timely manner. We seek any suggestions for improving the disbursement process. Specifically, we seek comment on whether we should establish deadlines or performance targets to ensure that beneficiaries get the support for which they qualify in a timely manner. USAC's disbursement process varies slightly depending on the mechanism: for High Cost and Low Income, USAC disburses one amount to each carrier participating in the program each month; for the Schools and Libraries and Rural Health Care programs, USAC disburses amounts based on invoices received from the program participants. We seek comment on whether we should establish a single uniform system for disbursing USF, and whether such a single disbursement method is feasible, given the many differences among the USF programs. We seek comment on whether we need to modify our rules to address program-specific disbursement issues, such as strengthened procedures to help effectuate the E-rate carry-over rule. For example, are there rules we should adopt to ensure full use of the $2.25 billion annual cap for the E-rate program? [146] Commenters should discuss whether the current system results in efficient, effective, competitively neutral administration of the programs. We seek comment on whether experience shows that the amounts disbursed are accurate, and if not, suggestions for ways to improve such accuracy. We seek comment on whether we should adopt criteria or provide guidance for the Administrator's review of invoices for the E-rate and Rural Health Care programs. We understand that some beneficiaries have asserted that the Administrator sometimes denies payment on submitted invoices even though the original application had been approved. Would specific criteria or guidance help the invoice review process?

61. We seek comment on whether the existing disbursement process for the High Cost program should be revised. The High Cost support mechanism provided approximately $3.4 billion in support in fiscal year 2004.[147] As currently structured, the High Cost program disburses approximately $300 to $325 million per month. USAC issues one payment, generally by electronic transfer, for each carrier for all universal service payments for which it is eligible.[148] The disbursement amount is posted on USAC's website approximately five days before disbursement, which is the carrier's notification of the disbursement amount. USAC sends a remittance statement to the carriers on the last day of each month. Commenters should discuss whether the Administrator should provide additional notification to the carriers. We seek comment on whether we should adopt rules to provide for true-ups of amounts disbursed. Amounts paid to carriers under Local Switching Support[149] and Interstate Common Line Support[150] components of High Cost are based on forecasts and are subject to true-up. USAC compares

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[146] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket, No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26933-935, ¶¶ 52-58 (2003); "*Carryover of Unused Funds for Funding Year 2004*," Public Notice, CC Docket No. 02-6, 19 FCC Rcd 20420 (WCB, 2004); 47 C.F.R. § 54.507(a).

[147] *See supra* note 99.

[148] The disbursement, which is for High Cost services provided in the past month, is made on the next to the last day of the month.

[149] Under section 54.301(b), each incumbent LEC that has been designated an ETC and that serves a study area with 50,000 or fewer lines shall provide USAC by October 1, for each study area, the projected total unseparated dollar amount assigned to certain accounts listed in section 54.301(b) for the following calendar year. 47 C.F.R. § 54.301(b). Under section 54.301(e), each incumbent LEC that has been designated an ETC and that serves a study area with 50,000 or fewer lines shall, for each study area, provide USAC with the historical total unseparated dollar amount assigned to those accounts for each calendar year, no later than 12 months after the end of the calendar year. 47 C.F.R. § 54.301(e).

[150] Under section 54.903(a)(3), each rate-of-return carrier submits to USAC on March 31 projected data necessary to calculate prospective Interstate Common Line Support, including common line cost and revenue data for each study area for the upcoming funding year. 47 C.F.R. § 54.903(a)(3). Under section 54.903(4), carriers submit to USAC, on December 31 of each year, the data necessary to calculate the Interstate Common Line Support, including common line cost and revenue data for the prior year. 47 C.F.R. § 54.903(a)(4).

the actual costs, submitted by carriers twelve months after the end of the year, to the projected costs. Currently, we have rules limiting the level of a carrier's projections and carriers can overestimate or underestimate their accounts. We seek comment on whether we should require that data be submitted earlier in order to facilitate the true-ups. Commenters should also address whether, as part of the true-up process, carriers should pay interest on the difference between projected and actual amounts if the projected amounts exceed actual amounts.

62. USAC issues one monthly payment, generally by electronic transfer, for all Low Income universal service discounts provided two months earlier. The disbursement amount is posted on USAC's website approximately five days before disbursement, which is the carrier's notification of the disbursement amount. USAC bills companies that receive Low Income support (Lifeline, Link-Up, and Toll Limitation Service) and have a negative disbursement amount for any given month. So-called "negative disbursement" amounts can occur when USAC conducts a true-up between a company's projected support amount and the actual support claimed, or when a company revises its previous support claims, resulting in adjustments to a carriers support payments. We seek comment on whether our Form 497 should be revised in order to reduce the likelihood of negative disbursement amounts, which are, in effect, an interest free loan to the carrier.[151] We seek comment on whether carriers should be charged interest on the negative disbursement amount. USAC estimates Low Income payments on a quarterly basis, based on the percentage growth in total support claimed by all carriers over the previous quarters, and applies this factor to the amount of support the carrier received in the most recent quarter. The disbursements are based on a rolling average of the payments made to that carrier over the previous twelve months. The carrier data submission, filed fifteen days after the end of a quarter, is used to true-up payments. We seek comment on whether we should revise this disbursement procedure and if so, how.

63. We seek comment on whether we should simplify or streamline the four-level discount process for Lifeline and Link-Up, or if additional levels would be appropriate. Tier 1 is equal to the incumbent ETC's federal tariffed SLC. Tier 2 is an additional $1.75. Tier 3 is equal to one-half the amount of state-mandated Lifeline support or one-half of any Lifeline support provided by the carrier, up to $1.75 per month. Tier 4 is additional federal Lifeline support of up to $25 per month for eligible residents of tribal lands. There are additional discounts for low income residents on tribal lands; Enhanced Lifeline, Link-Up, and other universal service-related programs that are targeted specifically toward tribal lands.[152]

64. We also seek comment on whether we should revise the current Rural Health Care disbursement process. The disbursement process for the Rural Health Care program is similar to the process for the E-rate program. We seek comment on whether we should adopt rules to better ensure that the disbursement process is administered in an efficient manner.

c. Contributions Process

65. We seek comment on whether to adopt any rules clarifying or improving the contributions process to ensure the Administrator collects sufficient funds. The Form 499-A sets forth the information that carriers must submit so that the Administrators of the USF and other funds can calculate and assess

[151] In some cases, because of the true-up mechanism, the opposite result occurs and the carrier is under-reimbursed until the true-up is completed.

[152] The Commission also has an open rulemaking proceeding on extending Enhanced Lifeline and Link-Up to areas near reservations in order to target such assistance to the most underserved areas of the Nation. *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas,* CC Docket No. 96-45, Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10958 (2003).

contributions.[153] Beginning March 14, 2001, the Commission modified its reporting requirements to require carriers to file not only the annual Form 499-A, but also a quarterly worksheet, FCC Form 499-Q, with the interstate and international revenues from the previous period.[154] Currently, USAC bases a carrier's universal service obligation on the carrier's projected collected revenue rather than its historical gross-billed revenue.[155] USAC uses the revenue information provided on the Quarterly Worksheets to determine each carrier's universal service contribution on a quarterly basis, with a yearly true-up using the Annual Worksheet.[156] USAC then bills carriers each month, based on their quarterly contribution amount. Carriers must pay their contribution by the date shown on the invoices.[157] A carrier's failure to file the worksheets or submission of inaccurate or untruthful information "may subject the contributor to the enforcement provisions of the Act and any other applicable law."[158] We seek comment on whether we should modify or streamline the current contribution process. We seek comment on whether to adopt criteria for the Administrator to follow for making projections or forecasts, and if so, what criteria would be appropriate. Commenters should address the pros and cons of any proposals.

d. Periodic Review of Program Management

66. We seek comment on whether we should adopt rules requiring periodic review of the administration and management of the USF. Commenters should discuss whether a triennial review, such as we have for the Local Competition rules, would be useful or whether such reviews should occur at different time intervals.

B. Oversight of the USF

67. In this proceeding, we are not trying to find problems after they occur (and thus, seek to recover improperly disbursed funds in some cases years after disbursement), but we are trying to prevent problems from occurring in the first place. We recognize, however, that strong oversight procedures are needed because the application review process can never be perfect. In moving forward to strengthen audits and oversight over the program, we are informed by the lessons of prior review efforts and investigations. We are particularly focused on preventing a recurrence of past problems.

68. In this section of the NPRM, we consider whether to strengthen our oversight of the high cost, low income, schools and libraries, and rural health care universal service support mechanisms. In particular, we seek comment on adopting a targeted audit requirement to ensure program integrity and to detect and deter waste, fraud, and abuse. We generally seek comment on ways in which our oversight goals may be achieved through specific changes to various stages of the application and funding process.

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[153] *NECA Changes Order*, 12 FCC Rcd at 18442, ¶ 80.

[154] *See Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001). *See FCC Form 499-Q Telecommunications Reporting Worksheet -- Quarterly Filing for Universal Service Contributors*, http://www.fcc.gov/Forms/Form499-Q/499q.pdf (April 2003).

[155] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002).

[156] *See* 47 C.F.R. § 54.709(a).

[157] 47 C.F.R. § 54.711(a) ("The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.")

[158] 47 C.F.R. § 54.713. *See also NECA Changes Order,* 12 FCC Rcd at 18442 n.165 (citing 47 U.S.C. §§ 206-209, 312, 403, 503).

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. We note that many of these issues were addressed in the context of the schools and libraries universal service support mechanism.[159] As a result, we specifically invite parties to comment on the ways our goals and methods for protecting the high cost, low income, and rural health care fund mechanisms from waste, fraud, and abuse should replicate or differ from those previously adopted with regard to the schools and libraries universal service support mechanism.

1. Independent Audits

69. Since the inception of the E-rate program, schools and libraries have been subject to audits to determine compliance with the program rules and requirements.[160] The Commission's rules authorize the Administrator to conduct audits of all beneficiaries, as well as contributors to the USF. Audits are a tool for the Commission and USAC, as directed by the Commission, to ensure program integrity and to detect and deter waste, fraud, and abuse.[161] Because audits may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules applicable during a particular funding year, audits can reveal instances in which universal service funds were improperly disbursed or used in a manner inconsistent with the statute or the Commission's rules.[162]

70. Audits and investigations have uncovered issues ranging from poor program design (*e.g.*, problems with technology plans and problems with program rules) to improper use of funds, including intentional efforts to defraud the program by some unscrupulous actors. In each case in which fraud has occurred, the Commission has debarred or proposed debarment based on Department of Justice convictions.[163] In these cases, the parties pled guilty or were convicted of a variety of offenses, such as imposing the entire cost of the goods and services on USAC,[164] submitting materially false and fraudulent invoices to USAC,[165] and trying to persuade school officials not to reveal evidence to Commission auditors.[166] The Commission's OIG has identified instances of rule violations and has recommended

[159] *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd 15808.

[160] 47 C.F.R. § 54.516. *See Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15813, ¶ 13.

[161] *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15813, ¶ 13.

[162] *Id.* As in previous orders, we use the term "improperly disbursed funds" to refer to an amount of money disbursed inconsistently with the statute or Commission rules. This amount may be all or part of a disbursement, depending upon the circumstances.

[163] *See, e.g.*, Letter from Maureen F. DelDuca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Duane Maynard, *Notice of Debarment*, 18 FCC Rcd 26729 (2003).

[164] *See* Letter from Maureen F. DelDuca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to John Angelides, *Notice of Debarment*, 18 FCC Rcd 26722 (2003); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to John Dotson, *Notice of Debarment*, 19 FCC Rcd 23636 (2004); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Haider Bokhari, *Notice of Suspension and of Proposed Debarment*, DA 05-421 (rel. Feb. 16, 2005) ("Haider Bokhari Notice of Suspension"); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Qasim Bokhari, *Notice of Suspension and of Proposed Debarment*, DA 05-422 (rel. Feb. 16, 2005) ("Qasim Bokhari Notice of Suspension").

[165] *See* Haider Bokhari Notice of Suspension.; Qasir Bokhari Notice of Suspension.

[166] *See* Letter from Maureen F. DelDuca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Oscar Alvarez, *Notice of Debarment*, 18 FCC Rcd 26716 (2003).

recovery of universal service moneys.[167] Likewise, USAC has, at our direction, maintained an audit program that has involved more than 201 audits of participants in the E-rate program and USAC audits of more than 100 participants in the other USF support mechanisms. In some cases, beneficiaries have self-identified compliance problems and proactively disclosed these to USAC or the Commission. For the E-rate program, approximately $1.14 billion in funds provided to beneficiaries have been subjected to an audit. To date, USAC has recovered a total of approximately $7.6 million for all violations of Commission rules. Recovery of $4.5 million is subject to pending appeals and recovery of $19.5 million is still under review. We have not yet determined whether program rules were or were not violated and whether recovery is warranted for these funds. These efforts have also led to recommended recovery of $6,243,223 for the High Cost support mechanism, $392,536 for the Low Income support mechanism, and $49,348 for the Rural Health Care support mechanism. The recommended recovery amounts are small in comparison to the more than $31 billion in funds disbursed since 1997, demonstrating that the great majority of E-rate, High Cost, Low Income, and Rural Health Care program recipients follow our rules and have not engaged in fraud. Nonetheless, even a situation that results in 0.67 percent of our funds being recovered as improperly disbursed represents a weakness in the operation of the programs, which needs to be corrected. We will be aggressive in correcting this problem. Conversely, we believe that USAC, OIG, and independent auditing processes may waste government money if they are unnecessarily repetitious, or inefficiently designed or executed.

71. *E-Rate Beneficiary Audits.* With this in mind, we seek comment on whether the Commission should institute a targeted independent audit requirement to further safeguard the E-rate program against potential misconduct, including waste, fraud, and abuse. Specifically, we seek comment on whether the Commission should require some recipients of E-rate funding to obtain an annual independent audit evaluating compliance with the statute and the Commission's rules. Many schools and libraries already obtain annual independent audits to comply with the Single Audit Act. Commenters should address whether, or under what conditions, the anticipated costs associated with targeted audits of program beneficiaries would outweigh the benefits of enhanced oversight of the universal service fund.[168] For example, are post-disbursement audits even appropriate where the cost of the audit would approach or exceed the amount of universal service support disbursement?

72. We specifically seek comment on the costs and burdens that an independent audit requirement would have on smaller beneficiaries. For example, would an independent audit requirement deter the smaller schools and libraries from applying for discounts from the fund? Moreover, because the cost of such an audit could exceed the total discounts received by some applicants, any benefit of the E-rate program may be erased quickly by a burdensome audit requirement. We seek comment on whether the audit requirement should apply only to recipients that receive a relatively large amount of support or benefits from the program. What should the threshold be? For example, we could impose a requirement

[167] *See Federal Communications Commission, Office of the Inspector General Semiannual Report to Congress, October 1, 2003-March 31, 2004; Federal Communications Commission, Office of the Inspector General Semiannual Report to Congress, April 1-September 30, 2003; See also Problems with the E-Rate Program: Waste, Fraud, and Abuse Concerns in the Wiring of our Nation's Schools to the Internet, Part 1: Hearing Before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce*, 108th Cong. 49 (2004) (statement of H. Walker Feaster III, Inspector General, Federal Communications Commission).). OIG audit reports are available on the Commission's website at http://www.fcc.gov/oig/oigreportsaudit/html.

[168] In addition to detecting specific instances of waste, fraud, and abuse, the results of a targeted audit requirement may be used to inform the Commission about the overall state of compliance throughout the E-rate program community. By providing us with facts and information concerning compliance with our rules, these audits can assist the Commission in making policy determinations, such as whether rule changes are necessary and whether USF moneys are being used for their intended purpose. In addition, because these audits will be evaluating compliance with our rules, they may be used as a basis for seeking recovery of any improperly disbursed funds.

that any school or library that receives $3 million or more in discounts in any funding year, or a total of $3 million or more over a consecutive three-year period, must undergo an annual audit. We note that, based on data from Funding Year 2002, an annual $3 million threshold would ensure independent audit coverage of at least 25 percent of E-rate funds disbursed; combining an annual $3 million threshold with a $3 million triennial threshold would ensure independent audit coverage of more than 50 percent of E-rate funds disbursed. Should the same threshold apply to both schools and libraries, and service providers?

73. In addition, we seek comment how such audits should be funded. Should schools, libraries, and service providers that are subject to an annual independent audit pay the costs for an auditor to evaluate their compliance with Commission rules and the Act? Alternatively, we could require USAC to procure the services of an independent auditor to perform the audits in accordance with generally accepted government auditing standards ("GAGAS"). In such a scenario, the costs of the independent audits would be borne by the USF itself, and therefore recovered through the collections process. We note that many participants in the USF may have internal auditors on staff who could perform these audits. The Commission's rules require audits of USF beneficiaries to comply with GAGAS. These standards allow for entities to hire independent auditors to perform audit work, but they also allow (with certain safeguards) employees of the entity to perform independent audits. We seek comment on whether allowing internal auditors and other staff to perform reviews or audits would satisfy the need for strong oversight.

74. We seek comment on the scope and methodology of an annual independent audit. We note that our efforts to combat waste, fraud, and abuse must distinguish between intentional fraud and ministerial error. Our audits, penalties, and application process must recognize the fundamental difference between intentional fraud and ministerial error. While minimizing ministerial error is important, such errors are far different from fraud. In fact, the complicated nature of our applications and the presence of USAC rules that are not published contribute to ministerial errors. Should the auditor evaluate compliance with Commission rules in order to determine potential noncompliance? Should USAC and the Commission recover improperly disbursed funds? Should our audits try to distinguish between intentional fraud, negligence, and unintentional ministerial errors? Parties recommending such an approach should offer a definition of "ministerial error" and provide examples. Commenters recommending this approach should also discuss whether compliance with certain administrative procedures, such as filing or application deadlines and requirements, provide a degree of certainty to all parties, including the fund Administrator. We seek comment on whether our audits should be limited to compliance with Commission rules or whether and under what circumstances the audits should include compliance with USAC administrative policies and practices. Commenters should discuss whether compliance with unpublished USAC administrative policies and practices should be included in the audit. In addition, we seek comment on whether government auditing standards, which require, *inter alia*, that independent auditors obtain a sufficient understanding of internal controls that the entity uses to ensure compliance with Commission rules that are material to the subject matter to plan the engagement, should be applied during the audit. Are auditors properly trained or have beneficiaries experienced auditors who do not properly understand the program rules? Have auditors wasted time or resources because the audit is improperly designed, improperly accomplished, or because auditors do not adequately understand the program rules? How much does it cost a school or library in terms of money and staff hours to comply with various types of audits? We seek comment on whether we should limit auditing so that one entity is not audited more than once for a given program year, so that one entity is not audited by USAC, and independent auditor, and/or the OIG for the same application. Should the auditor evaluate the sufficiency of the audited entity's internal controls that the entity uses to ensure compliance with Commission rules as part of its examination into the audited entity's compliance? We generally seek comment on other standards that should be imposed for carrying out such audits. For example, because the primary purpose of the audit is to evaluate compliance with the statute and program rules, should auditors be required to perform a "compliance attestation" in accordance with government auditing standards? Why or why not? We invite proposals on the mechanics of administering an independent audit program. Commenters

should discuss ways to avoid repetitious or inefficient audits. In addition, we seek comment on whether USAC should provide audit reports to audited entities, and, if so, whether USAC should be required to provide the audit report within a particular period of time, after the audit is concluded.

75. We seek comment on whether the current structure of E-rate audits is appropriate to the program. Some schools indicate that E-rate audits are more intense and require them to expend more resources than do audits for the federal Title I educational program, which is a substantially larger program involving far more government money. How can we improve the process?

76. *Rural Health Care, Low Income, and High Cost Beneficiary Audits*. We seek comment on whether the current audit structure for the Rural Health Care, Low Income, and High Cost programs is appropriate to the programs. How can we improve the auditing process for these programs? As we note above in the E-rate context, our efforts to combat waste, fraud, and abuse must distinguish between intentional fraud and ministerial error. Our audits, penalties, and application process must recognize the fundamental difference between intentional fraud and ministerial error. Should the auditor evaluate compliance with Commission rules in order to determine potential noncompliance? Should USAC and the Commission recover improperly disbursed funds? Should our audits try to distinguish between intentional fraud, negligence, and unintentional ministerial errors? Parties recommending such an approach should offer a definition of "ministerial error" and provide examples. Commenters recommending this approach should also discuss whether compliance with certain administrative procedures, such as filing or application deadlines and requirements, provide a degree of certainty to all parties, including the fund Administrator. We seek comment on whether our audits should be limited to compliance with Commission rules or whether and under what circumstances the audits should include compliance with USAC administrative policies and practices. Commenters should discuss whether compliance with unpublished USAC administrative policies and practices should be included in the audit. We seek comment on whether we should limit auditing so that one entity is not audited more than once for a given program year, so that one entity is not audited by USAC, an independent auditor, and/or the OIG for the same application. Should the auditor evaluate the sufficiency of the audited entity's internal controls that the entity uses to ensure compliance with Commission rules as part of its examination into the audited entity's compliance? We generally seek comment on other standards that should be imposed for carrying out such audits. For example, because the primary purpose of the audit is to evaluate compliance with the statute and program rules, should auditors be required to perform a "compliance attestation" in accordance with government auditing standards? Why or why not? We invite proposals on the mechanics of administering an independent audit program. Commenters should discuss ways to avoid repetitious or inefficient audits. In addition, we seek comment on whether USAC should provide audit reports to audited entities, and, if so, whether USAC should be required to provide the audit report within a particular period of time, after the audit is concluded.

77. We seek comment on whether, in order to improve our oversight capacity to guard against waste, fraud, and abuse, and ensure funds are used for appropriate purposes, our rules should require independent audits of recipients of funds (*i.e.*, service providers) from the High Cost, Low Income, and Rural Health Care programs. We specifically seek comment on whether recipients of funds from any or all of these support mechanisms should be required to undergo an independent audit requirement, and, if so, whether only recipients above a particular threshold should be subject to this requirement. For example, we could require independent audits for any entity obtaining more than $3 million in USF support in a particular fiscal year. We note that for the High Cost program, approximately 15 percent of the study areas, *i.e.*, 292 study areas, received $3 million or more in High Cost support for fiscal year 2004. Establishing an audit requirement at this threshold would ensure coverage for about 69 percent of the High Cost fund for 2004. With respect to Rural Health Care, only two service providers have received $3 million or more in a given year since the inception of the program. We recognize that the cost of independent audits could outweigh the benefits in cases where USF recipients only receive a small amount of support. We seek comment on the costs and benefits of any independent audit program,

particularly the potential paperwork and other costs imposed on rural carriers and small entities. We seek comment on the scope and methodology of these audits. Similar to the E-rate context, we seek comment on whether the auditor should evaluate compliance with Commission rules in order to determine potential noncompliance (and whether USAC and the Commission should recover improperly disbursed funds). Do the costs of an audit outweigh the benefits of enhanced oversight of the universal service fund? Should such audits be performed at the recipients' expense? If not, we seek comment on whether recipients should be required to reimburse USAC or the Commission for the cost of the audit, or to pay other penalties, in the event that waste, fraud, and abuse are discovered.

78. We seek comment on the estimated costs of audits of these other mechanisms. Should we impose identical audit requirements for each USF program? If not, what audit requirements, if any, should we impose on each program? For example, the Rural Health Care program has historically disbursed a fraction of the amount of the Schools and Libraries and High Cost mechanisms. Should we require rural health care providers to get audits only if the total disbursements to a particular provider reach a certain level? What should the audit threshold be for beneficiaries of each fund mechanism? Should there be different independent audit requirements or thresholds for fund recipients (*e.g.*, rural health care participants) and participating service providers? We seek comment on the impact of any rule on small entities. We also seek comment on alternatives that might provide 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.

79. We seek comment on whether we should automatically sunset any independent audit requirement we may ultimately adopt. For example, we could sunset any measures automatically after a three-year period or we could review any independent audit requirement after a specific period of time.

80. *Contributor Audits.* In addition to considering whether we should require audits of USF program beneficiaries, we seek comment on whether our rules should require independent audits of contributors to the universal service fund. Pursuant to section 54.707 of the Commission's rules, USAC has the authority to audit contributors and carriers reporting data.[169] In addition to such audits, our Enforcement Bureau regularly investigates contributor filings to ensure compliance with our rules. In addition to these existing procedures, we seek comment on whether we should establish an independent audit program for contributors modeled on the Single Audit Act or some other independent audit program (*e.g.*, independent audits used for the securities industry). Would the benefits of ensuring that contributors pay their full amount of USF support justify the costs of such a program? Should we establish a threshold for triggering a contributor audit (*e.g.*, require independent audits only for carriers contributing $100 million or more in a particular fiscal year)? A $100 million threshold for auditing contributors would ensure audit coverage for about 60 percent of the total contributions to the fund. If the Commission were to adopt an independent audit requirement for contributors to the Universal Service Fund, what additional rules or requirements (if any) should be adopted to ensure rigorous but fair audits? Finally, should we require contributors to pay for the audits on their own, or would using USF moneys be more appropriate?

81. We seek comment as to whether we should model any independent audit requirement we apply to participants in the USF on the requirements contained in the Single Audit Act and the OMB's implementing guidance.[170] We seek comment on whether we should prohibit parties who fail to comply

[169] 47 C.F.R. § 54.707.

[170] *See* Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations." The OMB implementing requirements specify in detail the responsibilities of audited entities to (1) maintain internal controls over their operations that provide reasonable assurance of compliance with applicable laws and rules; (2) comply with laws, regulations, and provisions of contracts or grant agreements related

(continued....)

with any independent audit requirement from receiving any USF moneys until such audit is satisfactorily completed. We seek comment on whether we should adopt rules requiring audited entities to prepare and submit a plan for corrective action addressing all audit findings.[171]

82. We seek comment on whether any independent audit requirement we adopt for beneficiaries or contributors should include an audit opinion concerning the sufficiency of an audited entity's internal controls over compliance and other areas of concern to us in our policy making role. We seek comment on whether we should adopt additional criteria beyond those established in government auditing standards for selecting an auditor, *e.g.*, competitive bids.

2. Document Retention Requirements for Recipients of Funds from the High Cost, Low Income, and Rural Health Care Mechanisms

83. In the *Schools and Libraries Fifth Report and Order*, we concluded that specific recordkeeping requirements not only prevent waste, fraud and abuse, but also protect applicants and service providers in the event of vendor disputes.[172] In that order, we adopted a requirement that applicants and service providers retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular funding year.[173] We found that a five-year record retention requirement would facilitate improved information collection during the auditing process and will enhance the ability of auditors to determine whether applicants and service providers have complied with program rules.[174]

84. We seek comment on whether we should adopt document retention rules for all of the USF mechanisms that are consistent with the amended schools and libraries rule adopted in the *Schools and Libraries Fifth Report and Order*.[175] We recognize that, because the high cost and low income programs do not precisely mirror the application and competitive bidding process in the schools and libraries program, different document retention requirements might be needed for each support mechanism. For the high cost and low income support mechanisms, we invite comment on the length of time that records relating to the receipt or delivery of services should be maintained by the beneficiary and/or service provider. We are not proposing document retention requirements for individual participants in the Low Income program. We solicit comment on the types of documents that would be sufficient to demonstrate compliance with the rules pertaining to the high cost and low income programs. For example, we seek comment on the types of records (such as billing and engineering) used to develop year end counts of total working loops and total working USF loops, as required for High Cost Loop support. We seek comment on a reasonable record retention period for such documents. We also seek comment on whether we should revise the document retention rules for the rural health care mechanism.[176] Should we specify minimum document retention requirements?

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to the program; (3) ensure audits are properly reformed and submitted when due; and (4) take follow-up and corrective action based on audit findings (*e.g.*, prepare a summary of audit findings and a corrective action plan). *See id.* at § .300. In particular, the OMB's implementing guidance applies sanctions to parties who fail to comply with the audit requirements, *e.g.*, withholding some or all of the moneys committed until the audit is completed. *Id.* at § .225.

[171] We note that this does not suggest that the Single Audit Act applies to the USF.

[172] *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15823-24, ¶ 47.

[173] *Id.*

[174] *Id.*

[175] *Id.* at 15823-26, ¶¶ 47-50.

[176] *See* 47 C.F.R. § 54.619(a)(1).

85. In the *Schools and Libraries Fifth Report and Order*, we clarified that schools, libraries, and service providers remain subject to both random audits and to other audits and or investigations to examine an entity's compliance with the statute and the Commission's rules. These audits and investigations may be initiated at the discretion of the Commission, the Commission's OIG, USAC, or another authorized governmental oversight body.[177] Similarly, section 54.619(c) of the Commission's rules subjects health care providers to random compliance audits.[178] The *Schools and Libraries Fifth Report and Order* also concluded that failing to comply with an authorized audit or other investigation, such as failing to retain records or failing to make available required documentation, would constitute a rule violation that may warrant recovery of universal service moneys that were previously disbursed for the time period for which such information is being sought.[179] We invite comment on whether recipients of funds from the High Cost, Low Income, and Rural Health Care universal service support mechanisms (*i.e.*, service providers and carriers) should be subject to comparable requirements.

3. Administrative Limitations Period for Audits or Other Investigations by the Commission or USAC of Recipients of Funds from the High Cost, Low Income, and Rural Health Care Support Mechanisms

86. In this section, we seek comment on the establishment of an administrative limitations period in which the Commission or USAC will determine that a violation has occurred among recipients of funds from the high cost, low income, and rural health care universal service support mechanisms. We believe that establishing a general policy in this area is in the public interest because it would provide these USF support mechanism participants with some certainty of the time within which an audit or further review of funding may occur.

87. In the *Schools and Libraries Fifth Report and Order*, we indicated our preference for a limitation on the timeframe for audits or other investigations "in order to provide beneficiaries with certainty and closure in the E-rate applications and funding processes."[180] We established a policy that, for administrative efficiency, the time frame for such inquiry should match the record retention requirements, and accordingly, we announced that any inquiries to determine whether or not statutory or rule violations exist with be initiated and completed within a five-year period after final delivery of service for a specific funding year.[181] We stated that conducting inquiries within five years struck an "appropriate balance between preserving the Commission's fiduciary duty to protect the fund against waste, fraud and abuse and the beneficiaries' need for certainty and closure in their E-rate application processes."[182]

88. We seek comment on whether a similar five-year standard for initiating and concluding audits and investigations is appropriate for recipients of funds from the high cost, low income, and rural health care universal service support mechanisms. Similarly, we seek comment on whether a five-year period is appropriate for seeking adjustment of a contribution obligation to make the correct contribution amount to the USF. Many E-rate beneficiaries are public institutions. In these cases, the money needed to comply with audits and to maintain services when funds are unexpectedly delayed or denied comes from taxpayers and is part of a lengthy and complex budgeting process. If schools and libraries must

[177] *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15825-26, ¶ 50.

[178] 47 C.F.R. § 54.619(c).

[179] *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15825-26, ¶ 50

[180] *Id.* at 15818-19, ¶ 32.

[181] *Id.*

[182] *Id.* at 15819, ¶ 33.

account for the fact that an unintentional clerical error many years in the past may require them to disgorge E-rate funds, the system will work very inefficiently. For this reason we believe that we must balance our duty to investigate fraud with E-rate beneficiaries' legitimate need for finality, which they have with other government programs. In the *Schools and Libraries Fifth Report and Order*, we found that the public interest ordinarily is not served by seeking to recover funds associated with statutory or rule violations when the administrative costs of seeking recovery outweigh the dollars subject to recovery.[183] We seek comment on this conclusion, and whether and in what circumstances pursuit of recovery of funds might be in the public interest even where the potential recovery amounts are small in relation to the audit or investigation costs. We also seek comment on whether to adopt a rule for the high cost, low income, and rural health care support mechanisms that requires recovery of the full amount disbursed in situations in which there is a pattern of rule or statutory violations, but the specific individual violations collectively do not require recovery of all disbursed amounts.

4. Recovery of Funds

89. We seek comment on whether to establish specific rules or criteria to address instances in which a USF beneficiary may not have used moneys in accordance with program rules.[184] We seek comment on whether, consistent with the conclusions in the *Schools and Libraries Fifth Report and Order*, amounts disbursed from the High Cost, Low Income, and Rural Health Care support mechanisms in violation of the statute or Commission rule must be recovered in full. In addition, we seek comment on whether additional rules or criteria are necessary to ensure a fair, transparent fund recovery process for all USF mechanisms. Are there instances in which violations of Commission rules undermine statutory requirements or substantive policy goals of the USF programs, but may not rise to the level of waste, fraud, or abuse? Should funds be recovered for ministerial or clerical errors? In addition, we seek comment on whether and under what circumstances a beneficiary may retain an overpayment if, for some reason, USAC has either mistakenly disbursed an amount in excess of that which the entity is allowed under our rules, or has disbursed an erroneous amount as a result of violations of administrative procedures. Where disbursement of funds is warranted under the statute and rules, but an erroneous amount has been disbursed, should the amount of funds that may be recovered be limited to the difference between what the beneficiary is legitimately allowed under the statute and our rules and the total amount of funds disbursed to the beneficiary or service provider? Finally, we seek comment on whether we should adopt a rule providing for an administrative hearing before the issuance of a letter seeking recovery of funds from the High Cost, Low Income and Rural Health Care support mechanisms.

5. Measures to Deter Waste, Fraud, and Abuse

90. The Schools and Libraries program is capped at $2.25 billion; however, requests for funds have historically far exceeded the annual cap.[185] Thus, waste, fraud, or abuse of this program harms those schools and libraries who cannot receive their discount requests due to insufficient resources. In 2003, the Task Force on the Prevention of Waste, Fraud, and Abuse suggested a ceiling on the total amount of

[183] *Id.* at 15819-20, ¶ 35.

[184] In the *Schools and Libraries Fifth Report and Order*, the Commission stated that it is clear that funds disbursed in violation of the statute or a rule that implements the statute or a substantive program goal must be recovered. *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15814-15, ¶ 18. We noted that USAC, through its duties as administrator of the fund, initially seeks recovery of erroneously disbursed funds. *Id.* at 15814, n.37. The *Schools and Libraries Fifth Report and Order* identified rules of this type and provided notice to all stakeholders that violation of these rules will result in recovery. *Id.* at 15814-15, ¶ 18. In addition, the Commission recognized that recovery may not be appropriate for violation of some USF procedural rules implemented to enhance operation of the E-rate program. *Id.* at 15815, ¶ 19.

[185] *See supra* para. 34.

funding that an applicant can request.[186] We seek comment on whether such a cap would be an effective measure of deterring waste, fraud, and abuse. If so, parties should explain how and describe the costs and benefits of any such approach. We seek comment on whether the concern raised by the USAC Task Force could be addressed through some measure other than an additional cap. We also seek comment on whether USAC should publicize "best practices" for E-rate program applicants.[187] In addition, we seek comment on whether modifying the competitive bidding rules (*e.g.*, by requiring a minimum of three bids)[188] would be an effective measure for deterring waste, fraud, and abuse. For example, where an applicant received only one bid, would additional review be warranted to ensure that the bid is not inflated, and if so, what level of review would be appropriate? We are concerned that obtaining three or more bids may be particularly difficult in rural areas. We are also concerned that obtaining three bids for small projects or for Priority One telecommunications services may be impractical in many cases, even for urban and suburban schools and libraries. If we require a minimum of three bids we may therefore exclude many rural schools and libraries, and many small projects and telecommunications services from the program. In order to avoid such an outcome, we ask commenters to address how a multiple bid requirement would be an effective deterrent against waste, fraud, and abuse and whether the costs of imposing additional rules in this regard would outweigh the benefits. We also seek comment on what rules should be adopted, if any, to ensure that USF moneys are used efficiently and are not wanted by, for example, applicants seeking to "gold plate" their supported services or seeking services or equipment beyond what they reasonably need or can use.[189] Should we establish more detailed guidance about what is or is not supported under the E-rate program?[190] Should we establish maximum prices for particular services or equipment?

91. Recently, the Commission adopted measures to protect against waste, fraud, and abuse in the administration of the E-rate program.[191] In the *Schools and Libraries Fifth Report and Order*, the Commission stated that subsequent applications from beneficiaries that have violated the statute or rules in the past will be subject to greater review, such as enhanced obligations to provide additional documentary evidence demonstrating current compliance with all applicable requirements.[192] We seek comment on whether we should adopt specific rules governing higher scrutiny for previous rule violators; for example, should we require specific reports or set performance goals for these beneficiaries? We seek comment on requirements, if any, that we should apply to the Administrator's conduct of heightened review of E-rate program participants. Commenters should discuss whether we should adopt criteria for service providers[193] or require additional information from applicants. Commenters should discuss whether we should adopt rules or guidelines for when USAC should stop payments or processing

[186] *See* Response to Task Force at 1.

[187] *See* Response to Task Force at 5-6.

[188] *See Third Report and Order*, 18 FCC Rcd at 26938-39, ¶ 65 (seeking comment on situation where only one entity responds to a Form 470 posting).

[189] "Gold plating" refers to investment in unnecessary or excessive facilities when other facilities would be more economically efficient.

[190] *See Third Report and Order*, 18 FCC Rcd at 26947-48, ¶ 87 (seeking comment on codifying rules to establish a bright line test for a "cost effective" service).

[191] In the *Schools and Libraries Fifth Report and Order*, the Commission stated that funds disbursed in violation of statute or rule (other than *de minimis* amounts) must be recovered in full. The Commission established a policy to initiate and complete any audit or investigation to determine statutory or rule violations within five years of final delivery of service for a specific funding year. *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15819, ¶ 32.

[192] *Id.* at 15822-23, ¶ 44.

[193] *See* Response to Task Force at 6.

applications as a result of suspected program violations. What threshold would be appropriate to trigger such an action?[194] What would be the appropriate point for USAC to resume payments or processing applications?

92. *Measures to Prevent Waste, Fraud, and Abuse in the High Cost, Low Income, and Rural Health Care Programs.* We seek comment on whether we should adopt specific rules governing higher scrutiny for previous rule violators in these three programs. Should we require specific reports or set performance goals for these beneficiaries? We also seek comment on whether USAC should publicize "best practices" for these program participants. We specifically seek comment on ways to improve our oversight of the High Cost program. Commenters should discuss ways we can improve carriers' incentives for efficiency. Commenters should also address the state certification process and our oversight of costs not directly related to providing telecommunications services. Commenters should discuss whether we should require additional information from High Cost program participants in order to prevent waste, fraud, and abuse.

93. Additionally, we seek comment on ways we can deter waste, fraud, and abuse in the Low Income program. Commenters should discuss whether we should revise our rules to require carriers to provide additional documentation, showing the number of Lifeline subscribers for which they claim reimbursement. We also seek comment on whether we should revise our rules to require carriers seeking Low Income or High Cost support for serving tribal members residing on a reservation to provide additional information to demonstrate that each customer is a tribal member and resides on tribal lands.

94. Finally, we seek comment on ways to deter waste, fraud, and abuse in the Rural Health Care program. We also seek to ensure USF moneys are used efficiently and not in a wasteful manner in the Rural Health Care program by, for example, requesting goods or services that are not reasonably needed. Commenters should discuss whether we should establish a cap on Rural Health Care support. Commenters should address how we can verify whether the program beneficiary is providing rural health care that is eligible for reimbursement under program rules. Commenters are encouraged to propose specific language or rules (including possible enforcement mechanisms) that would further our goal of ensuring that funds received from the high cost, low income, schools and libraries, and rural health care programs are used in an appropriate manner.

6. Other Actions to Reduce Waste, Fraud, and Abuse

95. We seek comment on whether we should further protect the schools and libraries, high cost, low income, and rural health care universal service support mechanisms by adopting a rule specifically prohibiting recipients from using funds in a wasteful, fraudulent, or abusive manner. It is important that these proposed rules have sufficient specificity for beneficiaries and contributors to understand their obligations. If we adopt a general rule, applicants may not have adequate notice of what behavior is prohibited by our rules. Would such a rule enhance the effectiveness of any future enforcement efforts relating to the discovery of waste, fraud, and abuse? Commenters should discuss the necessity and appropriate scope of such of rule. Should it apply only to intentional acts of fraud, waste, and abuse, or should it incorporate instances when applicants or recipients recklessly or negligently use funds in an inappropriate manner? In addition, we seek comment on whether we should define waste, fraud, and abuse in our rules.[195]

96. USAC has implemented controls for the Schools and Libraries support mechanism to ensure application validity and prevent inaccurate data entry. USAC also has data validation procedures

[194] *See Third Report and Order*, 18 FCC Rcd at 26947, ¶ 84.

[195] *See, e.g.*, GAGAS HANDBOOK.

for the High Cost, Low Income, and Rural Health Care programs. We seek comment on whether we should adopt specific rules to require USAC to implement application validity controls for all USF programs. Under our rules, USAC has the authority to conduct compliance audits of beneficiaries of the schools and libraries fund.[196] USAC conducts audits of schools and libraries with its own staff and also retains independent auditors to conduct these audits. Under USAC's procedures, if the audit indicates a rule violation, USAC attempts to recover the funds from E-rate beneficiaries or service providers, as required in the *Schools and Libraries Fifth Report and Order*. We seek comment on ways that USAC can better facilitate this process and transfer the matter to the Commission for enforcement action in a timely manner.[197] USAC also conducts audits of High Cost, Low Income, and Rural Health Care beneficiaries and contributors.

97. We seek comment on whether we should revise the debarment rule to make it more effective against individuals and other entities, such as corporations.[198] The current debarment rules apply only to the E-rate program. The Commission's rules provide for automatic suspension and initiation of debarment proceedings against persons convicted of, or held civilly liable for, the commission or attempted commission of fraud and other similar offenses "arising out of activities associated with or related to the schools and libraries support mechanism."[199] To date, the Commission has debarred four parties for defrauding the schools and libraries program.[200] We seek comment on ways to inform schools and libraries of the list of debarred parties. Commenters should discuss ways schools and libraries can reduce their vulnerability to predatory contractors. We also believe that the Commission should establish a more aggressive way to inform schools and libraries when contractors are debarred. Many schools and libraries find it very difficult to find the debarment list today. How should we improve the situation? Should we also inform schools and libraries when a contractor is under investigation? How do we allow schools and libraries to take steps to reduce their vulnerability to predatory contractors without violating the rights or prejudging parties under investigation? We seek comment on whether as part of our registration process we should require contractors to waive any right to confidentiality they may have during an investigation. Should the Commission or USAC draft a list of best and worst practices to assist beneficiaries in reducing fraud? We seek comment on whether we should adopt debarment rules applicable to the High Cost, Low Income, and Rural Health Care mechanisms. If so, should the debarment rules be modeled on the debarment rule applicable to the E-rate program, should we adopt mechanism-specific debarment rules, or should we model our debarment rules for any or all of the programs, including the E-rate program, on the government-wide non-procurement debarment

[196] 47 C.F.R. § 54.516(c).

[197] For most enforcement actions, our statute of limitations is one year from the date of the occurrence. 47 U.S.C. § 503(b)(6).

[198] A debarred person is prohibited from involvement in the E-rate program for three years. 47 C.F.R. § 54.521(g). The Commission may set a longer period of debarment or extend the existing period of debarment. *Id.*

[199] *See* 47 C.F.R. § 54.521.

[200] *See, e.g.*, Letter from Maureen F. DelDuca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Oscar Alvarez, *Notice of Debarment*, 18 FCC Rcd 26716 (2003); Letter from Maureen F. DelDuca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to John Angelides, *Notice of Debarment*, 18 FCC Rcd 26722 (2003); Letter from Maureen F. DelDuca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Duane Maynard, *Notice of Debarment*, 18 FCC Rcd 26729 (2003); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to John Dotson, *Notice of Debarment*, 19 FCC Rcd 23636 (2004).

regulations?[201] We note that we have initiated a proceeding to consider, among other things, changes to our E-rate program debarment rules.[202] We incorporate that record into this proceeding and ask parties to refresh the record to account for their experience since that time. In the *Second Report and Order*, we asked whether we should adopt the proposed government-wide debarment rules then pending. Final government-wide rules were subsequently adopted in 2003.[203] Commenters discussing the government-wide debarment rules should ensure their comments address these final rules. We also seek comment on whether we should broaden the scope of our debarment rules to encompass entities that have been found guilty of civil and criminal violations beyond those associated with our universal service programs or entities that have shown to have engaged in a clear pattern of abuse of our rules. We also seek comment on whether we should adopt sanctions other than debarment for violations in all USF programs. Commenters should discuss what type of sanctions would be appropriate, and identify any appropriate distinctions among the universal service programs. For example, should we reduce an E-rate beneficiary's discount level for a limited number of years for repeated violations?

98. We tentatively conclude that we should establish more aggressive sanctions and debarment procedures and disclosures in all USAC programs. There should be a range of sanctions available to us for violations in all USAC programs. What types of sanctions should we employ? We also believe that sanctions should be appropriate to the violation. Sanctions should reflect the fundamental difference between isolated incidents of unintentional ministerial error and committing criminal fraud. What sanctions should we apply to clerical mistakes versus intentional fraud? One specific idea we seek comment on is whether we should be able to reduce an E-rate beneficiary's discount level for a limited number of years as a sanction for repeated violations rather than imposing a fine, especially for public institutions. We seek comment on whether the Commission or USAC should create a list of best and worst practices to assist beneficiaries to reduce fraud. This list would give examples to schools and libraries that would help them identify a good contractor and a good application, and to avoid predatory contractors and risky application practices.

99. We continue to remain committed to rapidly detecting and addressing potential misconduct, and ensuring that universal service funds are used in the absence of waste, fraud, and abuse. We seek comment generally on other measures that would further these goals by deterring the inappropriate use of funds received from the various universal service support mechanisms. We invite commenters to propose mechanism-specific measures as well as measures that would apply to applicants or recipients of any of the various support mechanisms. Commenters should specify the manner in which their proposals would further protect the universal service support mechanisms from waste, fraud, and abuse.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

100. As required by the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. § 604, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") for this NPRM, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The IRFA is in Appendix A. 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

[201] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225, ¶ 67 (2003) ("*Second Report and Order*") citing 28 C.F.R. § 67.100 *et seq.*

[202] *See Second Report and Order*, 18 FCC Rcd 9202, 9235-39, ¶¶ 102-115.

[203] *See* 68 Fed. Reg. 66534-01 (Nov. 26, 2003).

comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[204] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[205]

B. Paperwork Reduction Act Analysis

101. This Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking does not contain information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

C. Ex Parte Presentations

102. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[206] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented in generally required.[207] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.[208]

D. Comment Filing Procedures

103. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[209] interested parties may file comments on this NPRM within 90 days after publication in the Federal Register and may file reply comments within 150 days after publication in the Federal Register. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. One (1) courtesy copy must be delivered to Warren Firschein at Federal Communications Commission, Telecommunications Access Policy Division, Wireline Competition Bureau , 445 12th Street, S.W., Room 5-B442, Washington, D.C. 20554; e-mail: warren.firschein@fcc.gov; one (1) courtesy copy must be delivered to Mika Savir at Federal Communications Commission, Telecommunications Access Policy Division, Wireline Competition Bureau , 445 12th Street, S.W., Room 5-B448, Washington, D.C. 20554; e-mail: mika.savir@fcc.gov; and one (1) copy to Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its website: www.bcpiweb.com, by e-mail at fcc@bcpiweb.com, by telephone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563.

104. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.[210] Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. If multiple docket or rulemaking numbers appear

[204] *See* 5 U.S.C. § 603(a).

[205] *Id.*

[206] 47 C.F.R. §§ 1.1200-1.1216.

[207] 47 C.F.R. § 1.1206(b)(2).

[208] 47 C.F.R. § 1.1206(b).

[209] 47 C.F.R. §§ 1.415, 1.419.

[210] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

in the caption of this proceeding, 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, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get 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.

105. 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. All filings must contain the docket or rulemaking number that appears in the caption of this proceeding.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 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.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, M.D. 20743.

- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

106. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C., 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its website: www.bcpiweb.com, by e-mail at fcc@bcpiweb.com, by telephone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563.

107. For further information regarding this proceeding, contact Warren Firschein, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-0844, or warren.firschein@fcc.gov or Mika Savir, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-0384, e-mail: mika.savir@fcc.gov.

108. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act ("PRA") comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to Judith-B.Herman@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 via the Internet to Kristy_L._LaLonde@omb.eop.gov or by fax to (202) 395-5167.

V. ORDERING CLAUSES

109. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214, 254, and 403, this Notice of Proposed Rulemaking IS ADOPTED.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[211] 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 Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (*"NPRM"*). 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 *NPRM*. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[212] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[213]

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

2. In the *NPRM*, we seek comment on ways to further protect the high cost, low income, schools and libraries, and rural health care universal service support mechanisms from waste, fraud, and abuse. Specifically, we seek comment on whether, so as to improve our oversight capacity to guard against waste, fraud, and abuse, our rules should require audits of recipients of funds from the high cost, low income, schools and libraries, and rural health care programs, and audits of contributors to the universal service fund. We also seek comment on whether to adopt document retention rules for all of the universal service fund mechanisms that are consistent with the rules pertaining to participants in the schools and libraries support mechanism. In addition, the *NPRM* seeks comment on whether to establish an administrative limitations period in which the Commission or USAC will determine that a violation has occurred among recipients of funds from the high cost, low income, and rural health care universal service support mechanisms that is consistent with the rules pertaining to participants in the schools and libraries support mechanism.

3. Additionally, we seek comment on ways to improve the management, administration, and oversight of the universal service fund, including the process for applying of universal service support, the disbursement process, the billing and collection process, issues relating to the Universal Service Administrative Company ("USAC"), and performance measures and goals for assessing and managing the universal service programs.

2. Legal Basis

4. The legal basis for the *NPRM* is contained in sections 1, 4, 201 through 205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 214, 254, 303(r), and 403, and section 1.411 of the Commission's rules, 47 C.F.R. § 1.411.

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[211] *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).

[212] *See* 5 U.S.C. § 603(a).

[213] *See id.*

3. Description and Estimate of the Number of Small Entities to Which Rules May Apply

5. 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.[214] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[215] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[216] 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.[217] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[218] Nationwide, there are approximately 1.6 small organizations.[219] The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[220] As of 1997, there were about 87,453 governmental jurisdictions in the United States.[221] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

6. The Commission has determined that the group of small entities possibly directly affected by the proposed rules herein, if adopted, includes 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.[222] Further descriptions of these entities are provided below. In addition, the Universal Service Administrative Company is a small organization (non-profit) under the RFA, it does not constitute a substantial number of such entities,[223] and we believe that circumstances triggering the new reporting requirement will be limited and that the requirement does not constitute a significant economic impact on that entity.

a. Schools and Libraries

7. As noted, "small entity" includes non-profit and small governmental entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and

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[214] 5 U.S.C. § 603(b)(3).

[215] 5 U.S.C. § 601(6).

[216] 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."

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

[218] 5 U.S.C. § 601(4).

[219] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[220] 5 U.S.C. § 601(5).

[221] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299-300, Tables 490 and 492.

[222] 47 C.F.R. §§ 54.502, 54.503, 54.517(b).

[223] *See NPRM*, *supra*, at ¶ 4; *see generally* 5 U.S.C. § 605.

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."[224] 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.[225] 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.[226] Certain other statutory definitions apply as well.[227] The SBA has defined for-profit, elementary and secondary schools and libraries having $6 million or less in annual receipts as small entities.[228] 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 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

8. 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."[229] 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.[230] 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.

9. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[231] According to Commission data,[232] 1,310 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently,

[224] 47 C.F.R. § 54.500(b).

[225] 47 C.F.R. § 54.500(j).

[226] 47 C.F.R. § 54.501.

[227] *See id.*

[228] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) codes 611110 and 519120 (NAICS 2002 code 519120 was previously 514120).

[229] 5 U.S.C. § 601(3).

[230] *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).

[231] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[232] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (May 2004). This source uses data that are current as of October 22, 2003 (Trends in Telephone Service).

the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

10. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs) and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers." The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[233] According to Commission data,[234] 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees.[235] In addition, 35 carriers reported that they were "Other Local Exchange Carriers." Of the 37 "Other Local Exchange Carriers," an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees.[236] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

11. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[237] According to the Commission data,[238] 281 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 281 companies, an estimated 254 have 1,500 or fewer employees and 27 have more than 1,500 employees.[239] Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by the rules and policies adopted herein.

12. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless small businesses within the two separate categories of *Paging*[240] and *Cellular and Other Wireless Telecommunications.*[241] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission data,[242] 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees.[243] Consequently, the Commission estimates that

[233] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[234] Trends in Telephone Service at Table 5.3.

[235] *Id.*

[236] *Id.*

[237] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[238] Trends in Telephone Service at Table 5.3.

[239] *Id.*

[240] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513321 (changed to 517211 in October 2002).

[241] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513322 (changed to 517212 in October 2002). This category includes Personal Communications Service (PCS) and SMR Telephony Carriers.

[242] Trends in Telephone Service at Table 5.3.

[243] *Id.*

most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

13. *Private and Common Carrier Paging.* In the Paging *Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[244] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[245] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. Also, according to Commission data, 379 carriers reported that they were engaged in the provision of either paging or messaging services or other mobile services.[246] Of those, the Commission estimates that 373 are small, under the SBA-approved small business size standard.[247]

c. Internet Service Providers

14. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity."[248] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[249] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[250] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24, 999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of internet service providers increased approximately five percent from 1997 to 2002.[251]

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[244] *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-295 (1997), 62 FR 16004 (Apr. 3, 1997), at ¶¶ 291-295.

[245] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10085, ¶ 98 (1999).

[246] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, p. 5-5 (Aug. 2003).

[247] *Id.*

[248] U.S. Census Bureau, "2002 NAICS Definitions: 518111 Internet Service Providers" (Feb. 2004) <www.census.gov>.

[249] 13 C.F.R. § 121.201, NAICS code 518111 (changed from previous code 514191, "On-Line Information Services," in Oct. 2002).

[250] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 514191 (issued Oct. 2000).

[251] *See* U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 514191 (issued Nov. 2004). The preliminary data indicate that the total number of "establishments" increased from 4,165 to 4,394. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms,"

(continued....)

d. Vendors of Internal Connections

15. The Commission has not developed a small business size standard specifically directed toward manufacturers of internal network connections. The closest 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."[252] 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.[253] 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.[254] 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.

e. Miscellaneous Entities

16. *Wireless Communications Equipment Manufacturers.* The equipment manufacturers described in this section are merely indirectly affected by our current action, and therefore are not formally a part of this RFA analysis. We have included them, however, to broaden the record in this proceeding and to alert them to our decisions. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees.[255] Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments[256] in this category.[257] Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35 percent,[258] so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with and additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.

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because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.

[252] 13 C.F.R. § 121.201, NAICS Code 334220, 334290.

[253] *Id.*

[254] 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).

[255] *Id.*

[256] The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 1,089.

[257] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, "Industry Statistics by Employment Size," Table 4, NAICS code 334220 (issued August 1999).

[258] *Id.* Table 5, "Industry Statistics by Industry and Primary Product Class Specialization: 1997."

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

17. The *NPRM* seeks comment on whether, so as to improve our oversight capacity to guard against waste, fraud, and abuse, our rules should require audits of recipients of funds from the high cost, low income, schools and libraries, and rural health care programs, and audits of contributors to the universal service fund.[259] We have no audit cost estimate at this time. In addition, the *NPRM* seeks comment on whether to adopt document retention rules for all of the universal service fund mechanisms that are consistent with the rules pertaining to participants in the schools and libraries support mechanism.[260]

18. The *NPRM* also seeks comment on ways to improve the management, oversight, and administration of the universal service fund and the universal service mechanisms.[261] The *NPRM* also seeks comment on improvements to the application and disbursement process, which may include changes in the universal service forms, adoption of a multi-year application, or changes in other reporting requirements.[262]

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

19. 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.[263]

20. In the *NPRM*, we seek comments asking for identification of any recordkeeping measures that would improve the Commission's ability to enforce its rules governing waste, fraud, and abuse in the high cost, low income, schools and libraries, and rural health care programs. Decreasing the likelihood of waste, fraud, and abuse preserves program funding for all eligible entities. The *NPRM* seeks comment on whether the audit requirement should apply only to recipients that receive a relatively large amount of support or benefit from the program. Similarly, with regard to potential audits of contributors to the fund, the *NPRM* seeks comment on whether we should establish a threshold for triggering an audit (*e.g.*, require independent audits only for carriers contributing $100 million or more in a particular fiscal year). In addition, the *NPRM* seeks comment on adopting a multi-year application form for Universal Service Fund beneficiaries, which could, if adopted, reduce the filing burden on small entities.

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[259] *See NPRM*, *supra*, at ¶¶ 69-82.

[260] *See NPRM*, *supra*, at ¶¶ 83-85.

[261] *See NPRM*, *supra*, at ¶¶ 11-23, 32-33.

[262] *See NPRM*, *supra*, at ¶¶ 34-59.

[263] *See* 5 U.S.C. § 603(c).

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

21. None.

STATEMENT OF CHAIRMAN KEVIN J. MARTIN

Re: Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, WC Docket No. 05-195

Today's decision reaffirms the Commission's commitment to improve the management, administration, and oversight of the Universal Service Fund (USF).

I fully support the universal service program and the critical function it serves to ensure access for consumers in rural and high-cost areas, and to promote access to advanced services for schools, libraries, and health care service providers in rural areas.

Managing the USF in an efficient, effective manner is one of the Commission's core functions. It is incumbent upon us to take the steps necessary to improve the operational efficiency of the program while providing greater certainty to the recipients. We can thus achieve our mutual goal of protecting the continuing health and sustainability of the universal service fund.

This NPRM provides an opportunity for the Commission to explore the lessons learned through the operations of the High Cost and Low Income programs. In these programs, the Commission's rules specify formulae that are used to distribute universal service support. This type of formulaic approach may hold promise for improving the administration of the E-rate and Rural Healthcare programs. By using a formulaic approach to distribute support directly to schools, libraries, and rural healthcare providers, the Commission may be able to address the concerns raised by beneficiaries about the growing complexity of the application process while still ensuring that the programs' funds are used appropriately.

STATEMENT OF COMMISSIONER MICHAEL J. COPPS

RE: *Federal-State Joint Board on Universal Service, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, CC Docket Nos. 96-45, 02-6, 02-60, 03-109 and 97-21, Notice of Proposed Rulemaking.*

Today's NPRM is about keeping the Universal Service Fund on good footing and being good stewards of our programs. Let me focus on one of those programs. No doubt about it, the E-Rate is one of the nation's great success stories. Thanks to this program, schools and libraries across the country, including those in rural areas and in our inner cities, have access to telecommunications services and to the Internet. The critical importance of this program means that it needs regular review and care. We continue that process today. I want to commend the Chairman for recognizing the importance of application simplification to improving the program, saving scarce resources, and reducing too common ministerial and clerical errors. I am particularly pleased that we make a tentative conclusion to move to a multi-year application process for Priority One services. This is a real step forward and I look forward to seeing it instituted soon. We must also always be mindful of protecting the program from those few who would abuse it. While instances of intentional fraud are infrequent, our goal must be to eliminate them altogether. I therefore support the NPRM's conclusion that we will strengthen our debarment rules and take new steps to identify and punish predatory contractors.

I am concerned about one aspect of the NPRM. It asks if we should replace the application process and distribute E-Rate funds directly to schools and libraries according to their size. Such a change could also allow funds to be used for unspecified communications-related services and equipment, rather than requiring applications that specify services and equipment. So many questions about this approach remain unaddressed. Distributing funds directly to schools could conceivably exclude Catholic and other private and parochial schools from the E-Rate program. Tying funds to school size could conceivably result in our rural and insular schools being denied the funds they need for the extraordinary cost of services in these areas, just because they have fewer students. And if schools are given a sum of money to be used for unspecified purposes rather than for specified and verifiable services and equipment, it could be much more difficult to identify fraud. Without assurances that parochial schools and rural schools would not be disadvantaged, and fraud detection would not be undermined, I must express my concern with this aspect of a generally very sound item. I urge all those who share this concern to respond to this notice so that our record leaves no doubt about the effects, including those always pernicious unintended effects, of proposals that would so dramatically affect this very successful program.

STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN

Re: *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket No. 05-195, CC Docket No. 96-45, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 03-109, CC Docket No. 97-21, FCC 05-124.

My commitment to universal service is based on the fundamental belief that a chain is only as strong as its weakest link. Our universal service programs strengthen the links in our communications network and, today, we open an important inquiry about how to reinforce and improve those programs. Although this Notice focuses on administrative, management and oversight issues, it touches on almost every operational detail of our universal service programs. Some of the wide-ranging proposals here give me pause, but the comprehensive nature of this item should demonstrate our commitment to the effectiveness and integrity of this already outstanding program.

Universal service has been the bedrock telecommunications of the past seventy years. Congress and the Commission recognized early on that the economic, social, and public health benefits of the telecommunications network are increased for all subscribers by the addition of each new subscriber. Universal service has played an important role in stimulating and maintaining the high levels of penetration that our country now enjoys, with benefits for all users of the network, no matter where they live.

Given these benefits, it is not surprising that Congress enshrined the principles of keeping our communities connected and ensuring that the latest advanced communications services reach all Americans in the Telecommunications Act of 1996. In the 1996 Act, Congress reaffirmed its commitment to connectivity for rural America and for low income consumers, but also made important additions to our universal service framework. Since its inception, the Schools and Libraries program has opened a world of new learning and opportunity for millions of school children and library patrons. The funding made possible through our Rural Health Care program has been crucial to the sustainability of many telemedicine programs and this program holds enormous potential to improve the quality of life in rural America.

To ensure continued success, we must remain committed to monitoring, auditing, reviewing and reinforcing this program. Part of that process is being responsive to criticisms of the Commission's management, and this item seeks comment on a wide-ranging set of proposals, some of which I find more attractive than others. It also means building on the many successes and positive improvements that the Commission and the universal service community have already made. Indeed, I appreciate very much the dedication of the service providers, contributors, beneficiaries, USAC employees, and dedicated Commission staff who have worked hard to make this program a success.

Among the more promising options here are the proposals to safeguard against waste, fraud, and abuse by expanding the scope of our disbarment rule, which prohibits bad actors from participating in the program. I'm glad that this item seeks comment on whether we should broaden the scope of our debarment rule to encompass entities that have been found guilty of civil and criminal violations beyond those associated with our universal service programs or entities that are shown to have engaged in clear patterns of abuse of our rules. I am also glad that the item seeks comment on applying different levels of sanctions for different violations.

While it is important that we strive to consistently improve our performance, we must also ensure that even well-intentioned reform efforts do not undermine the effectiveness of our universal service programs. So I am concerned about proposals to adopt overly formulaic approaches for our universal service programs. Allocating support based on formulas, like school size, may ignore critical differences in the cost to obtain services in rural parts of the country and may work against smaller or private schools that cannot achieve economies of scale. I'm particularly concerned that such approaches, or proposals to adopt multiple bid requirements or per-application caps for funding, would not provide sufficient support, as required by the Act, for schools, libraries, and consumers in rural areas.

As we seek to bolster our efforts to prevent waste and fraud, this Notice also provides an important opportunity for the Commission to clarify and improve our administrative processes for the benefit of all participants. In particular, I have heard considerable support for the proposal to adopt a streamlined application process for "priority one" services through our Schools and Libraries program. This Notice recognizes that there have been fewer problems with priority one services, in our experience. It's axiomatic that if we can target our efforts to prevent waste, fraud, and abuse more closely to high risk applications, we should be able to simplify our processes for those low risk areas. We should not engage in one-way ratcheting of our process or leave in place unnecessary obstacles for deserving applicants.

I would like to commend Chairman Martin and my colleagues for the collaborative process and efforts on this item. For this process to be successful, we must continue to draw on the cumulative expertise of all program participants. With the help of this intertwined community, we can further strengthen the program and ensure that it continues the positive strides that it has already made.