

B. Final Regulatory Flexibility Analysis

117. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²⁰⁰ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Schools and Libraries NPRM*.²⁰¹ The Commission sought written public comment on the proposals in the *Schools and Libraries NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.²⁰²

1. Need for, and Objectives of, the Second Report and Order

118. In this Order, the Commission adopted a number of rules to streamline program operation, and promote the Commission's goal of reducing the likelihood of fraud, waste, and abuse. We clarify the statutory term "educational purpose," the prohibition of funding of discounts for duplicative services, and that wireless services are eligible to the same extent wireline services are eligible. We conclude that voice mail should be eligible for discounts under the schools and libraries universal service support mechanism. We direct USAC to develop a pilot program testing an online list of internal connections equipment that is eligible for discounts. We codify an existing policy that a request must include less than "30 percent" of ineligible services. We adopt a rule requiring service providers to give applicants the choice each funding year whether to pay the discounted price or pay the full price and then receive reimbursement, and a rule requiring service providers to remit any reimbursement payments to the applicant within a set time period. We extend the time limit for filing an initial appeal to 60 days, and agreed to accept appeals as filed when postmarked. We also conclude that all successful appeals should be funded to the extent that they would have been funded had the discounts been awarded through the normal funding process. We adopt rules debarring persons convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries program, absent extraordinary circumstances. We also make several minor and technical rule changes to conform rules with the No Child Left Behind Act of 2002, clarify the docket for appeals filing, and delete certain obsolete sections.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

119. There were no comments filed that specifically addressed the rules and policies presented in the IRFA. Nevertheless, the agency has considered the potential impact of the rules proposed in the IRFA on small entities.²⁰³

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

120. The RFA directs agencies to provide a description of and, where feasible, an

²⁰⁰ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁰¹ *Schools and Libraries NPRM*, 17 FCC Rcd at 1946.

²⁰² See 5 U.S.C. § 604.

²⁰³ See *infra* paras. 133-37.

estimate of the number of small entities that may be affected by the proposed rules, if adopted.²⁰⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁰⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁰⁶ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²⁰⁷

121. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”²⁰⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.²⁰⁹ The term “small governmental jurisdiction” is defined as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²¹⁰ As of 1997, there were approximately 87,453 government jurisdictions in the United States.²¹¹ This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small government jurisdictions must be 75,955 or fewer. 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.²¹²

a. Schools and Libraries

122. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”²¹³ A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under

²⁰⁴ 5 U.S.C. § 603(b)(3).

²⁰⁵ 5 U.S.C. § 601(6).

²⁰⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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.”

²⁰⁷ Small Business Act, 15 U.S.C. § 632.

²⁰⁸ 5 U.S.C. § 601(4).

²⁰⁹ 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).

²¹⁰ 5 U.S.C. § 601(5).

²¹¹ 1995 Census of Governments, U.S. Census Bureau, United States Department of Commerce, Statistical Abstract of the United States (2000).

²¹² 47 C.F.R. §§ 54.502, 54.503, 54.517(b).

²¹³ 47 C.F.R. § 54.500(b).

state law," and not offering education beyond grade 12.²¹⁴ 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.²¹⁵ Certain other statutory definitions apply as well.²¹⁶ The SBA has defined as small entities elementary and secondary schools and libraries having \$6 million or less in annual receipts.²¹⁷ In Funding Year 2 (July 1, 1999 to June 30, 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 size standard, we estimate that fewer than 83,700 schools and 9,000 libraries might be affected annually by our action, under current operation of the program.

b. Telecommunications Service Providers

123. 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."²¹⁸ 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.²¹⁹ We have therefore included small 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.

124. *Local Exchange Carriers and Competitive Access Providers.* Neither the Commission nor the SBA has developed a size standard specifically for small providers of local exchange services. The closest applicable size standard under the SBA rules is for wired telecommunications carriers.²²⁰ This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.²²¹ According to the most recent Commission data there are 1,619 local services providers with 1,500 or fewer employees.²²² Because it seems

²¹⁴ 47 C.F.R. § 54.500(j).

²¹⁵ 47 C.F.R. § 54.501.

²¹⁶ *See id.*

²¹⁷ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) Codes 611110 and 519120 (NAICS 2002 code 519120 was previously 514120).

²¹⁸ 5 U.S.C. § 601(3).

²¹⁹ *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).

²²⁰ 13 C.F.R. § 121.201, NAICS Code 513310.

²²¹ *Id.*

²²² Estimates are based upon FCC Form 499-A worksheets, filed April 1, 2001, combined with public employment data from FCC ARMIS filings and Securities Exchange Commission filings. These estimates do not reflect affiliates that do not provide telecommunications service or that operate solely outside the United States. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table

(continued....)

certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's size standard. Of the 1,619 local service providers, 1,024 are incumbent local exchange carriers, 411 are Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), 131 are resellers and 53 are other local exchange carriers.²²³ Consequently, we estimate that no more than 1,619 providers of local exchange service are small entities that may be affected.

125. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable size standard under the SBA rules is for wired telecommunications carriers.²²⁴ This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.²²⁵ According to the most recent Commission data regarding the number of these carriers nationwide of which we are aware, there are 181 IXCs with 1,500 or fewer employees.²²⁶ Because it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's size standard. Therefore, we estimate that the majority of those 181 IXCs may be affected by our action.

126. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunications, which consists of all such firms having 1,500 or fewer employees.²²⁷ According to data for 1997, a total of 977 such firms operated for the entire year.²²⁸ Of those, 965 firms employed 999 or fewer persons for the year, and 12 firms employed 1,000 or more. Therefore, nearly all such firms were small businesses. In addition, we note that there are 1807 cellular licenses; however, a cellular licensee may own several licenses. According to Commission data, 858 carriers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio telephony services, which are placed together in the data.²²⁹ We have estimated that 291 of these are small under the SBA

(...continued from previous page)

5.3, page 5-5 (May 2002) (*Telephone Trends Report*). FCC Website location
<http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend502.pdf>.

²²³ *Id.*

²²⁴ 13 C.F.R. § 121.201, NAICS Code 513310.

²²⁵ *Id.*

²²⁶ See *Telephone Trends Report*, *supra* note 222.

²²⁷ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

²²⁸ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, Table 5, "Employment Size of Firms Subject to Federal Income Tax: 1997," NAICS code 513322 (October 2000).

²²⁹ See *Trends in Telephone Service*, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 - Number of Telecommunications Service Providers that are Small Businesses (May 2002).

small business size standard.²³⁰

127. *Paging.* In the *Paging Second Report and Order*, we adopted a small size standard for “small businesses” for purposes of determining eligibility for special provisions for the auctions held in 2000.²³¹ For those purposes, a small business was defined as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.²³² The SBA approved this definition.²³³ There were 440 licenses sold, and 57 companies claiming small business status won licenses. In addition, at present there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. The SBA has developed a small business size standard for Paging, which consists of all such firms having 1500 or fewer employees.²³⁴ According to Commission data, 608 carriers reported that they were engaged in the provision of either paging or “other mobile” services.²³⁵ Of these, we estimate that 589 are small, under the SBA-approved small business size standard. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

c. Internet Service Providers

128. SBA has developed a small business size standard for Online Information Services.²³⁶ According to SBA regulations, a small business under this category is one having annual receipts of \$21 million or less.²³⁷ According to Census 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.²³⁸ Thus, the number of Online Information Services firms that are small under the SBA's \$21 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 the great majority of ISPs are small.

²³⁰ *Id.* Data found in *Trends in Telephone Service* is based on information filed by service providers on FCC Form 499-A worksheets, in combination with employment information obtained from ARMIS and Securities and Exchange Commission filings as well as industry employment estimates published by the Bureau of Labor Statistics.

²³¹ Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Second Report and Order*, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (*Paging Second Report and Order*); see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 10030, paras. 98-107 (1999).

²³² *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

²³³ See Letter to Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

²³⁴ 13 C.F.R. § 121.201, NAICS code 513321 (changed to 517211 in October 2002).

²³⁵ See *Trends in Telephone Service*, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 - Number of Telecommunications Service Providers that are Small Businesses (May 2002).

²³⁶ 13 C.F.R. § 121.201, NAICS Code 518111 (previously 514191).

²³⁷ *Id.*

²³⁸ 1997 Economic Census, Establishment of Firm Size, U.S. Census Bureau, U.S. Department of Commerce, Economics and Statistics Administration, Document EC97S62S-SZ (1997 Health Care Data) at 18.

d. Vendors of Internal Connections

129. 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 size standards under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment" (RTB) and "Other Communications Equipment."²³⁹ 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.²⁴⁰ The most recent available Census Bureau data indicates that there are 1,187 establishments 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.²⁴¹ Some of these manufacturers might not be independently owned and operated. Consequently, we estimate that the majority of the 1,458 internal connections manufacturers are small.

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

130. There are no additional reporting or recordkeeping requirements relating directly to the decisions in this Order. The decision to have the Universal Service Administrative Company notify applicants of suspension and debarment proceedings, and maintain a list of persons debarred from the program does not add any reporting, recordkeeping, or compliance requirements to small entities.²⁴² The same is true for the decision to have the Wireline Competition Bureau modify forms to include notification of debarment rules.

131. Regarding other compliance burdens, the Order clarifies a compliance requirement that would affect all participating entities, by requiring service providers to allow applicants to choose whether they should be provided with discounted bills or whether they should pay the service provider for the undiscounted price and later be reimbursed. In addition, the Order establishes a time limit for service providers to reimburse the applicant. This potentially could require small service providers to implement accounting systems to allow them to provide such discounts and remit such payments within the required time frame. In the *Schools and Libraries NPRM*, we specifically invited commenters to discuss the impact of such changes on small businesses and schools and libraries that might also be small entities.²⁴³ We find that this would have a positive economic impact on the schools and libraries, including small ones, that cannot afford upfront payments.²⁴⁴ We are not persuaded that any burden regarding this billing clarification is significant and conclude that it will not be a burden upon

²³⁹ 13 C.F.R. § 121.201, NAICS Code 334220, 334290.

²⁴⁰ *Id.*

²⁴¹ 1997 Economic Census, Manufacturing, Industry Series, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Document No. E97M-3342B (August 1999), at 9; 1997 Economic Census, Manufacturing, Industry Series, Other Communications Equipment Manufacturing, Document No. EC97M-3342C (September 1999), at 9 (both available at <<http://www.census.gov/prod/www/abs/97ecmani.html>>).

²⁴² See *supra* paras. 66-77.

²⁴³ *Schools and Libraries NPRM*, 17 FCC Rcd at 1954, para. 103.

²⁴⁴ See *supra* paras. 44-50.

small providers that wish to participate in the program to provide applicants with such a choice. Regarding the remittance deadline, we find this will not be a burden to small providers and that it will positively impact schools and libraries, including small ones, waiting for reimbursement.²⁴⁵

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

132. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others: “(1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or *simplification of compliance and reporting requirements under the rule for such small entities*; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”²⁴⁶

133. Although there were no comments specifically regarding the IRFA, there were concerns from commenters about how an online eligible services list might impact businesses providing services, and might help small schools and libraries. Consistent with our desire to assist small entities, we have directed USAC to develop a pilot program testing an online list of internal connections equipment that is eligible for discounts and report back to the Commission about its impact.

134. The Order also allows for the funding of discounts for voice mail, a proposal that garnered overwhelming support of commenters.²⁴⁷ We find that adoption of this proposal would reduce the administrative burden on schools and libraries participating in the program because they would no longer have to segregate out the voice mail portion of their phone bills when they apply for funding.²⁴⁸ The inclusion of voice mail would have a positive effect on entities that receive discounts for telecommunications in that this commonly used service would now be included in discounts.

135. In addition, we codify an existing policy of less than “30 percent” of a request to include ineligible services. This maintains the status quo.

136. We also extend the time limit for filing an initial appeal with the Schools and Libraries Division and the Commission to 60 days and accept appeals as filed when postmarked based on comments that this would benefit all entities involved in the program. Also, all entities will benefit by the steps we have taken to ensure that all successful appeals will be funded to the extent that they would have been funded had the discounts been awarded through the normal funding process.

137. Additionally, we direct the Enforcement Bureau to undertake suspension and debarment proceedings for persons convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism. We

²⁴⁵ See *supra* paras. 44-51.

²⁴⁶ 5 U.S.C. § 603(c)(1)-(4).

²⁴⁷ See *supra* paras. 28-30.

²⁴⁸ See *supra* para. 30.

have given a suspended or debarred person, or a person that has contracted or intends to contract with a suspended or debarred person to provide or receive services in connection with the schools and libraries support mechanism the opportunity to request that the Commission reverse or reduce the period or scope of suspension or debarment. Under SBREFA, agencies are required to taken into account small business size when assessing fines and forfeitures, and our agency will comply with the law as appropriate.²⁴⁹

138. **Report to Congress:** The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.²⁵⁰

C. Initial Paperwork Reduction Act of 1995 Analysis

139. This Further Notice contains either a proposed or modified information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB comments are due 60 days from the date of publication of this Further Notice in the Federal Register. 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.

D. Initial Regulatory Flexibility Analysis

140. As required by the Regulatory Flexibility Act (RFA),²⁵¹ 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 the Further Notice of Proposed Rulemaking (Further 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 Order provided below in section IV.C. The Commission will send a copy of the Order, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).²⁵² In addition, the Order and IRFA (or summaries thereof) will be published in the Federal Register.²⁵³

²⁴⁹ See SBREFA § 223.

²⁵⁰ See 5 U.S.C. § 604(b).

²⁵¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁵² See 5 U.S.C. § 603(a).

²⁵³ See *id.*

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

141. In the *Schools and Libraries NPRM*, we sought comment on whether to amend our rules regarding the treatment of unused funds from the schools and libraries universal service mechanism.²⁵⁴ In the *First Order* revising our rules regarding the treatment of unused funds from the schools and libraries universal service support mechanism, we determined that beginning no later than the second quarter of 2003, any unused funds from the schools and libraries support mechanism shall, consistent with the public interest, be carried forward for disbursement in subsequent funding years of the schools and libraries support mechanism.²⁵⁵ We also stated our intent to develop specific rules implementing this policy.²⁵⁶ In the Further Notice, we seek comment on proposed rules and procedures implementing that policy.

142. In addition, in the Further Notice we seek further comment on the viability of an online eligible services list with brand name products in the telecommunications services and Internet access categories. We also seek comment on whether to modify our existing rules so that applicants no longer need to certify that their technology plan has been approved, but instead can certify that it will be approved by the time that services supported by the universal service mechanism for schools and libraries begin. We seek comment on whether it may be appropriate to debar persons from participation in the schools and libraries program under circumstances that do not culminate in a criminal or civil judgment. Finally, we seek comment on the effect of a debarment on a provider's participation in other universal service programs, and on our rules regarding changing service providers post-debarment.

2. Legal Basis

143. The legal basis for the Further 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

144. We have described in detail in the Final Regulatory Flexibility Analysis in this proceeding the categories of entities that may be directly affected by our proposals. For this Initial Regulatory Flexibility Analysis, we hereby incorporate those entity descriptions by reference.²⁵⁷

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

145. The specific proposals under consideration in the Further Notice would not, if adopted, result in additional recordkeeping requirements for small businesses. The proposal to

²⁵⁴ See *Schools and Libraries NPRM*, 17 FCC Rcd at 1940-1941.

²⁵⁵ *First Order*, 17 FCC Rcd at 11523-11524.

²⁵⁶ *Id.* at 11524.

²⁵⁷ See *supra* paras. 120-129.

have the Universal Service Administrative Company report unused fund data to the Commission does not add any reporting, recordkeeping, or compliance requirements to small entities.²⁵⁸

146. In the Further Notice we ask for further comment on the feasibility of an online eligibility list including brand name products in the telecommunications services and Internet access categories to help applicants in the application process. We conclude in the Order that the establishment of a similar program with regard to internal connections is likely to reduce compliance burdens on small applicants because it would help facilitate the application process, as commenters noted.²⁵⁹ We believe that such a list would help all schools, libraries, local governments applying for these entities, all of which include small entities, and reduce any costs by facilitating the application process. We invite comment on whether an online eligibility list including brand name products in the telecommunications services and Internet access categories would affect the cost of complying for small businesses.

147. In addition, the proposal to modify our existing requirement that applicants can certify that their technology plan will be approved does not add a requirement for small entities, but rather extends the timing of the requirement to allow more time to meet the requirement of the program. As we noted in the Order, we believe that the rule change will reduce any burden on applicants in obtaining approval of a technology plan well in advance of the commencement of a funding year. We seek comment on the costs and benefits of our proposal.²⁶⁰

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

148. 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.²⁶¹

149. As noted above, in the *First Order* we revised our rules regarding the treatment of unused funds from the schools and libraries universal service support mechanism.²⁶² In the Further Notice, we seek comment on how to implement the Commission's policy to carry over unused funds to subsequent years of the schools and libraries mechanism. We propose that in the second quarter of each calendar year, the Commission will announce a specific amount of unused funds from prior funding years to be carried forward in accordance with the public interest for use in the next full funding year, in excess of the annual funding cap. We propose that USAC provide the Commission with quarterly estimates of the amount of unused funds, and that the Commission would carry forward available unused funds from prior years on an annual

²⁵⁸ See *supra* paras. 93-94.

²⁵⁹ See *supra* para. 34.

²⁶⁰ See *supra* paras. 99-100.

²⁶¹ See 5 U.S.C. § 603(c).

²⁶² *First Order*.

basis.²⁶³ Consistent with our analysis in the *First Order*, we believe that the rules and procedures that we propose will have a similar impact on both small and large entities, because schools and libraries will benefit equally from the additional funds made available. We invite commenters to discuss the benefits of these proposed rules and procedures and whether these benefits are outweighed by resulting costs to any other small entities.

150. Regarding an online eligible services list including brand name products in the telecommunications services and Internet access categories, we direct the Administrator in the Order to create a pilot program for a similar item, internal connections discounts.²⁶⁴ In the Order, we also direct the Administrator to report back to the Commission about the ramifications of the pilot program for internal connections. We believe this will help us in our assessment of the feasibility of an online eligible services list including brand name products in the telecommunications services and Internet access categories. We request that commenters, in proposing possible alternatives to an online eligible services list including brand name products in the telecommunications services and Internet access categories, discuss the economic impact that changes may have on small entities.

151. In addition, in the Further Notice we seek comment on the allocation of funds for Priority One services in the event that requests for such services exceed the funding cap. Although the program has not had a funding year in which this has happened, if the requests for Priority One services exceed the funding cap, there currently are no rules that govern the way the Priority One requests would be awarded discounts. The way in which such funding is disbursed may have an impact upon those small entities applying for discounts and any small companies providing such goods and services. We request that commenters, in proposing possible alternatives to our rules, discuss the economic impact that changes may have on small entities.

152. We also consider whether it is appropriate to debar certain persons from participation in the schools and libraries universal service mechanism under certain circumstances that may not culminate in a criminal conviction or civil judgment.²⁶⁵ We believe that providing the Commission the flexibility to debar persons who, for example, willfully or repeatedly violate Commission's rules, ensures accountability in the program and allows for additional funding for more deserving applicants. This would potentially benefit applicants that abide by the Commission's rules, including small entities. We also seek comment on whether there should be a process whereby the Commission could delay, reverse, or modify suspension or debarment on a case-by-case basis. Such action may provide the Commission with additional flexibility to take into account the various situations that may arise under the debarment program. In addition, we seek comment on whether our rules should permit applicants whose service provider has been debarred to change service providers before their application for discounted services has been approved or after the last date for invoices. We believe that such action would provide greater flexibility to all entities, including small entities, to change service providers under a greater range of circumstances. We request that commenters, in proposing possible alternatives to these rules, discuss the economic impact that changes may have on small entities.

²⁶³ See Appendix C.

²⁶⁴ See *supra* paras. 33, 36-37.

²⁶⁵ See *supra* section IV(F).

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

153. None.

E. Comment Filing Procedures

154. We invite comment on the issues and questions set forth in the Further 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,²⁶⁶ interested parties may file comments on or before **30** days after publication in the Federal Register of this FNPRM, and reply comments on or before **60** days after publication in the Federal Register of this FNPRM. All filings should refer to CC Docket No. 02-6. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²⁶⁷

155. Comments filed through 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. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is CC Docket No. 02-6. Parties may also submit an electronic comment 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.

156. 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, Vistrionix, 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 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.

²⁶⁶ 47 C.F.R. §§ 1.415, 1.419.

²⁶⁷ See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

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 a.m. 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

157. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Room 5-B540, Washington, DC, 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or 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 docket number, in this case, 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 pleading, 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.

158. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington, DC, 20554. In addition, the full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating 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 qualexint@aol.com.

159. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply

with section 1.49 and all other applicable sections of the Commission's rules.²⁶⁸ We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the FNPRM in order to facilitate our internal review process.

F. Further Information

160. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or bmillin@fcc.gov. This FNPRM can also be downloaded in Microsoft Word and ASCII formats at http://www.fcc.gov/ccb/universal_service/highcost.

161. For further information, contact Katherine Tofigh at (202) 418-1553 or Jonathan Secrest at (202) 418-2024 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

VI. ORDERING CLAUSES

162. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, this Second Report and Order IS ADOPTED.

²⁶⁸ See 47 C.F.R. § 1.49.

163. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix B attached hereto, effective thirty (30) days after the publication of this Second Report and Order in the Federal Register, except for sections 54.500(k), 54.503, 54.507(g)(i-ii), 54.517(b), and 54.514(a), which are effective July 1, 2004.

164. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, this Further Notice of Proposed Rulemaking IS ADOPTED.

165. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Second Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

List of Parties Filing Comments
CC Docket No. 02-6

<u>Commenter</u>	<u>Abbreviation</u>
Access Living of Metropolitan Chicago	AL
Airoidi, Joan	
Alaska, State of (Department of Education and Early Development)	Alaska
Alaska Telephone Association, The	ATA
American Association of School Administrators	AASA
American Library Association	ALA
Arkansas E-rate Workgroup, The State of	Arkansas E-rate
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	AWS
Avella Area School District	Avella
Bakersfield School District	Bakersfield
BellSouth and SBC Comm., Inc.	BellSouth/SBC
Benton Foundation	
Bibbey, David	
Boston, City of	Boston
Bowe, Marty	
California Department of Education, The	California DOE
Carnegie Library of Pittsburgh	Carnegie Library
Cellular Telecommunications & Internet Association	CTIA
Central Susquehanna Intermediate Unit	Central Susquehanna
Cleveland Municipal School District	Cleveland MSD
Coalition for E-rate Reform	E-rate Reform
Colorado Department of Education	Colorado DOE
Community Technology Centers' Network, The Benton Foundation, Association for Community Networking, California Community Technology Policy Group, Santa Barbara College, Casa Foundation	CTCNet
Council of Chief State School Officers	CCSSO
Council of the Great City Schools, The	Great City
Delaware Center for Educational Technology	
Dell Computer Corporation	Dell
eChalk LLC	eChalk
Edison Schools, Inc.	Edison Schools
Educational Services District 101	Edu. Service D. 101
Education and Library Networks Coalition	EdLINC
Emilienburg, Steven	
E-Rate Elite Services, Inc.	E-Rate Elite
Excaliber Internet Corp.	Excaliber
Florida Division of Library and Information Services	
Florida Public Service Commission	Florida PSC

Florida State of Dept. of Ed.	Florida DOE
Funds For Learning, LLC	
General Communications, Inc.	GCI
Gibson, Jeffrey	
Grainger, Kathleen Bond	
Gregory, James D.	
Harris, Jim	Harris (Alabama DOE)
Harvey ESD	Harney
Hawaii State Public Library	Hawaii
Illinois State Board of Education	Illinois BOE
Inclusive Technologies	
Information Institute	
Information Renaissance	
Integrity Networking Systems, Inc.	Integrity
Intelenet Commission, Indiana Department of Education and Indiana State Library	Intelenet
Iowa Communications Network	
Iowa Department of Education	Iowa DOE
Iversen, Sarah L.	
Johnson, Jack	
Jones Public Schools	
Kellogg Consulting, LLC	Kellogg Consulting
Kentucky Department for Libraries and Archives	
Kentucky Department of Education	
Kila School District #20	Kila
Lawton-Bronson Community School, Norman Washburn	
Lebanon School District	
Los Angeles Unified School District	LA USD
Madison School District	
Maine Public Utilities Commission	Maine PUC
Marian High School	
Megdad, Diane	
Memphis City Schools	
Michigan Information Network, The	Michigan
Missouri Office of the Public Counsel	Missouri OPC
Missouri Research and Education Network	MOREnet
Montana Independent Telecommunications Systems	MTIS
Montana Public Service Commission	Montana PSC
Montgomery, Ruth Ann	
Nassau-Suffolk School Boards Association	N-SSBA
National Council on Disability	NCD
National Education Association, the International Society for Technology in Education and The Consortium for School Networking	NEA et al
New Jersey Library Association, The	
New York City Board of Education, The	NYCBOE
New York Public Library, The	NYPL

New York State Education Department, The	
Nextel Communications, Inc.	Nextel
North Attleborough Public Schools	
North Carolina State Library	NCL
North of Boston Library Exchange	NOBLE
Northwood School District	
O'Donnell, Tracey	
Office of Information Technology Services of North Carolina, The	OIT NC
Office of the Public Counsel	
Ogden, Jeffrey C.	
Pennsylvania Department of Education	Pennsylvania DOE
Philadelphia School District	
Pisano, Vivian M.	
Plummer, Jamie	
Quaker Valley School District	
Queens Borough Public Library	
Richardson Associates Electronics	
Rural School and Community Trust	
Scranton Public Library	Scranton PL
Lackawanna County Library System	
Seattle Public Library	Seattle PL
Segalman and Nixon	
Sharer, Judy	
Skiatook Public Schools	
Software & Information Industry Association	Software & Info
Sorenson, Doug	
Spectrum Communications Cabling Services, Inc.	Spectrum
Sprint Corporation	Sprint
Sterling, Jack	
St. Louis Public Library	
Southwest Virginia Education and Training Network	SVETV
TAMSCO Telecommunications Division	TAMSCO
Tel/Logic Inc.	Tel/Logic
Telecommunications for the Deaf, Inc.	TDI
Three Rivers	
Trillion Digital Communications, Inc.	Trillion
United Cerebral Palsy of Michigan/Pam Schuster	
Universal Service Administrative Company	USAC
Verizon Telephone Companies	Verizon
Warwick Communications, Inc.	Warwick
Weisiger, Greg	Weisiger
West Virginia Department of Education	West Virginia DOE
WiscNet	
Wisconsin Department of Public Instruction, The	WDPI
WorldCom, Inc.	WorldCom
York County Library System	York County Library
Martin Library Association	

**List of Parties Filing Reply Comments
CC Docket No. 02-6**

<u>Commenter</u>	<u>Abbreviation</u>
Alaska, State of (Department of Education and Early Development)	Alaska
American Association of School Administrators	AASA
American Library Association	ALA (late)
Arkansas E-rate Workgroup, State of	AEWG
AT&T Wireless Services, Inc.	AWS
Council of Chief State School Officers	CCSSO
Cox Communications, Inc.	COX
Dell Computer Corporation	Dell
Education and Library Networks Coalition	EdLiNC
Florida Public Service Commission	FPSC
Funds For Learning, LLC	
Information Technology Industry Council	ITI
Iowa, State Library	
Merit Network, Inc.	Merit
National Association of State Telecommunications Directors	NASTD
National Education Association, The International Society for Technology in Education, and the Consortium for School Networking	NEA et al
New York State Education Department	New York
Nextel Communications, Inc.	Nextel
Qwest Communications International Inc.	Qwest
Siemens Enterprise Networks	Siemens
Spectrum Communications Cabling Services, Inc.	Spectrum
Sprint Corporation	Sprint
Verizon	Verizon
Weisiger, Greg	
WorldCom, Inc.	WorldCom

APPENDIX B**FINAL RULES**

For the reasons discussed in the preamble, Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 54 – UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

2. Section 54.500 is amended by revising paragraphs (b) and (j) and adding paragraph (k) to read as follows:

§ 54.500 Terms and definitions.

(b) *Elementary school.* An “elementary school” is a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

(j) *Secondary school.* A “secondary school” is a non-profit institutional day or residential school that provides secondary education, including a public secondary charter school, as determined under state law. A secondary school does not offer education beyond grade 12.

(k) *Educational Purposes.* For purposes of this subpart, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate and proximate to the provision of library services to library patrons, qualify as “educational purposes.” Activities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services to library patrons.

3. Section 54.501 is amended by revising paragraph (b) to read as follows:

§ 54.501 Eligibility for services provided by telecommunications carriers.

(b) *Schools.* (1) Only schools meeting the statutory definitions of “elementary school,” as defined in 20 U.S.C. 7801(18), or “secondary school,” as defined in 20 U.S.C. 7801(38), and not excluded under paragraphs (b)(2) or (b)(3) of this section shall be eligible for discounts on telecommunications and other supported services under this

subpart.

4. Section 54.503 is amended by revising to read as follows:

§ 54.503 Other supported special services.

For the purposes of this subpart, other supported special services provided by telecommunications carriers include voice mail, Internet access, and installation and maintenance of internal connections in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such services shall not be covered by the universal service support mechanisms.

5. Section 54.504 is amended by adding paragraph (c)(1) to read as follows:

§ 54.504 Requests for services.

(c) *****

(1) *Mixed Eligibility Requests.* If 30 percent or more of a request for discounts made in an FCC Form 471 is for ineligible services, the request shall be denied in its entirety.

6. Section 54.507 is amended by revising the first sentence of paragraph (g)(1)(i) and the first sentence of paragraph (g)(1)(ii) to read as follows:

§ 54.507. Cap.

(g) *****

(1) ***

(i) Schools and Libraries Corporation shall first calculate the demand for telecommunications services, voice mail, and Internet access for all discount categories, as determined by the schools and libraries discount matrix in § 54.505(c) of this part.***

(ii) Schools and Libraries Corporation shall then calculate the amount of available funding remaining after providing support for all telecommunications services, voice mail, and Internet access for all discount categories.***

7. Section 54.511 is amended by revising paragraph (a) to read as follows:

(a) *Selecting a provider of eligible services.* In selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers but price should be the primary factor considered.

8. Add § 54.514 under the undesignated heading "Payment for discounted service" to read as follows:

§ 54.514 Payment for discounted service.

(a) *Choice of payment method.* Service providers providing discounted services under this subpart in any funding year shall, prior to the submission the Form 471, permit the billed entity to choose the method of payment for the discounted services from those methods approved by the Administrator, including by making a full, undiscounted payment and receiving subsequent reimbursement of the discount amount from the service provider.

(b) *Deadline for remittance of reimbursement checks.* Service providers that receive discount reimbursement checks from the Administrator after having received full payment from the billed entity must remit the discount amount to the billed entity no later than 20 business days after receiving the reimbursement check.

9. Section 54.517 is amended by revising paragraph (b) to read as follows:

§ 54.517 Services provided by non-telecommunications carriers.

(b) *Supported services.* Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing voice mail, Internet access, and installation and maintenance of internal connections.

10. Section 54.701 is amended by deleting paragraphs (b) through (e), and redesignating paragraphs (f) through (h) as (b) through (d).

11. Section 54.720 is amended by revising paragraphs (a) through (d), redesignating paragraph (e) as (f), and adding a new paragraph (e), to read as follows:

§ 54.720 Filing deadlines.

(a) An affected party requesting review of an Administrator decision by the Commission pursuant to § 54.719(c), shall file such a request within sixty (60) days of the issuance of the decision by a division or Committee of the Board of the Administrator.

(b) An affected party requesting review of a division decision by a Committee of the Board pursuant to § 54.719(a), shall file such request within sixty (60) days of issuance of the decision by the division.

(c) An affected party requesting review by the Board of Directors pursuant to § 54.719(b) regarding a billing, collection, or disbursement matter that falls outside the *jurisdiction of the Committees of the Board* shall file such request within sixty (60) days of issuance of the Administrator's decision.

(d) The filing of a request for review with a Committee of the Board under § 54.719(a) or with the full Board under § 54.719(b), shall toll the time period for seeking review from the Federal Communications Commission. Where the time for filing an appeal has been tolled, the party that filed the request for review from a Committee of the Board or the full Board shall have sixty (60) days from the date the Committee or the Board issues a decision to file an appeal with the Commission.

(e) In all cases of requests for review filed under § 54.719, the request for review shall be deemed filed on the postmark date. If the postmark date cannot be determined, the applicant must file a sworn affidavit stating the date that the request for review was mailed.

12. Section 54.721 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 54.721 General filing requirements.

(a) *** The request for review shall be captioned "In the matter of Request for Review by (name of party seeking review) of Decision of Universal Service Administrator" and shall reference the applicable docket numbers.

13. In § 0.111(a), redesignate paragraphs 14 through 22 as paragraphs 15 through 23 and add new paragraph 14 to read as follows:

(14) Resolve universal service suspension and debarment proceedings pursuant to § 54.521.

14. Add §54.521 under the undesignated center heading “Prohibition on Participation: Suspension and Debarment” to read as follows:

§ 54.521 Prohibition on Participation: Suspension and Debarment

(a) *Definitions.*

(a)(1) *Activities associated with or related to the schools and libraries support mechanism.* Such matters include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism described in this section (§54.500 *et seq.*).

(a)(2) *Civil liability.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement with admission of liability, stipulation, or otherwise creating a civil liability for the wrongful acts complained of, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. §§ 3801-12).

(a)(3) *Consultant.* A person that for consideration advises or consults a person regarding the schools and libraries support mechanism, but who is not employed by the person receiving the advice or consultation.

(a)(4) *Conviction.* A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered by verdict or a plea, including a plea of *nolo contendere*.

(a)(5) *Debarment.* Any action taken by the Commission in accordance with these regulations to exclude a person from activities associated with or relating to the schools and libraries support mechanism. A person so excluded is “debarred.”

(a)(6) *Person.* Any individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.

(a)(7) *Suspension.* An action taken by the Commission in accordance with these regulations that immediately excludes a person from activities associated with or relating to the schools and libraries support mechanism for a temporary period, pending completion of the debarment proceedings. A person so excluded is “suspended.”

(b) *Suspension and debarment in general.* The Commission shall suspend and debar a person for any of the causes in §54.521(c) using procedures established in §54.521, absent extraordinary circumstances.

(c) *Causes for suspension and debarment.* Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and

other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.

(d) *Effect of suspension and debarment.* Unless otherwise ordered, any persons suspended or debarred shall be excluded from activities associated with or related to the schools and libraries support mechanism. Suspension and debarment of a person other than an individual constitutes suspension and debarment of all divisions and/or other organizational elements from participation in the program for the suspension and debarment period, unless the notice of suspension and proposed debarment is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements or to specific types of transactions.

(e) *Procedures for suspension and debarment.* The suspension and debarment process shall proceed as follows:

(e)(1) Upon evidence that there exists cause for suspension and debarment, the Commission shall provide prompt notice of suspension and proposed debarment to the person. Suspension shall be effective upon the earlier of receipt of notification or publication in the Federal Register.

(e)(2) The notice shall:

(e)(2)(i) give the reasons for the proposed debarment in terms sufficient to put the person on notice of the conduct or transaction(s) upon which it is based and the cause relied upon, namely, the entry of a criminal conviction or civil judgment arising out of activities associated with or related to the schools and libraries support mechanism;

(e)(2)(ii) explain the applicable debarment procedures;

(e)(2)(iii) describe the effect of debarment.

(e)(3) A person subject to proposed debarment, or who has an existing contract with the person subject to proposed debarment or intends to contract with such a person to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support mechanism, may contest debarment or the scope of the proposed debarment. A person contesting debarment or the scope of proposed debarment must file arguments and any relevant documentation within thirty (30) calendar days of receipt of notice or publication in the Federal Register, whichever is earlier.

(e)(4) A person subject to proposed debarment, or who has an existing contract with a the person subject to proposed debarment or intends to contract with such a person to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support mechanism, may also contest suspension or the scope of suspension, but such action will not ordinarily be granted. A person contesting suspension or the scope of suspension must file arguments and any relevant documentation within thirty (30) calendar days of receipt of notice or publication in the Federal Register, whichever is earlier.

(e)(5) Within ninety (90) days of receipt of any information submitted by the respondent, the Commission, in the absence of extraordinary circumstances, shall provide the respondent prompt notice of the decision to debar. Debarment shall be effective upon the earlier of receipt of notice or publication in the Federal Register.

(f) *Reversal or limitation of suspension or debarment.* The Commission may reverse a suspension or debarment, or limit the scope or period of suspension or debarment, upon a finding of extraordinary circumstances, after due consideration following the filing of a petition by an interested party or upon motion by the Commission. Reversal of the conviction or civil judgment upon which the suspension and debarment was based is an example of extraordinary circumstances.

(g) *Time period for debarment.* A debarred person shall be prohibited from involvement with the schools and libraries support mechanism for three (3) years from the date of debarment. The Commission may, if necessary to protect the public interest, set a longer period of debarment or extend the existing period of debarment. If multiple convictions or judgments have been rendered, the Commission shall determine based on the facts before it whether debarments shall run concurrently or consecutively.

APPENDIX C

PROPOSED RULES

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 54 – UNIVERSAL SERVICE**Subpart F – Universal Service Support for Schools and Libraries**

1. Section 54.507 is amended by adding paragraphs (a)(1) and (a)(2) to read as follows:

§ 54.507 Cap.

(a) *****

(a)(1) *Amount of Unused Funds.* Beginning in the second quarter 2003, the Administrator shall report to the Commission funding that is unused from prior years of the schools and libraries support mechanism on a quarterly basis.

(a)(2) *Application of Unused Funds.* On an annual basis, in the second quarter of each calendar year, all funds that are collected and that are unused from prior years shall be available for use in the next full funding year of the schools and libraries mechanism in accordance with the public interest and notwithstanding the annual cap.

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 02-6

The schools and libraries program has done a great deal to strengthen our Nation's network of schools and libraries. Today, due in no small part to the program, 99 percent of all public schools are connected to the Internet. To protect that success the Commission must remain vigilant in its oversight role. The Order the Commission adopts today is a first step in our continuing evaluation of ways to ensure that the schools and libraries program meets the objectives established by Congress.

Government programs tend toward complexity the longer they exist. Today's item eliminates complexity where it serves no legitimate purpose while expanding upon the existing robust protections against waste, fraud and abuse in the program. Significantly, today we adopt rules debarring persons convicted of criminal or civil violations arising from their participation in the schools and libraries program from getting back in line to seek funding from the program for a three year period.

Finally, I would note that the Commission's staff will continue to support the efforts of local, state and federal law enforcement agencies to detect and prosecute criminal behavior and punish the bad actors. The information sharing between the Commission and law enforcement authorities has led to a number of significant fraud investigations and prosecutions. These efforts will continue to root out fraudulent behavior in the schools and libraries program.

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 02-6

The universal service support mechanism for schools and libraries (often called the E-Rate program) has helped millions of school children and library patrons gain access to advanced telecommunications services. Despite its general success, however, the program — like any government program — can be made more efficient and effective. The challenge is to remove unnecessary impediments to the flow of support, while continuing to ensure that adequate safeguards are in place to prevent waste, fraud, and abuse.

Today's Order and Further Notice are an important step in the right direction. We are adopting several rule changes that will eliminate red tape and remove obstacles to the flow of support to eligible schools and libraries. We also are adopting a debarment rule that will prevent entities that are convicted of criminal violations or held civilly liable for E-Rate abuses from participating in the program for a period of time.

While these are important changes, they represent only the first stage in a more comprehensive reform effort. I have organized a public forum, to be held May 8, 2003, to explore further means of improving our oversight of the E-Rate program. In particular, we will focus on complementing existing efforts to combat waste, fraud, and abuse. I look forward to hearing from stakeholders about ways to ensure that program beneficiaries are using E-Rate funds judiciously and that applicants are unable to game the system. For example, parties in this rulemaking have made a variety of proposals to ensure that expenditures on internal connections are both necessary and cost-effective — including adjusting the discount matrix, restricting schools' and libraries' ability to transfer equipment, and limiting how often schools and libraries apply for internal connections funding. These and other suggestions require further scrutiny, since all are likely to have pros and cons. But I am confident that, through the upcoming forum and the Further Notice we adopt today, we are strengthening the E-Rate program. The survival of this program depends on strong oversight, and I am encouraged that we appear to be on the right track.

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 02-6

By connecting our schools and libraries to the Internet, E-Rate plays a critical role in providing our children and our communities with the digital tools necessary to compete and prosper in the Information Age. No program has been as singularly effective at making sure that young people from the poorest and most geographically isolated communities in this country are not left on the wrong side of the digital divide. The statistics are impressive and they bear repeating. When the Telecommunications Act was passed, only 14% of public school classrooms were connected to the Internet. By last year, 87% of these classrooms were connected. In rural areas, the results have been even more impressive, with 89% of public school classrooms now connected. And in schools with high percentages of students eligible for free or reduced-price lunches, we have also made substantial progress: 79% of public school classrooms are now connected.

Great programs like E-Rate do not thrive without regular review and care. The gains we have made can vanish without continued attention and, indeed, vigilance. This is why our actions today are important. So I am pleased that we adopt rules for suspension and debarment to ensure that bad actors will be denied the ability to participate in the E-Rate program. I am also pleased that we develop an online list of eligible internal connections equipment that will make it simpler for schools and libraries to develop their applications.

These are good and positive steps, but there is more work that remains to be done. We need to work harder to ensure that deserving schools and libraries receive support in a more timely way. With libraries and school districts around the country struggling under the weight of often draconian budget cuts, the need to deliver timely E-Rate support has never been more important. We also need to clarify our competitive bidding rules to ensure that applicants get the services they need at low prices. And we need to be dead serious about rooting out abuses to make sure the program functions with the integrity it must have. My hope is that as abuses are identified and eliminated, we will focus simultaneously on these other programmatic challenges that are equally high priority. In sum, we need to work together to make sure that the E-Rate's public-private commitment to technology access has a future every bit as bright as the record it has already achieved. Today's item represents a start, and I am pleased to support it.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 02-6

With today's action we address certain issues and proposals regarding the Schools and Libraries Program. Since its inception in 1996, this program has opened up a whole new world of opportunities to students who might not have access to advanced capabilities without the program. Last year, close to \$1.7 billion were disbursed to schools and libraries across the United States. The schools and libraries in South Dakota, for example, received over \$5.5 million of that disbursement. From 1998-2002, USAC has disbursed over \$6 billion of funding in this program. All of that funding is in support of education.

I am an ardent supporter of this program, in addition to the other universal service programs.

The Schools and Libraries program has received great deal of attention since its inception. Some of the attention has been positive, and, unfortunately, some has been negative. The FCC and USAC have attempted to create a program that is beyond reproach. USAC has extensive program integrity assurance procedures that are designed to prevent waste, fraud and abuse. There have been extensive audits of the programs to supplement USAC's internal controls. However, there are some who have found ways around these protections to the benefit of themselves, and the detriment of the program, and ultimately the eligible schools and libraries across the nation. With the help of USAC, the providers, and the user community, we hope to further tighten up the program to ensure that it continues to perpetuate the positive strides it has already made.

I view today's item as taking a necessary first step in creating an even stronger and more efficient and effective program. Next, on May 8, 2003, we will hold an open forum to learn more about how we can further improve the program. At that point, I hope we will take more comprehensive steps that we have posed in our Further Notice in this proceeding.

As I have said, today's Order is just a first step. I look forward to larger, more comprehensive steps in many areas.

One such area is in the area of debarment. I am inclined to pursue debarment for those entities that have been found guilty of civil and criminal violations beyond those associated with the Schools and Libraries Program. Moreover, I believe that we should be able to debar providers, and applicants, in the event that USAC can establish a clear pattern of abuse based on objective FCC-crafted, USAC-implemented criteria.

It is also incumbent on us to ensure that the users, in addition to the service providers, are not violating our rules. I would support a process that would address any abuses that are committed by the schools and libraries that are meant to benefit from this program. Establishing parameters and enforcing violations will only make this program stronger.

Once we have established the violations for which debarment is appropriate, I would support different levels of treatment for different violations. For instance, if one is convicted of a civil offense, or has demonstrated a pattern of abuse of the program and its rules, I would allow

re-entry into the program after a specified period of debarment. On the other hand, if a particular provider is convicted of a criminal offense, I believe that there should be a higher threshold before that entity is permitted to re-enter the program after the period of debarment has ended. For instance, such an entity should be required to petition for approval to participate again. It may also be appropriate for those entities that have been convicted of civil or criminal offenses to be required to put up a bond in order to participate again, at least for a probationary period.

I believe that it is important to address the possibility of changing the discount levels for this program. Many have suggested that the 90% discount level is too high because it does not require enough of an investment by the school or library. Reducing the discount levels can introduce more accountability, and better control the costs of the program. At the same time, there may very well be some schools and libraries that could not afford the benefits of this program if we reduced the discounts. Perhaps we should consider an "ad hoc" 90% discount based on specific FCC established criterion applied by USAC.

When private companies make decisions about their telecommunications investments, particularly when it comes to investments in equipment, they generally do not expect to replace their equipment year after year. The current rules in the Schools and Libraries program allow schools and libraries to do just that. In this Order, we have reinforced the rule disallowing the funding of duplicative services because they impact the fair distribution of discounts to schools and libraries. Similarly, perhaps we should disallow annual requests for duplicative equipment, or networking, in order to ensure that the funds are more fairly and evenly distributed among requesting users. Perhaps in this program we should consider assigning a "service life" to equipment. This program-specific service life would require program participants to keep the equipment for a particular period of time rather than applying annually for discounts for duplicative equipment. It may be helpful to ascertain how businesses determine how long they will keep a particular piece of equipment before replacing it. I would encourage comment on this.

Also, if our goal is to connect all schools and libraries, perhaps we should establish a baseline, or minimum level of connectivity. This "minimum level" could be based, among other things, on the speed of connections, the number of computers on site per student population, or a combination of them. In the event we have remaining funds, once we have established that minimum level among all of the discount levels, we could circle back and take the schools and libraries to the second level of service and connectivity.

I support this item as a first step in a number of steps that we will need to take to improve an already outstanding program. I look forward to working with my colleagues, USAC, the service providers, and the schools and libraries as we undertake this endeavor.