[95] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Fifth Order on Reconsideration in CC Docket No. 97-21, *Federal-State Joint Board on Universal Service*, Eleventh Order on Reconsideration in CC Docket No. 96-45, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 6033, n. 15 (1999) (*Eleventh Reconsideration Order and Further Notice*).

The Administrator calculates this amount in part by generating a prediction of the percentage of its decisions that will be reversed based on historical experience. Because the prediction may underestimate the actual number of reversed decisions, it is possible that the appeal reserve fund in a particular year will ultimately be inadequate to fund all successful appeals in that year.

54. In the *Eleventh Reconsideration Order and Further Notice*, the Commission proposed certain rules establishing funding priorities for the Administrator to apply when distributing funds from the appeal reserve to schools and libraries that successfully appeal decisions of the Administrator.[96] Specifically, the Commission proposed that the Administrator should first fund all Priority One appeals, and then allocate any remaining funds in the appeal reserve to Priority Two appeals in order of descending discount rate.[97] The Commission further proposed that if funds were not available for all Priority One appeals, then all funding should be allocated to Priority One appeals on a pro-rata basis.[98] To ensure correct distribution of funds to Priority One appeals, the Commission proposed that the Administrator should wait until a final decision has been issued on all Priority One service appeals before allocating funds to such services on a pro-rata basis.[99]

55. In response to these proposals, several commenters suggest that it is inappropriate to limit appellants to those funds in the appeal reserve fund because it might result in successful appellants being treated differently from applicants who were awarded funding initially.[100] In some circumstances, two schools or libraries of similar eligibility that file simultaneous applications for identical support might receive different funding merely because one was subject to an erroneous initial funding decision that was subsequently reversed on appeal. To avoid such a result, we now seek comment on whether, to ensure a fair and equitable distribution of funds, we should instead fully fund successful appeals to the same extent that they would have been funded in the initial application process had they not been initially denied funding.

56. We further seek comment on what rules should govern if the new proposal were adopted, in the event that the funding year's appeal reserve is depleted. One option, for example, would be for the Administrator to rely on any other funds that remain from the current funding year first, including funds that had never been committed and funds that had been committed but were never used by the original recipients. If these sources are unavailable or insufficient, the Administrator could then use funds from the next funding year as soon as they become available, and reduce the level of discounts available in that next funding year by that amount. We seek comment on this and any other option consistent with our goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse

[96] *See, generally, Eleventh Reconsideration Order and Further Notice*, 14 FCC Rcd 6033, 6037-38, paras. 9-12.

[97] *Id.*, 14 FCC Rcd at 6037, para. 9.

[98] *Id.*, 14 FCC Rcd at 6038, para. 10.

[99] *Id.*

[100] *See* United States Telephone Association Comments, at 2; Council of Chief State School Officers Comments, at 3 (filed in response to *Eleventh Reconsideration Order and Further Notice*).

consistent with the 1996 Act.

57. Under such an option, it may be unnecessary to withhold funding until all appeals have been decided. Some delay in funding may be unavoidable, however, because if the Administrator must fund successful appeals in one year by drawing funds from the succeeding Funding Year, those funds would not be available until the beginning of that future funding year. We believe that delays in funding of Priority Two internal connections will generally be less burdensome than delays in funding of Priority One services, because the latter services must be purchased by the applicant during the funding year regardless of whether funding for discounts is awarded at that time or not. We therefore seek comment on whether the Administrator should fund successful appellants in the order that decisions on appeal are issued, except that the Administrator should not commit funds to successful applicants requesting support for Priority Two services until the Administrator is certain that sufficient funds remain to fund all successful appellants requesting discounts for Priority One services. We seek comment on all of our current proposals regarding the funding of successful appellants.

D. Enforcement Tools

1. Independent Audits

58. In its December 2000 report, the General Accounting Office proposed strengthening application and invoice review procedures in order to reduce the amount of funds inadvertently spent on ineligible services.[101] The Administrator has implemented a number of procedural changes suggested by the report, and has undertaken numerous measures on its own initiative. Working closely with the Commission's Office of the Inspector General (OIG), the Administrator has significantly stepped up its efforts aimed at detecting and resolving instances of waste, fraud, and abuse. For example, it has increased the number of audits, withheld suspect payments, withdrawn posted FCC Forms 470 from its website and rejected FCC Form 471 applications, and has increasingly coordinated its efforts with federal, state, and local law enforcement to combat fraud and other potentially criminal activity. We, in turn, have examined our rules to consider whether our existing enforcement tools should be strengthened in any way.

59. We seek comment on whether, so as to improve our oversight capacity to guard against waste, fraud, and abuse, our rules should explicitly authorize the Administrator to require independent audits of recipients and service providers, at recipients' and service providers' expense, where the Administrator has reason to believe that potentially serious problems exist, or is directed by the Commission. We specifically seek comment on the impact of such a rule on small entities. We further seek comment on alternatives that might provide other assurances of program integrity consistent with the goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

2. Prohibitions on Participation

60. The Act and our rules permit the Commission to initiate forfeiture proceedings

[101] *See GAO Report.*

against those that willfully or repeatedly fail to comply with statutory and regulatory requirements.[102] There are no provisions in our current rules, however, to bar entities from participating in the program for periods of time.

61. We seek comment on whether, so as to further improve our oversight, we can and should adopt rules barring applicants, service providers, and others (such as consultants) that engage in willful or repeated failure to comply with program rules from involvement with the program, for a period of years. Assuming we were to adopt such a rule, we seek input on what standards should apply for barring such entities, and on what an appropriate length of time would be for such a prohibition. We also seek comment on other questions regarding implementation of such a prohibition, including whether the prohibition might apply to individuals, so that those responsible for actions that led to the barring of a particular entity do not evade the purpose of the prohibition by joining or forming another eligible entity.

62. We seek comment generally on whether to adopt additional measures to reduce potential waste, fraud, and abuse in the schools and libraries support mechanism. Consistent with our intent to continue strengthening program integrity, we seek input on further rules and procedures to address these matters.

E. Unused Funds

1. Overview

63. In each funding year, a portion of the $2.25 billion available under the program cap has gone unused, largely because some applicants do not fully use the funds committed to them in a given year.[103] Under the Administrator's procedures in effect in the first three funding years of the program, the Administrator engaged in various ongoing analyses throughout each funding year to ensure that it did not commit more than the $2.25 billion cap each year. Although this $2.25 billion limit on commitments ensured that the level of funds actually disbursed remained under the $2.25 billion cap, the result, given that applicants do not seek disbursement of all committed funds, has been that some of the $2.25 billion has gone unused by applicants each year.

64. The Administrator issues funding commitment decision letters to applicants once their applications have been approved, but does not authorize payouts of committed funds until it receives valid invoices demonstrating that the applicants have obtained the requested products and services. The Administrator approves the disbursement of funds once it receives a certification from the recipient and invoices from the service provider or applicant, indicating

[102] Section 503 of the Act provides for forfeitures in the case of any person who "willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or Order issued by the Commission under this Act . . . ." 47 U.S.C. § 503(b)(1)(B).

[103] According to USAC, unused funds from Funding Year 1 resulted from: the unsatisfied completion of service contracts; use of only a portion of the funds committed to a school or library; and unused funds reserved for appeals. *See* Proposed First Quarter 2000 Universal Service Contribution Factor, CC Docket No. 96-45, Public Notice, DA 99-2780 (rel. Dec. 10, 1999)(*December 1999 Public Notice)*.

that approved services have begun. In many cases, however, applicants and vendors do not submit the required documentation for all the funding, and therefore receive only partial funding, or none of the committed funds at all. As of June 30, 2001, approximately $940 million of the $3.7 billion in program funds committed to applicants during the first and second funding years was not disbursed because of the failure of applicants and providers to submit the required documentation.[104] In the first funding year, the Administrator disbursed approximately 82 percent of committed funds.[105] In the second funding year through June 30, 2001, the Administrator disbursed approximately 71 percent of committed funds.[106] The Administrator projects that a similar proportion of committed funds will be disbursed in Funding Year 3.

65. We seek comment on whether there are any administrative modifications to the schools and libraries universal service support mechanism that we should implement to improve program operation, ensure a fair and equitable distribution of funds, or guard against waste, fraud, and abuse. We seek comment generally on whether there are modifications to the application and funding disbursement process that would serve our goals in this proceeding, that could be implemented immediately without need for a rule change.

66. In addition, the existence of unused funds each year raises two issues that we address in this Notice. The first issue is how to reduce the level of funds that go unused. The second issue is what to do with undisbursed funds, to the extent that they remain despite our reduction efforts. In the sections that follow, we seek comment on these issues.

2. Reduction of Unused Funds

67. We anticipate that several recent administrative changes to the schools and libraries program should help to reduce the under-utilization of committed funds. Specifically, in May 2000, the Administrator released a new Form 500 that gives applicants a convenient tool to reduce or cancel commitments they will not use so that those funds can be made available for other applicants during the same funding year.[107] Additionally, the Administrator developed new and more flexible procedures for service provider changes, consistent with governing precedent. The Administrator expects those procedures to permit approval of many pending service provider changes and the distribution of more funds each year. Furthermore, in order to address the under-utilization of program resources caused by this gap between committed and disbursed funds, the Administrator, in consultation with the Commission, will begin to base the overall amount of committed funds each year on a formula that takes into consideration past levels of

[104] *See USAC Filing for Fourth Quarter 2001 Projections.* GAO recommended that FCC staff should develop a strategy for reducing the percentages of committed funds that go unused, including contacting applicants to ascertain their reasons for not fully using available funds, and determining whether programs rules or procedures should be changed. *See GAO Report* at 37.

[105] *See USAC Filing for Fourth Quarter 2001 Projections.*

[106] *See id.*

[107] *See* Schools and Libraries Universal Service, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form, OMB 3060-0853 (April 2000) (Form 500).

disbursement. We believe that each of these changes will help prevent the likelihood of waste, fraud, and abuse by improving the disbursement of program funds.

68. It is our goal to reduce the gap between funds that have been committed and those that have been disbursed, in order to most effectively implement the goals of section 254(h) by providing for discounts as close as possible to the level of the annual $2.25 billion cap. We seek to develop a record on the reasons why applicants and providers may fail to fully use committed funds under the program. We also seek comment on whether any other program changes would likely result in an increased percentage of committed funds being disbursed each funding year, which will help to reduce the overall amount of unused funds from the schools and libraries mechanism.[108] In the event we adopt additional measures to reduce the existence of unused funds, we seek comment on whether it is necessary to adopt procedures to address a situation in which more funds are committed and used than are available for disbursement.

3. Treatment of Unused Funds

69. Section 54.507(a) of the Commission's rules codifies the annual $2.25 billion cap on the schools and libraries support mechanism.[109] The rule also provides that "all *funding authority* for a given funding year that is unused in that funding year shall be carried forward into subsequent funding years for use in accordance with demand."[110] Although section 54.507(a) addresses *funding authority*, it is silent as to the treatment of unused *funds*, *i.e.*, funds that the Administrator had available for disbursement, but that were not disbursed in that funding year. As discussed *infra*,[111] unused funds from Funding Year 1 have been used to reduce the contribution factor for Funding Years 2 and 3, consistent with Commission rules and policies. We believe, however, that we should consider what should be done with unused funds that may occur in future years.

70. In accord with our efforts to reduce the amount of unused funds from the schools and libraries mechanism, we seek comment on revising the Commission's rules to clarify the appropriate treatment of such unused funds. As stated above, the Commission's rule adopted in accord with the *Universal Service Order* refers to unused *funding authority*, not unused *funds*.[112] Thus, the Commission seeks comment on two options relating to the treatment of unused funds. The first option would be to modify the rule to require expressly that unused funds from the schools and libraries mechanism (beginning with Funding Year 2) should be credited back to contributors through reductions in the contribution factor.[113] The second option would be to

[108] This request for comments is consistent with the recommendation of the General Accounting Office in its December 2000 report. GAO Report, GAO-01-105, at 37.

[109] 47 C.F.R. § 54.507(a).

[110] *Id.* (emphasis added).

[111] *See* paras. 72-77.

[112] 47 C.F.R. § 54.507(a).

[113] The universal service contribution factor is used to calculate a carrier's contribution to the universal service fund. (continued....)

modify the rule to require expressly the distribution of the unused funds in subsequent years of the schools and libraries program, in excess of the annual cap. We seek comment on each of the alternatives. We believe that consumers may benefit from reducing the contribution factor with unused funds because it will decrease the contribution amounts that carriers recover from consumers. Alternatively, disbursing unused funds in subsequent funding years of the schools and libraries mechanism would provide additional resources for applicants, thereby assisting efforts to provide affordable telecommunications and information services to schools and libraries.

IV. ORDER ON RECONSIDERATION

71. In this Order, we consider three petitions asking for reconsideration of Public Notices released in 2000 that credited to contributors unused funds from Funding Year 1 of the universal service support mechanism for schools and libraries.[114] We conclude that it was appropriate to credit back unused funds from Funding Year 1 in the form of a reduction in the contribution factor and deny the petitioner's requests for reconsideration.

A. Background

72. In the *Fifth Order on Reconsideration*, the Commission decided to revise the $2.25 million annual cap, and establish collection and disbursement limits of $1.925 billion for the schools and libraries support mechanism during Funding Year 1.[115] As a result, the collection

(Continued from previous page)

In the *Second Order on Reconsideration*, the Commission set forth the specific method of computation for universal service contributions. *See Changes to the Board of Directors of the National Exchange Carrier Association Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18427, at para. 49 (1997) (*Second Order on Reconsideration*). The Commission directed USAC to calculate an individual carrier's quarterly contribution by multiplying the carrier's universal service revenue base (*i.e.*, interstate and international end-user telecommunications revenues) by the relevant universal service contribution factor. See 47 C.F.R. 54.709(a)(2). *See also Federal-State Joint Board on Universal Service Access Charge Reform*, CC Docket Nos. 96-45 and 96-262, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 96-45, Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679 (2000). The contribution factor is based "on the ratio of quarterly projected costs of the support mechanisms, including administrative expenses, to the applicable revenue base." The Commission further directed USAC to "adjust the contribution factors for each quarter based on quarterly demand for services and administrative costs, subject to any funding caps established in the Universal Service Order." *See Second Order on Reconsideration*, 12 FCC Rcd at 18425, para. 45.

[114] *See* Petition for Reconsideration of Proposed First Quarter 2000 Universal Service Contribution Factor by Greg Weisiger, filed December 20, 1999; Petition for Reconsideration of Proposed Third Quarter 2000 Universal Service Contribution Factor by Greg Weisiger, filed June 12, 2000; Petition for Reconsideration of Proposed Fourth Quarter 2000 Universal Service Contribution Factor by Greg Weisiger, filed September 18, 2000 (*Public Notice Reconsideration Petitions*). *See also* Petitioner Requests Carryover of Unused Funds in the Federal Universal Service Mechanism for Schools and Libraries Pleading Cycle Established, CC Docket No. 96-45, Public Notice, DA 01-975 (rel. Apr. 19, 2001).

[115] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, 14916, para. 3 (1998) (*Fifth Order on Reconsideration*). *See also Universal Service Order*, 12 FCC Rcd at 9054, para. 529 (establishes $2.25 billion annual cap).

and disbursement limits in Funding Year 1 were $325 million less than the annual $2.25 billion cap. The Commission explained its decision by noting the desire of many legislators to balance the need to provide support for schools and libraries against the need to provide support for other mechanisms, such as the high cost support mechanisms, and to keep telephone rates affordable.[116]

73. In 1998, the Commission adopted section 54.507(a) of the Commission's rules, which provides that unused *funding authority*, the difference between the amounts authorized to be collected in any funding year and the $2.25 billion annual cap, would be available for use in subsequent funding years in accordance with demand.[117] Nevertheless, for Funding Year 1, the Commission provided an exception to the rule and specifically prohibited the carryover of unused *funding authority* for the period January 1, 1998 through June 30, 1999.[118] The Commission further determined that unused *funds* that were collected but not disbursed in Funding Year 1 would be carried forward to the next funding period.[119] The rule did not specifically establish how these funds would be used after they were carried forward, however – whether they were to be credited back to contributors or distributed in subsequent funding years to exceed the cap for the schools and libraries mechanism.

74. In May 1999, in the *Twelfth Order on Reconsideration*, the Commission again amended its funding rules to implement quarterly collection and disbursement limits on universal service funds for schools and libraries in Funding Year 2.[120] In addition, unlike Funding Year 1, when the Commission did not authorize funding to the cap, the Commission made clear that for Funding Year 2, the $2.25 billion funding cap would remain undisturbed.[121] Therefore, unused funds that were carried forward from Funding Year 1 could not be disbursed because that would result in disbursement in excess of the $2.25 billion that was authorized to be collected and disbursed in Funding Year 2. The Commission amended section 54.507(a) of its rules to reflect these changes.[122]

75. On December 10, 1999, the Common Carrier Bureau (Bureau) released a Public Notice announcing the proposed universal service contribution factor for the first quarter of

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[116] *See Fifth Order on Reconsideration*, 13 FCC Rcd at 14926, para. 18.

[117] 47 C.F.R. § 54.507(a).

[118] 47 C.F.R. § 54.507(a)(2). The first funding cycle of the schools and libraries universal service mechanism was 18 months. *See also Fifth Order on Reconsideration*, 13 FCC Rcd at 14934, para. 30.

[119] *Id.*

[120] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twelfth Order on Reconsideration in CC Docket No. 96-45, 64 Fed. Reg. 30440 (1999) (*Twelfth Order on Reconsideration*).

[121] *Twelfth Order on Reconsideration* at para. 9.

[122] *See* 47 C.F.R. § 54.507(a)(1).

2000.[123] The universal service contribution factor is used to calculate a carrier's contribution to the universal service fund.[124] USAC reported that it would not need to disburse the full amount of funds that it was authorized to collect for Funding Year 1 of the schools and libraries support mechanism. Specifically, USAC estimated that the schools and libraries program would have an unused balance of approximately $229 million after making all disbursements for Funding Year 1.[125] The Public Notice directed USAC to apply one-quarter of the estimated unused balance to reduce the collection requirement for the schools and libraries program in the first quarter of 2000.[126] The Public Notice noted that this action was consistent with section 54.507 of the Commission's rules and a previous decision by the Commission to permit excess contributions to the rural health care support mechanism to be credited back to contributors.[127] Under the Commission's rules, the Public Notice was deemed approved by the Commission 14 days after release.[128]

76. In 2000, the Commission took no action to change the annual funding cap, and therefore, consistent with the rules, the schools and libraries universal service mechanism was funded at $2.25 billion during Funding Year 3.[129] Subsequently, the proposed contribution factors for the third and fourth quarters of 2000 were released and the estimated unused funds for Funding Year 1 were revised. In the third quarter, USAC estimated that the schools and libraries mechanism would have an unused balance of $340 million.[130] In the fourth quarter, USAC

[123] *December 1999 Public Notice.* We note that the funding year for the schools and libraries universal service mechanism is a fiscal year cycle (July 1 – June 30). Therefore, the first quarter of 2000 was during Funding Year 2 (July 1999- June 2000) of the schools and libraries program.

[124] *See Second Order of Reconsideration*, 12 FCC Rcd at 18427, para. 49.

[125] *December 1999 Public Notice.* According to USAC, this balance occurred because: 1) although USAC made funding commitments to certain schools and libraries, it received no indication that the services were or would be provided; 2) some schools and libraries used only a portion of the funds committed to them; and 3) a portion of the funds reserved for appeals would not be needed.

[126] *Id.* The Commission found that it would be prudent to apply only one-quarter of the estimated unused balance to reduce the contribution factor in the first quarter of 2000 because the unused balance projected for the schools and libraries program was only an estimate at that time.

[127] *See* 47 C.F.R. § 54.507; Proposed First Quarter 1999 Universal Service Contribution Factors and Proposed Actions, CC Docket No. 96-45, Public Notice, FCC 98-318 (rel. Dec. 4, 1998) (*December 1998 Public Notice*). The *December 1998 Public Notice* relied upon 47 C.F.R. § 54.709(b) as authority to take into consideration excess contributions when calculating future contribution factors.

[128] *See* 47 C.F.R. § 54.709(a)(3).

[129] *See* Statement of FCC Chairman William E. Kennard and Commissioner Gloria Tristani, *E-Rate to Receive Full Funding*, released April 13, 2000 (*Funding Year 3 Statement*). We note that Funding Year 3 (July 2000-June 2001) of the schools and libraries program began on July 1, 2000. Therefore, Funding Year 3 included the third and fourth quarters of 2000.

[130] *See* Federal Universal Service Support Mechanisms Fund Size Projections & Contribution Base for the Third Quarter 2000 (filed by USAC May 2, 2000).

estimated there would be an unused balance of $170 million.[131] By Public Notice, the Bureau directed USAC to apply the estimated unused funds to reduce the collection requirement for the schools and libraries program in the third and fourth quarters of 2000.[132] Again, those Public Notices were deemed approved by the Commission 14 days after release.

77. The petitioner filed three petitions requesting the Commission to reconsider the Public Notices establishing the contribution factors for the first, third, and fourth quarters of 2000.[133] Specifically, the petitioner asks the Commission to reconsider its decision to credit unused funds from Funding Year 1 to contributors in the form of a reduction in the collection requirement for the schools and libraries universal service support mechanism in 2000. Rather, the petitioner requests that these funds be carried forward and directly disbursed to schools and libraries for use in subsequent funding years of the schools and libraries program.

B. Discussion

78. We deny the petitions for reconsideration of Public Notices in which unused funds from Funding Year 1 of the schools and libraries universal service support mechanism were applied to reduce the contribution factor. As noted above, section 54.507(a)(2) of the Commission's rules directed the Commission to carry forward unused funds from Funding Year 1, but failed to address how the funds were to be used after they were carried forward.[134] In the *Twelfth Order on Reconsideration,* the Commission adopted rules that precluded the use of unused funds from Funding Year 1 to exceed the disbursement cap in Funding Year 2.[135] The Commission determined that no more than $2.25 billion should be "collected or disbursed" in Funding Year 2.[136] In light of this restriction, the Commission reasonably determined that it could best satisfy the needs of the program by using the unspent funds to reduce the contribution factor for Funding Year 2.[137]

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[131] *See* Federal Universal Service Programs Fund Size Projections & Contribution Base for the Fourth Quarter 2000 (filed by USAC August 2, 2000).

[132] *See* Proposed Third Quarter 2000 Universal Service Contribution Factor, CC Docket No. 96-45, Public Notice, DA 00-1272 (rel. Jun. 9, 2000) (applying one-half of estimated unused schools and libraries balance to offset projected expenses in the third quarter of 2000); Proposed Fourth Quarter 2000 Universal Service Contribution Factor, CC Docket No. 96-45, Public Notice, DA 00-2065 (rel. Sep. 8, 2000) (applying remainder of estimated unused schools and libraries balance to offset projected expenses in the fourth quarter of 2000).

[133] *See Public Notice Reconsideration Petitions.*

[134] 47 C.F.R. § 54.507(a)(2).

[135] *Twelfth Order on Reconsideration* at para. 9.

[136] 47 C.F.R. § 54.507(a)(1).

[137] We also note that this action is consistent with section 54.709(b), which generally addresses the disposition of unused funds from quarter to quarter. "If the contributions received by the Administrator in a quarter exceed the amount of universal service support program contributions and administrative costs for that quarter, the excess payments will be carried forward to the following quarter. The contribution factors for the following quarter will (continued....)

79. Although the Commission did not adopt the same express limiting language found in 54.507(a)(1) with regard to Funding Year 3, the Commission followed the same policy – using unspent funds from Funding Year 1 to reduce the contribution factor for Funding Year 3. At the time that the Commission ordered that the Funding Year 2 cap could not be exceeded in the *Twelfth Order on Reconsideration*, the Commission did not anticipate that unused funds from Funding Year 1 would still be remaining during Funding Year 3. Thus, it did not write the rule to address any year other than Funding Year 2. Although we acknowledge that there is language in the *Universal Service Order* suggesting that unused funds from the schools and libraries universal service support mechanism will be carried forward to exceed the cap, the Commission later adopted an expressly different policy in the *Twelfth Order on Reconsideration.*[138] Applying Funding Year 1 unused funds to exceed the cap in Funding Year 3 would have been inconsistent with the Commission's policy established in the *Twelfth Order on Reconsideration* that unused funds from Funding Year 1 should not be used to exceed the annual funding cap in subsequent funding years.[139] Accordingly, we find that the decision to reduce the contribution factor in Funding Year 3 with unused funds carried forward from Funding Year 1 was appropriate and consistent with the Commission's previous decision to reduce the contribution factor in Funding Year 2.[140]

80. Finally, we decline to overturn our prior decisions with respect to the use of Funding Year 1 unused funds. We conclude that it would be contrary to the Commission's intent, as established in the *Twelfth Order on Reconsideration*, to carry forward the unused funds from Year 1 for purposes of disbursing such funds to schools and libraries to exceed the cap in subsequent funding years.[141] Furthermore, we conclude it would be disruptive to revisit this issue at this time. We therefore deny the petitioner's requests for reconsideration.

V. REVISING OR ELIMINATING OUTMODED RULES

81. We seek comment on any administrative or procedural rules or policies of the Commission or SLD, relating to the schools and libraries support mechanism, that should be revised or eliminated because they have become outmoded. In the four years since the implementation of the support mechanism, some such rules or policies may have become obsolete through changed circumstances or technologies, or may have been rendered unnecessary or redundant in light of changes made to the program. We therefore seek comment on such rules

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take into consideration the projected costs of the support mechanisms for that quarter and the excess contributions carried over from the previous quarter." 47 C.F.R. § 54.709(b).

[138] *Universal Service Order*, 12 FCC Rcd at 9052, 9054, paras. 526, 529; *Twelfth Order on Reconsideration* at para. 9.

[139] Moreover, we note that in its rules the Commission only codified the treatment for unused *funding authority*, not the treatment for unused *funds*, *see* 47 C.F.R. § 54.507, raising questions as to the import of the language in the *Universal Service Order*.

[140] *See Public Notice Reconsideration Petitions*.

[141] *Twelfth Order on Reconsideration* at para. 9.

or policies in order to determine whether any are no longer necessary or in the public interest.

VI. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

82. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the additional certification collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Notice. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

B. Initial Regulatory Flexibility Analysis

83. As required by the Regulatory Flexibility Act (RFA),[142] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided below in section VI.C. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[143] In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[144]

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

84. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.[145] In this Notice, we seek comment on several changes to the schools and libraries universal service support mechanism. With respect to the application process, we seek comment on (1) issues related to the process for determining eligible services, and the eligibility for schools and libraries universal

[142] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[143] *See* 5 U.S.C. § 603(a).

[144] *See id.*

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

service support of such services as voice mail, wireless, and Wide Area Networks; (2) permitting schools and libraries to receive discounts for Internet access that may in certain limited cases contain content, as long as it is the most cost-effective form of Internet access; (3) the 30 percent processing benchmark for reviewing funding requests that include both eligible and ineligible services; (4) whether to require a certification by schools and libraries acknowledging their compliance with the requirements of the Americans With Disabilities Act and related statutes; and (5) modifying our rule governing when members of a consortium may receive service from a tariffed service provider at below-tariff rates.

85. We also seek comment on several issues that arise once discounts have been committed to applicants: (1) providing schools and libraries the flexibility either to make up-front payments for services and receive reimbursement via the Billed Entity Applicant Reimbursement (BEAR) form process, or be charged only the non-discounted cost by the service providers, and require that service providers remit BEAR reimbursements to applicants within twenty days; (2) limiting transferability of equipment obtained with universal service discounts; and (3) allowing members of rural remote communities to use excess capacity from services obtained through the universal service support mechanism in certain limited situations.

86. With respect to the appeals process, we seek comment on increasing time limits for filing appeals to 60 days, and considering appeals filed as of the day they are post-marked; and procedures for funding successful appeals. Fourth, we seek comment on measures to strengthen our existing enforcement tools, including adopting a rule explicitly authorizing independent audits; and barring from the program certain applicants, service providers, and others that engage in willful or repeated failure to comply with program rules. On the issue of unused program funds, we seek comment on the reasons for unused funds, and on how the Commission should treat unused funds. We also deny certain petitions for reconsideration relating to unused funds, and seek comment on revising or eliminating outmoded administrative or procedural rules or policies relating to the schools and libraries universal service support mechanism.

2. Legal Basis

87. The legal basis for this Notice is contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 through 154, 201 through 205, 254, 303(r), and 403, and section 1.411 of the Commission's rules, 47 C.F.R. § 1.411.

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

88. 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.[146] The RFA generally defines the term "small entity" as having the same meaning as the terms

[146] 5 U.S.C. § 603(b)(3).

"small business," "small organization," and "small governmental jurisdiction."[147] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[148] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[149] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[150] Nationwide, as of 1992, there were approximately 275,801 small organizations.[151] "Small governmental jurisdiction"[152] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[153] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[154] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[155] 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 (96 percent) are small entities.

89. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services, including telecommunications service providers, Internet Service Providers (ISPs) and vendors of internal connections.[156]

a. Schools and Libraries

90. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is

[147] 5 U.S.C. § 601(6).

[148] 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).

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

[150] 5 U.S.C. § 601(4).

[151] 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).

[152] 47 C.F.R. § 1.1162.

[153] 5 U.S.C. § 601(5).

[154] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[155] *Id.*

[156] 47 C.F.R. §§ 54.502, 54.503, 54.517(b).

generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law."[157] A secondary school is generally defined as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12.[158] For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.[159] Certain other statutory definitions apply as well.[160] The SBA has defined as small entities elementary and secondary schools and libraries having $5 million or less in annual receipts.[161] In funding year 2 (July 1, 1999 to June 20, 2000) approximately 83,700 schools and 9,000 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's definition, we estimate that fewer than 83,700 schools and 9,000 libraries would be affected annually by the rules proposed in this Notice, under current operation of the program.[162]

b. Telecommunications Service Providers

91. We have included small incumbent local exchange carriers in this RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[163] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[164] We have therefore included small

[157] 47 C.F.R. § 54.500(b).

[158] 47 C.F.R. § 54.500(j).

[159] 47 C.F.R. § 54.501.

[160] *See id.*

[161] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) Codes 611110, 514120. These NAICS Codes were adopted by the SBA effective December 18, 2000, replacing the previously used Standard Industrial Classification (SIC) Codes.

[162] The number of small entities affected by these rules may also be affected by a determination of which entities may make the required certification, which is an issue on which this Notice seeks comment, see ¶ 8. For example, if a school district may certify on behalf of all of its schools, that district may well have annual receipts in excess of $5 million and therefore would not be a small entity under SBA's definition, whereas an individual school in that district might be a small entity with annual receipts of less than $5 million, and thus would be affected by these rules.

[163] 5 U.S.C. § 601(3).

[164] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC, dated May 27, 1999. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included (continued....)

incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

92. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for wired telecommunications carriers.[165] This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.[166] According to the most recent *Trends in Telephone Service* report, 1,335 carriers classified themselves as incumbent local exchange carriers.[167] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of local exchange carriers that would qualify as small business concerns under the SBA's definition. Of the 1,335 incumbent carriers, 13 entities are price cap carriers that are not subject to these rules. Consequently, we estimate that fewer than 1,322 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected.

93. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.[168] This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.[169] According to the most recent *Trends Report*, 204 companies reported that they were engaged in the provision of interexchange services.[170] As some of these carriers have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 204 small entity IXCs that may be affected by the proposals in this Notice.

94. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired

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small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

[165] 13 C.F.R. § 121.201, NAICS Code 513310.

[166] *Id.*

[167] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (Dec. 2000), <http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend200.pdf> (*Trends Report*).

[168] 13 C.F.R. § 121.201, NAICS Code 513310.

[169] *Id.*

[170] *Trends Report*, Table 16.3.

telecommunications carriers.[171] This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.[172] According to the most recent *Trends Report*, 496 competitive service providers reported that they were engaged in the provision of competitive local exchange services.[173] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 349 small entity CAPs and 60 other local exchange carriers that may be affected.

95. *Cellular and Wireless Telephony.* Neither the Commission nor the SBA has developed a definition of small entities specifically for wireless telephony. The closest definition is the SBA definition for cellular and other wireless telecommunications.[174] Under this definition, a cellular licensee is a small entity if it employs no more than 1,500 employees.[175] According to the most recent *Trends Report*, 806 providers classified themselves as providers of wireless telephony, including cellular telecommunications, Personal Communications Service, and Specialized Mobile Radio (SMR) Telephony Carriers.[176] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 806 wireless telephony carriers that may be affected.

96. *Other Wireless Services.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to wireless services other than wireless telephony.[177] The closest applicable definition under the SBA rules is again that of cellular and other wireless telecommunications, under which a service provider is a small entity if it employs no more than 1,500 employees.[178] According to the most recent *Trends Report*, 477 providers

[171] 13 C.F.R. § 121.201, NAICS Code 513310.

[172] *Id.*

[173] *Trends Report*, Table 16.3.

[174] 13 C.F.R. § 121.201, NAICS Code 513322.

[175] *Id.*

[176] *Trends Report*, Table 16.3.

[177] The Commission has adopted a number of service-specific definitions of small businesses for various categories of wireless service, principally in the context of the Commission's rules governing spectrum auctions. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, FCC 01-196, Attachment A, paras. 31-54 (rel. July 2, 2001). For purposes of administering the schools and libraries universal service program, however, we find that it is appropriate to address the various non-telephony wireless services as a group.

[178] 13 C.F.R. § 121.201, NAICS Code 513322.

classified themselves as paging services, wireless data carriers or other mobile service providers.[179] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 477 wireless service providers that may be affected.

c. Internet Service Providers

97. Under the new NAICS codes, SBA has developed a small business size standard for "On-line Information Services," NAICS Code 514191.[180] According to SBA regulations, a small business under this category is one having annual receipts of $18 million or less.[181] According to SBA's most recent data, there are a total of 2,829 firms with annual receipts of $9,999,999 or less, and an additional 111 firms with annual receipts of $10,000,000 or more.[182] Thus, the number of On-line Information Services firms that are small under the SBA's $18 million size standard is between 2,829 and 2,940. Further, some of these Internet Service Providers (ISPs) might not be independently owned and operated. Consequently, we estimate that there are fewer than 2,940 small entity ISPs that may be affected by the decisions and rules of the present action.

d. Vendors of Internal Connections

98. The Commission has not developed a definition of small entities applicable to the manufacturers of internal network connections. The most applicable definitions of a small entity are the definitions under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment" (RTB) and "Other Communications Equipment."[183] According to the SBA's regulations, manufacturers of RTB or other communications equipment must have 750 or fewer employees in order to qualify as a small business.[184] The most recent available Census Bureau data indicates that there are 1,187 companies with fewer than 1,000 employees in the United States that manufacture radio and television broadcasting and communications equipment, and 271 companies with less than 1,000 employees that manufacture other communications equipment.[185] Some of these manufacturers

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[179] *Trends Report*, Table 16.3.

[180] 13 C.F.R. § 121.201, NAICS Code 514191.

[181] *Id.*

[182] 1997 Census Report, Establishment and Firm Size, U.S. Census Bureau, U.S. Department of Commerce, Economics and Statistics Administration, Document EC97S51S-SZ, <http://www.census.gov/prod/ec97/97s51-sz.pdf>, at 24.

[183] 13 C.F.R. § 121.201, NAICS Code 334220, 334290.

[184] *Id.*

might not be independently owned and operated. Consequently, we estimate that there are fewer than 1,458 small entity internal connections manufacturers that may be affected by the decisions and rules of the present action.

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

99. The Notice seeks comment on the proposal that all recipients of discounts be required to certify that they are in compliance with the ADA, but does not specify the language or at what point in the process applicants should be required to make this certification. We already require applicants to make several certifications, both when they apply for discounted services and after approval of discounts when they file an FCC Form 486 indicating their receipt of those services. The new certification will merely require them to check one additional box prior to signing the relevant form.[186] Regardless of the precise language of the certification, we estimate that it will take no more than one minute to review and check the appropriate certification box. Aside from this requirement, the specific proposals under consideration in this Notice would, if adopted, result in no additional reporting or recordkeeping requirements.

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

100. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.[187]

101. We find that the following proposals will have no significant economic impact on small entities: allowing, under certain circumstances, full discounts on Internet service that includes content, the proposed modification to the appeals process, requiring certification of compliance with the ADA, a proposed alteration to the rules regarding application of tariff rates to consortia, the proposed rule establishing the right of funding for all successful appellants and the funding methodology, and possible rule changes affecting overcommitted funding requests.

102. Requiring that recipients be allowed to choose their payment method could have

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[185] 1997 Economic Census, Manufacturing, Industry Series, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Document No. E97M-3342B (August 1999), at 14; 1997 Economic Census, Manufacturing, Industry Series, Other Communications Equipment Manufacturing, Document No. EC97M-3342C (September 1999), at 14 (both available at <http://www.census.gov/prod/www/abs/97ecmani.html>).

[186] *See*, *supra*, paras. 28-29.

[187] *See* 5 U.S.C. § 603(c).

a significant impact on service providers, including small entities, by depriving them of their full revenues for a period of time when the applicant chooses to pay only the discounted portion up-front. We have considered the alternative of continuing to allow small service providers the discretion to mandate a particular payment method. However, as the Commission noted in *Universal Service Order*, "requiring schools and libraries to pay [service providers] in full could create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries."[188] In order to comply with the goals of the Act, *i.e.*, to ensure the delivery of affordable telecommunications service to schools and libraries, including small entities, we conclude that we can justify any additional economic impact that might occur to small service providers.

103. However, in seeking to minimize the burdens imposed on small businesses where doing so does not compromise the goals of the universal service mechanism, we have sought comment on whether to increase the current 10-day period for service providers to remit their payments to 20 days, and we invited comment on how the billing process might be made less burdensome for small entities. We further invited comment on whether, in the case of applicants that choose up-front payment of the full pre-discount cost followed by the provider's remittance of the discount fund through the BEAR process, some extension of the standard remittance period for small businesses may be appropriate.[189] We again invite commenters to discuss the benefits of such changes on small businesses and whether these benefits are outweighed by resulting costs to schools and libraries that might also be small entities.

104. We have sought comment on a proposed rule restricting transferability of equipment, which may have an economic impact on small entity schools and libraries. However, we expect that the impact on small entities will be minimal because the overall effect of the proposed rule is to restrict an entity's ability to purchase redundant systems. Thus, it should reduce rather than increase the entity's costs.

105. We have sought comment on two options for the treatment of funds left unused at the end of a Funding Year. The first option, to use these funds to reduce the contribution factor used to calculate a carrier's contribution for universal service support, would temporarily reduce the burden of universal service support on telecommunications service providers, including many small businesses. In the alternative, we have sought comment on a proposal to distribute unused funds to schools and libraries in subsequent funding years, which would improve the opportunities of small entity schools and libraries but conversely would impose a greater burden on small businesses. It is therefore not clear which of these two alternatives would be more appropriate to minimizing the economic impact on small entities. In seeking comment on these two options, we invite commenters to discuss this question.

106. We have further sought comment on numerous other areas of the program, including the reduction of the percentage of unused funds, the eligibility determination process,

[188] *Universal Service Order*, 12 FCC Rcd 8776, para. 586.

[189] *See*, *supra*, para. 36.

the specific eligibility of WANs, wireless services, and voice mail, the use of excess capacity in rural areas for non-educational purposes, the rules governing consortia, and the appropriate method of enforcement of our rules in general. We do not seek comment on specific proposals on these issues at this time, and therefore, cannot at this time determine how changes in these areas will impact on small entities in relation to the current regime. We therefore request that commenters, in proposing possible alterations to our rules, discuss the economic impact that those changes will have on small entities.

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

107. None.

C. Comment Due Dates and Filing Procedures

108. We invite comment on the issues and questions set forth in the Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules,[190] interested parties may comment on or before 45 days after this Notice is published in the Federal Register, and reply comment on or before 75 days after this Notice is published in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

109. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

110. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Parties who choose to file by paper are hereby notified that effective December 18, 2001, the Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing

[190] 47 C.F.R. §§ 1.415, 1.419.

hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8:00 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method...	It should be addressed for delivery to...
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 to 7:00 p.m.
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail	445 12th Street, SW Washington, DC 20554

All filings must be sent to the Commission's Secretary: Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Suite TW-A325, Washington, D.C. 20554.

111. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read-only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 02-6), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ("Disk Copy Not an Original.") Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette

copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail at qualexint@aol.com.

112. Written comments by the public on the proposed and/or modified information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, are due on or before 15 days after date of publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C. 20503.

113. Accessible formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426, (202) 418-7365 TTY, or at bmillin@fcc.gov.

VII. ORDERING CLAUSES

114. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), 403, and sections 0.91, 0.291, 1.3, and 1.411 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 1.411, this NOTICE OF PROPOSED RULE MAKING IS ADOPTED, as described herein.

115. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

116. IT IS FURTHER ORDERED pursuant to section 1.106(j) of the Commission's rules, 47 C.F.R. § 1.106(j), that the following Petitions for Reconsideration are DENIED: Petition for Reconsideration of Proposed First Quarter 2000 Universal Service Contribution Factor by Greg Weisiger, filed December 20, 1999; Petition for Reconsideration of Proposed Third Quarter 2000 Universal Service Contribution Factor by Greg Weisiger, filed June 12, 2000; Petition for Reconsideration of Proposed Fourth Quarter 2000 Universal Service Contribution Factor by Greg Weisiger, filed September 18, 2000.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas WTC
Secretary

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS, APPROVING IN PART, DISSENTING IN PART

Re: Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking.

I wholeheartedly support seeking comment on ways to improve the schools and libraries program. We are now in the fourth year of what can only be described as a tremendously successful program. By helping connect our schools and libraries to the Internet, the E-Rate plays a critical role in providing our children and our communities with the Information Age tools and skills necessary to prosper in the 21st century.

I must, however, dissent from one part of this Notice of Proposed Rulemaking that creates ambiguity where none need exist. This issue concerns whether unspent funds in one year of the program may be provided to schools and libraries in subsequent years.

In 1997, when the Commission put in place an annual cap of $2.25 billion for this program, the Commission made clear that "all funding authority for a given year that is unused shall be carried forward into subsequent years for use in accordance with demand."[191] In each year, the Administrator of the E-Rate program collects funds up to the cap to meet demand. Yet, although initial estimates were that demand would not exceed the cap for nearly a decade,[192] the program has been so successful that since the first year, requests from our nation's schools and libraries have exceeded the available funding. All funds, however, are not disbursed for a variety of administrative reasons or because individual schools and libraries do not fully use the money committed to them. Our rules were designed to ensure that funds would be used for their intended purpose or returned so that other deserving schools could benefit. Today, we have hundreds of millions of dollars in unspent funds that could and should be used to bring Internet access to our communities.

Yet, the Notice the Commission adopts today states that our rules are ambiguous as to whether unused funds in one year are available to support our schools and libraries in subsequent years. I find no ambiguity.

Last year, in the fourth year of the E-Rate program, schools and libraries requested more than double the available funds to help bring the Internet to the heart of our communities. Now is not the time to shortchange our children's future. I hope that, in the Order, my colleagues will vote with me to affirm full funding for this program. We need to make sure that the end result of this proceeding is to improve the program for our communities and our schools. They deserve no less.

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[191] 47 C.F.R. § 54.507(a).

[192] Congressional Budget Office, *Federal Subsidies of Advanced Telecommunications for Schools, Libraries, and Health Care Providers*, January 1998.