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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

ORDER

Adopted: October 14, 2005 **Released: October 14, 2005**

By the Commission:

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I. INTRODUCTION AND BACKGROUND

1. *In this Order, we take immediate steps to assist the victims of Hurricane Katrina by* making available approximately $211 million of targeted support from the Universal Service Fund ("USF") for reconstruction and remediation relating to the restoration of telecommunications services.[1] We expect that these measures will help the victims of Hurricane Katrina recover from the catastrophic damage and help the affected communities rebuild. As explained below, because of the exigent circumstances, we find good cause to adopt temporary rules without notice-and-comment in order to assist the Nation's disaster relief effort.

2. On Monday, August 29, 2005, Hurricane Katrina struck the Gulf Coast of the United States, causing significant damage in Alabama, Louisiana, and Mississippi.[2] Hurricane Katrina knocked out more than three million customer phone lines in Alabama, Louisiana, and Mississippi. The wireline telecommunications network sustained enormous damage – dozens of central offices and countless miles of outside plant were damaged or destroyed as a result of the hurricane or the subsequent flooding. Local wireless networks also sustained considerable damage – more than a thousand cell sites were knocked out of service by the hurricane. At the hurricane's height, more than thirty-five Public Safety Answering Points ("PSAPs") were out of service; as of September 16, 2005, three parishes in Louisiana were still without 911 or enhanced 911 ("E911") service because of the hurricane's damage.[3] Hurricane Katrina destroyed or damaged countless houses, office buildings, apartment buildings, schools, libraries, and health care facilities. Thousands of people – many evacuated to neighboring states – remain without telecommunications service, unable to contact loved ones, make new living arrangements, or find post-hurricane employment. To date, the damage caused by Hurricane Katrina has not been fully determined;

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[1] As discussed in more detail below, we estimate that the support provided herein would be approximately $39 million for Lifeline, $12 million for Link-Up, $28 million for rural health care, and $132 million for schools and libraries.

[2] President Bush issued Major Disaster Declarations for these three states on that same day. *See* http://www.fema.gov/news/disasters.fema.

[3] *See* http://www.fema.gov/news/disasters.fema?year=2005. According to the Federal Emergency Management Agency ("FEMA"), approximately 122,000 people affected by the hurricane were housed in temporary shelters as of September 15, 2005. *See* map attached at Appendix. FEMA now estimates that approximately 300,000 families are homeless and 200,000 will need government housing. "*Housing the Displaced is Rife with Delays*," Washington Post, Sept. 23, 2005 at A-01. By Hurricane Katrina disaster area, we mean those counties and parishes designated by FEMA as eligible for individual disaster assistance. Based on FEMA's description, we extend this relief to:

Alabama -- Baldwin, Mobile, Pickens, Greene, Hale, Tuscaloosa, and Washington.

Louisiana -- Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Lincoln, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana.

Mississippi -- Adams, Amite, Attala, Bolivar, Claiborne, Choctaw, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Quitman, Rankin, Scott, Simpson, Smith, Stone, Tippah, Walthall, Warren, Wayne, Wilkinson, Winston, and Yazoo.

we understand, however, that numerous people lost their lives and property owners sustained billions of dollars in damage.[4]

3. Hurricane Katrina has also severely limited the ability of health care providers in the affected areas to respond effectively to both injuries caused by the hurricane and ongoing medical needs of the population. Further, many evacuees are being transported to surrounding areas or states to receive medical attention.[5]

4. We have already taken a number of steps to assist in the disaster relief effort, including granting requests for special temporary authority ("STA") and waiver of various rules, and obtaining network information for damage assessment and analysis.[6] In this Order, we modify the USF program rules to more effectively target support to the disaster area and to people affected by Hurricane Katrina. Our goal is to work within the parameters of the program rules to ensure that victims of Hurricane Katrina continue to have access to telecommunications services and advanced telecommunications services necessary for recovery and restoration from the catastrophic damage. As a result, we adopt the following temporary rules:

- For the low-income program, we adopt Lifeline rules to provide households eligible for individual housing assistance under FEMA rules with temporary wireless telecommunications service.[7] For the same households, we also adopt Link-Up rules to help pay the costs of reconnecting households to the telecommunications network.[8]

- For the rural health care program, we adopt rules to allow rural and non-rural public and nonprofit health care providers, including American Red Cross shelters providing health care services to disaster victims, to apply for support for advanced telecommunications and information services used for telemedicine applications.[9] These temporary rules will increase the effectiveness of the rural health care universal service support mechanism by

[4] *See, e.g.*, "*Telecom Damage from Katrina Tops $400 Million; Repairs May Take Months*," Washington Post, Sept. 6, 2005.

[5] *See, e.g.*, "*Medicaid's Red Tape Entangles Evacuees*," Chicago Tribune, Sept. 14, 2005 (in Texas, which has accepted 200,000 evacuees, the state's Medicaid program could spend an extra $30 million per month).

[6] *See, e.g., Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Florida and Tennessee*, WC Docket Nos. 02-307, 02-150, 02-35, Order, DA 05-2447 (rel. Sept. 13, 2005); *Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 02-6, 96-45, WC Docket Nos. 02-60, 03-109, Order, DA 05-2484 (rel. Sept. 21, 2005); *Numbering Resource Optimization*, CC Docket No. 99-200, Order, FCC 05-164 (rel. Sept. 4, 2005); *Telephone Number Portability, Numbering Resource Optimization*, CC Docket Nos. 95-116, 99-200, Order, FCC 05-161 (rel. Sept. 1, 2005).

[7] The Lifeline rules are in effect from the release date of this Order until March 1, 2006. We estimate that that the total impact of these rules will be approximately $39 million.

[8] The Link-Up rules are in effect from the release date of this Order until March 1, 2007. We estimate that the total impact of these rules will be approximately $12 million.

[9] The health care rules adopted herein are in effect for Funding Year 2005. Providers can apply for this funding by March 1, 2006 and receive funding retroactive to August 29, 2005. We estimate that the total impact of these rules will be approximately $28 million.

providing additional discounts for advanced telecommunications and information services to health care providers in the affected areas and in areas where the evacuees have relocated.

- We take action to target support from the schools and libraries support mechanism (commonly known as the E-rate program), including opening a new application window, to allow schools and libraries in the affected area and those serving increased numbers of students and patrons to re-submit their requests for E-rate funds for this year. In addition, the Commission will assign the E-rate program's highest level of priority (*i.e.*, 90 percent) to schools and libraries in the Hurricane Katrina disaster area for Funding Year 2005 and Funding Year 2006 to ensure that these schools are eligible for the steepest discounts available for supported services.[10]

- Finally, we clarify that, under the rules for receiving high-cost support, carriers in the disaster area may use high-cost support funds received for high-cost areas in Alabama, Louisiana, and Mississippi to assist in reconstructing facilities damaged by the hurricane.[11]

5. We conclude that these steps are necessary to assist the disaster recovery efforts related to Hurricane Katrina. We find these actions to be consistent with section 254 of the Act, and the provision of universal service generally, for they will help ensure that needed telecommunications and information services will continue to be available throughout our nation on an affordable basis despite the impact of this national tragedy. We take these actions on a limited, interim basis because swift and decisive action is necessary to ensure that E-rate program participants, communities, health care providers, and low-income consumers continue to have access to needed telecommunications and information services. These measures adopted today should target approximately $211 million to the disaster area and to people affected by Hurricane Katrina. We expect that these funds will be generated through a combination of reprioritizing existing resources and a potential temporary increase in the contribution factor rate over the course of the next year. We remain committed to safeguarding the USF from potential waste, fraud, and abuse. To ensure that all monies are used for their intended purpose of assisting in Hurricane Katrina disaster relief and restoration, we adopt certification and documentation requirements for these temporary rules. All eligible telecommunications carriers, service providers, or beneficiaries requesting support under these temporary rules shall be subject to audit or investigation by the Commission's Office of Inspector General ("OIG"), or other authorized federal or state governmental agency and, upon request, must make available any documentation and records necessary to verify compliance with these rules. In addition, any eligible telecommunications carrier, service provider, or beneficiary receiving more than $1 million under this section shall be subject to an automatic audit, investigation, or other review by the Commission's OIG (or the Administrator working under the oversight of the OIG) to ensure the temporary support is used for its intended purposes.[12]

[10] We estimate that the total impact of these rule waivers will be approximately $132 million.

[11] We estimate that 39 high-cost companies were affected by Hurricane Katrina in Alabama, 29 in Louisiana, and 33 in Mississippi. *See infra* paras. 54-56 (discussing high-cost support).

[12] We note that the Commission's OIG may work with the Administrator to implement these audits using, for example, auditors working under contract.

II. ORDER

A. Waiver Standard

6. Generally, the Commission's rules may be waived for good cause shown.[13] Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.[14] As we discuss in more detail below, we find that the catastrophic damage to lives and property as a result of Hurricane Katrina in the Gulf Coast states and the need for expedited restoration of communications presents special circumstances for waiving certain universal service rules and that such a waiver is in the public interest.

7. We find that it is appropriate to implement these rules, effective upon release of this Order, on a temporary basis to expand funding in the affected areas.[15] We find that the circumstances caused by Hurricane Katrina create a special need for the Commission to use its discretion to provide universal service support to health care providers in the affected areas. This support is necessary to address the unique circumstances faced by health care providers, schools, libraries, service providers, and low-income consumers in the states of Alabama, Louisiana, and Mississippi, and the areas where evacuees have relocated. These temporary rules represent our recognition of the vital role played by telecommunications and by telemedicine in responding to the needs in the communities affected by Hurricane Katrina. These temporary rules also further the Commission's core responsibility to make available a rapid nationwide network for the purpose of responding to national crisis situations. For all of these reasons, we find this interim relief to be in the public interest.

B. Lifeline/Link-Up Support

1. Need for and description of temporary rules

8. In this Order, we adopt temporary modifications to the low-income program rules to improve the effectiveness of the low-income support mechanism at meeting the needs of victims of Hurricane Katrina. Since its inception, Lifeline/Link-Up has provided support for telephone service to millions of low-income consumers.[16] Nationally, the telephone penetration rate is 92.4 percent, in large part due to the success of the Lifeline/Link-Up program and our other universal service programs.[17] In light of the catastrophic damage caused by the worst natural disaster this country has faced, thousands of

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[13] 47 C.F.R. § 1.3. This rule provides that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." *Id.*

[14] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[15] For the reasons stated herein, we find good cause for the rules to become effective upon release of this Order, before publication in the Federal Register. 5 U.S.C. § 553(d)(3). *See* paras. 62-63, *infra*.

[16] *See* Wireline Competition Bureau, Federal Communications Commission, *Trends in Telephone Service Report*, Tables 20.2, 20.4 (August 2003) (*2003 Trends Report*) (estimating that 6.6 million people paid reduced rates under the Lifeline program in 2002 and 13.7 million people paid reduced charges under Link-Up since 1991).

[17] *See* Wireline Competition Bureau, Federal Communications Commission, *Telephone Subscribership in the United States Report*, Table 1 (rel. May 25, 2005) (*Telephone Subscribership Report*) (data through Nov. 2004); http://www.fcc.gov/wcb/iatd/lec.html.

people remain without basic telephone service.[18] Unless addressed, this lack of access to telecommunications will lengthen the already-long period of time anticipated for recovery from the damage caused by Hurricane Katrina.

9. As discussed in more detail below, in this section, we take two steps to address this significant problem affecting thousands of people. First, under the Lifeline program, we provide for temporary support under the federal Lifeline program for eligible telecommunications carriers making available a wireless service consumer offering to victims of Hurricane Katrina. Second, we provide support under the federal Link-Up program to hurricane victims moving to temporary housing arrangements and to those who return to permanent residences in the affected areas. To ensure victims of Hurricane Katrina in need of help receive this assistance, we base the eligibility criteria for these initiatives on those used by FEMA to provide individual disaster housing assistance to these people and entities.[19]

10. In crafting these temporary rules, we are informed by the principles of section 254 and our low-income program rules. Section 254(b) establishes principles upon which the Commission shall base policies for the preservation and advancement of universal service. Among other things, these principles state that consumers in all regions of the Nation, including low-income consumers, should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged in urban areas.[20] These principles also recognize that ensuring rates are affordable is a national priority. In light of these principles, we conclude that modifying the low-income program by providing for a wireless service federal Lifeline consumer offering and providing support under the federal Link-Up program for connection charges, on a temporary basis, is necessary to assist the disaster recovery efforts related to Hurricane Katrina.

11. *Lifeline*. Thousands of people left their homes because of the hurricane. Many of these people are in temporary shelters or in the process of finding interim housing and may be without a permanent home or employment for a period of time.[21] To facilitate the access of evacuees and other displaced persons to telecommunications services, any person approved for individual FEMA housing assistance or determined by FEMA to be eligible for such individual housing assistance relating to the

[18] As of September 16, 2005, carriers reported approximately 274,000 telephone lines remained out of service in Louisiana and Mississippi as a result of the damage caused by Hurricane Katrina.

[19] FEMA designated the affected areas under two categories, for individual assistance and for public assistance. FEMA provides individuals housing assistance and financial assistance for other needs. *See* 44 C.F.R. §§ 206.117, 206.119. FEMA's rules provide for a 60-day registration period, although FEMA may accept late registrations. *See* 44 C.F.R. § 206.11. In addition, FEMA's rules establish eligibility factors to specify the instances in which FEMA may provide individual disaster assistance. *See* 44 C.F.R. § 206.113. FEMA's rules further specify conditions of ineligibility that would disqualify an individual from receiving assistance. *Id.* at § 206.113(b).

[20] 47 U.S.C. § 254(b).

[21] *See* Letter from Foster L. Campbell, Commissioner, Louisiana Public Service Commission to Kevin J. Martin, Chairman, FCC (Sept. 8, 2005) (requesting the Commission to act to ensure that wireless carriers provide at least two months of free service to victims of Hurricane Katrina) ("Campbell Letter"). On September 19, 2005, the entire Louisiana Public Service Commission voted a resolution in support of the Campbell Letter.

hurricane will be eligible for federal Lifeline[22] support for a free wireless handset and a package of at least 300 minutes of use, not to exceed $130 per household, until March 1, 2006.[23]

12. We find that $130 per household is a reasonable amount of support for the purchase of a handset and at least 300 minutes based on the variety of the competitive plans available to consumers throughout the United States.[24] We note that at least one wireless provider has indicated this amount of support is sufficient to serve low-income consumers.[25] Moreover, we find that a minimum of 300 minutes of use per household will facilitate evacuees and those remaining in the affected areas to reconnect with loved ones, and make living, housing, and work arrangements in the wake of the hurricane. In addition, we expect that upon expiration, customers will retain the wireless phone and in many instances, be able to purchase additional minutes at discounted rates.[26] Such support will help consumers reconnect to the telecommunications network as the disaster-struck areas are rebuilt. For purposes of this Order, we define "household" as one adult and his/her dependants, living together in the same residence. We recognize that many families that normally live together as one household have been separated due to the hurricane and the evacuation process and may represent more than one household for this temporary Lifeline support. Our intent in providing this support is to assist hurricane victims, regardless of whether they are in an intact household, separated from family temporarily, or otherwise. To work within the parameters of the existing program, we will order this temporary support available to ETCs providing the supported wireless service consumer offering. We note that to receive the temporary support, wireless carriers cannot require consumers to enter into a long-term contract or require service beyond 300 minutes or March 1, 2006, whichever is shorter.[27]

13. We find that these modifications are economically reasonable and consistent with the existing framework of the program rules. Under the Lifeline program, low-income consumers could

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[22] Lifeline provides low-income consumers with discounts of up to $10.00 off of the monthly cost of telephone service for a single telephone line in their principal residence. 47 C.F.R. § 54.401(a)(2). Link-Up provides low-income consumers with discounts of up to $30.00 off of the initial costs of installing telephone service. 47 C.F.R. § 54.411(a)(1). Recognizing the unique needs and characteristics of tribal communities, enhanced Lifeline and Link-Up provides qualifying low-income individuals living on tribal lands with up to $25.00 in additional discounts off the monthly cost of telephone service and up to $70.00 more off the initial costs of installing telephone service.

[23] We estimate that this will have approximately a $39 million impact on the low-income fund, based on an estimated $130 per approximately 300,000 eligible evacuee households without telephone service. We limit this Lifeline rule to the time period from the release date of this Order to March 1, 2006 because this is a short-term emergency relief measure and we anticipate that after this time period, hurricane victims will no longer need this temporary emergency relief.

[24] *See, e.g.*, http://www.tracfone-orders.com/direct/tr/itemdetl.jsp?prod=2063&tech=TOGSM4&techzip=70806; http://onlinestorez.cingular.com/cell-phone-service/cell-phones/cell-phones.jsp?CategoryId=1717200027&source=INC230063.

[25] *Id.*

[26] For example, many prepaid wireless carriers, such as TracFone, will provide a customer bonus minutes for future airtime purchases. *See, e.g.*, http://www.tracfone.com/double_minute_autopay.jsp?AID=DMA&codeVal=3.

[27] Consumers remain free to choose to stay with the wireless carrier after the expiration of the offering. To continue providing service, however, wireless providers must obtain the customer's approval.

receive up to $10 per month or $120 per year.[28] Under these temporary rules, qualifying consumers would receive a $130 benefit, which would also include a handset.[29] We note that this relief, combined with the action we took earlier with regard to waiver of the geographic porting requirements,[30] would allow evacuees to maintain their home phone numbers, and promote continuity with regard to personal contacts, employment, education, and housing. Under the unique and devastating circumstances caused by the hurricane and its aftermath, we conclude that provision of this support, including a free wireless handset, is consistent with the purpose of section 254 because it is reasonably necessary to ensure that low income consumers have immediate access to telecommunications services. We further find that this support fulfills the Commission's broader mandate to make wire and radio communication service available to all people of the United States, and to promote the safety of life and property.[31] We use our ancillary authority under Title I to include a free wireless handset.

14. *Link-Up*. We also adopt temporary rules for the Link-Up program to pay for certain costs to connect victims of the hurricane to the network. Specifically, we will provide funding under the Link-Up program to eligible telecommunications carriers to receive, upon submission of an application and any necessary documentation, $30.00 per qualifying household for commencing telecommunications service for a single telecommunications connection at any temporary housing arrangements.[32] To ensure this temporary support is targeted to those victims of Hurricane Katrina moving to temporary housing arrangements (*e.g.*, trailer parks or other temporary housing facilities),[33] we will make this support available from release of this Order through March 1, 2007.[34] In addition, we will also permit, under the Link-Up program, eligible telecommunications carriers to receive (upon submission of an application and any necessary documentation to the Administrator) $30.00 per qualifying household returning to a primary residence in the Hurricane Katrina disaster area for commencing telecommunications service for a single telecommunications connection, including the reconnection of service disconnected as a result of Hurricane Katrina. Based on the numbers provided by FEMA, we estimate that up to 370,000 households would be eligible for this temporary Link-Up support at an estimated total cost of approximately $12 million.

[28] Enhanced Lifeline and Link-Up, however, provide qualifying low-income individuals living on tribal lands with up to $25.00 in additional discounts off the monthly cost of telephone service and up to $70.00 more off the initial costs of installing telephone service.

[29] We anticipate that wireless providers will seek to attract potential new customers by, for example, offering more free minutes as part of this package or at least providing additional minutes to consumers who do not need a new handset.

[30] *See Telephone Number Portability, Numbering Resource Optimization*, CC Docket Nos. 95-116, 99-200, Order, FCC 05-161 (rel. Sept.1, 2005).

[31] 47 U.S.C. § 151.

[32] We estimate that this will have approximately a $12 million impact on the low-income fund, based upon $30 per 370,000 households. Based on press reports and reports from federal government agencies, our best estimate is that approximately 370,000 households may be eligible. *See, e.g.*, "*Housing the Displaced is Rife with Delays*," Washington Post, Sept. 23, 2005 at A-01 (estimating 300,000 homeless families).

[33] This temporary support is intended to defray the costs of installation of a telephone line to a residence that did not have telephone service in effect prior to the hurricane; facilities such as hotels or motels do not qualify for support under these temporary rules.

[34] This timeframe generally coincides with the 18-month period of eligibility for temporary housing under FEMA's rules.

2. Applicable time period

15. Hurricane victims need access to telephone service, particularly in this emergency situation. Carriers operating in the disaster areas in Alabama, Louisiana, and Mississippi, as well as in any state where people have been temporarily relocated, *e.g.*, Texas, should have the opportunity to assist hurricane victims and receive appropriate temporary USF support payments. Accordingly, we find that due to this emergency situation, good cause exists for adopting these temporary Lifeline rules, which will expire on March 1, 2006, specifically for free wireless handsets, and at least 300 free minutes per household for displaced persons, whether they relocate within the three affected states, relocate to another state outside of the area, or return home after telephone service has been disconnected. We also find that good cause exists to adopt temporary Link-Up rules, as discussed above, which will expire on March 1, 2007.

16. *Summary of applicable time periods and deadlines*. Link-Up support funding is available from the release date of this Order until March 1, 2007. Any eligible application for Link-Up support postmarked by March 1, 2007 will receive the special Link-Up support described above. Wireless Lifeline support is available from the release date of this Order until March 1, 2006. Any eligible application for support postmarked by March 1, 2006 is eligible for the Wireless Lifeline support described above.[35]

3. Eligibility

17. *Low-income consumers*. As discussed above, any person approved for FEMA disaster assistance or determined by FEMA to be eligible for individual assistance relating to the hurricane will be eligible for temporary federal Lifeline and Link-Up support, on a per household basis.[36] Section 254(e) of the Communications Act of 1934, as amended, provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."[37] We adopt several conditions to ensure that this Lifeline and Link-Up temporary support is used solely to assist victims of Hurricane Katrina. First, this Lifeline and Link-Up support is only available to consumers approved for FEMA disaster housing assistance or determined by FEMA to be eligible for housing assistance relating to the hurricane. FEMA's rules target housing assistance to individuals and households who are harmed by a disaster and generally have limited means.[38] For example, housing assistance is generally not available to individuals who have adequate

[35] Carriers seeking reimbursement under these temporary Lifeline and Link-Up support initiatives should submit the Form 497 and any other forms or documentation already required to participate in the low-income program. In addition, carriers should also submit information with the Form 497 to demonstrate the provision of supported services to victims of Hurricane Katrina (*e.g.*, number of households receiving the supported wireless service offering, number of temporary housing arrangements receiving Link-Up support, number of reconnections receiving Link-Up support). As noted above, carriers are required to certify the accuracy of this information.

[36] This temporary addition of eligibility criteria applies only to the federal Lifeline and Link-Up programs and is not intended to require states with their own supplemental Lifeline and Link-Up programs to automatically provide additional support.

[37] 47 U.S.C. § 254(e).

[38] 44 C.F.R. §§ 206.113, 206.117.

rent-free housing accommodations.[39] To ensure this support is targeted to those consumers with the greatest need, we are making this temporary support available to those consumers determined to be eligible for FEMA disaster housing assistance and who do not have any obligation under FEMA rules to repay FEMA for the support.[40] Because this is temporary support intended to assist in disaster relief and restoration, we limit this Link-Up support to one connection for temporary housing and one reconnection (per household) for hurricane victims determined to be eligible for individual assistance under FEMA rules (and who have no obligation to repay the funds to FEMA) returning to permanent residences in the FEMA-designated Hurricane Katrina disaster area.[41] We limit the Lifeline support to a free wireless handset and at least 300 free minutes. Second, the temporary Link-Up support for reconnections is available only for circumstances where the consumer was disconnected from service because of the hurricane or subsequent flooding.[42] Third, we require consumers qualifying for this support to provide documentary evidence to the ETC serving them to demonstrate that FEMA determined they were eligible for individual disaster housing assistance. Proof of FEMA's determination of eligibility for individual housing disaster assistance without repayment obligations is sufficient. We anticipate that the households that will receive support under these temporary rules would have received support under the existing low-income program rules if they obtained telephone service. We note, however, that our Link-Up rules place certain restrictions on the number of times at the same residence a low-income consumer may qualify for support. We therefore clarify that this temporary Link-Up support will be available both for temporary housing arrangements and for eligible hurricane victims returning to permanent residences in the Hurricane Katrina disaster area.

18. By adopting these temporary modifications to our Lifeline and Link-Up programs, we are working within the existing parameters of the low-income program. The Commission has long relied on participation in means-tested programs, such as participation in the food stamps program, to determine eligibility in our low-income program. In 2004, the Commission expanded eligibility for the low-income program when it acted upon the Federal-State Joint Board's recommendation to expand the federal default eligibility criteria to include an income-based criterion and additional means-tested programs.[43] Under the existing rules, in cases where a state does not mandate state Lifeline support, the Commission's rules rely on other means-tested federal assistance programs (*e.g.*, Temporary Assistance to Needy Families, Federal Public Housing Assistance, Low Income Home Energy Assistance Program, and the National School Lunch Program's free lunch program) to determine eligibility criteria for the low-income program.[44] The approach we adopt here, *i.e.*, relying on FEMA determinations that a

[39] 44 C.F.R. § 206.113(b)(2).

[40] Under FEMA rules, disaster victims who receive assistance but have the ability to repay through insurance or other means are generally required to repay any funds to FEMA. *See* 44 C.F.R. § 706.113(a). *See also* Federal Emergency Management Agency, Help After a Disaster: Applicant's Guide to the Individuals and Households Program, 3-4 (Aug. 2005).

[41] Nothing in our temporary support initiative is intended to restrict low-income consumers from receiving Lifeline and Link-Up support under our existing income/program based low-income support mechanism.

[42] Thus, to the extent the consumer's telephone line remains in service after the hurricane, support for reconnecting service is not available.

[43] *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8307-313, ¶¶ 7-14 (2004).

[44] To qualify to receive Lifeline service in a state that mandates Lifeline support, a consumer must meet the eligibility criteria established by the state commission for such support. 47 C.F.R. § 54.409(a).

consumer is eligible for certain individual disaster assistance program, is consistent with our general approach of using federal assistance programs to determine consumer eligibility for our low-income program. By relying on FEMA determinations of household eligibility for disaster housing assistance, we are targeting this support to households struck by Hurricane Katrina, and we are using FEMA's determinations as a need-based program for determining low-income programs eligibility.

19. *Eligible Telecommunications Carriers.* There are approximately 65 wireless carriers designated as ETCs in the states of Alabama, Louisiana, and Mississippi. We recognize that these ETCs, as well as wireless carriers currently designated as ETCs in other states, may not be sufficient to implement this temporary rule in time to help with Hurricane Katrina disaster relief or may not be certified in areas where they now need to provide service. In order to effectively and efficiently implement these temporary rules, we forbear for the purposes of this special relief, until March 1, 2006, from section 254(e)'s requirement that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."[45] We establish the following alternative designation process for temporary ETCs to provide the specific Lifeline support described in this Order.

20. Section 10 of the Act requires that the Commission forbear from applying any regulation or any provision of the Act to telecommunications services or telecommunications carriers if the Commission determines that the three conditions set forth in section 10(a) are satisfied.[46] We find the requirements of section 10(a) are met to forbear from the ETC requirement until March 1, 2006, because of the limited and temporary nature of the support as well as the narrow application of the universal

[45] Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area. 47 U.S.C. § 214(e)(1). Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations. 47 U.S.C. § 214(e)(2). *See also Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, ¶ 93 (2000) ("*Twelfth Report and Order*"). Section 214(e)(6) directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission." 47 U.S.C. § 214(e)(6). *See, e.g., Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133 (2001). Of the three states designated for FEMA assistance (Louisiana, Mississippi and Alabama), only Alabama does not exercise jurisdiction over ETC designation. *See Federal-State Joint Board on Universal Service, Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the States of Georgia and Alabama*, CC Docket No. 96-45, Order, 20 FCC Rcd 6854 (WCB 2005).

[46] Specifically, section 10(a) provides that the Commission shall forbear from applying such provision or regulation if the Commission determines that:

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a).

service support to only Lifeline customers. Section 10(a)(1) is satisfied because temporary forbearance from the ETC requirement will enhance the charges and practices of telecommunications carriers as it relates to Lifeline customers because it expands the scope of telecommunications services available to these consumers.[47] Without such support, many of the affected consumers would be left with limited or no access to telecommunications services. In addition, because we specifically include a handset and a minimum of 300 minutes of wireless service and thus tailor the Lifeline support to the affected consumers, we do not believe that the additional safeguards afforded by the traditional ETC designation requirement are necessary for the protection of consumers.[48] Thus, forbearance also satisfies section 10(a)(2).[49] Further, under the alternative temporary ETC designation process that we establish herein, the Commission will review each offering to determine whether it complies with our requirements. This review will allow us to ensure that affected consumers are provided with affordable access to the telecommunications network. Finally, we find our actions here today to be most consistent with the public interest and determine that the additional safeguards afforded by ETC designation under section 214 work against the public interest in this limited circumstance. Under the normal designation process, carriers would be required to submit a detailed application that addresses not only the Lifeline assistance but also the other requirements of serving as an ETC. By streamlining the process, and expediting our review, we will enable carriers to provide access to telecommunications to affected consumers as quickly as possible.[50] Thus, we find that section 10(a)(1) through (3) are satisfied and temporary and conditional forbearance is appropriate.

21. *Additional Certifications*. Carriers seeking to be designated a temporary ETC to offer the special Lifeline support described in this Order must submit to the Commission a detailed description of the plan, including how many and type of minutes offered, the brand and model of the handset(s), the carrier's licensed service area, and any limitations or conditions associated with the plans.[51] In addition, consistent with the Commission's ETC precedent, the petition must include (1) a certification that the petitioner intends to offer Lifeline services to qualifying subscribers consistent with this Order; and (2) a description of how the petitioner intends to advertise the availability of the Lifeline service.[52] Upon submission, the Commission will conduct an expedited review to ensure compliance with our rules. Within ten days, the Commission will determine whether the offering complies with this Order and whether the carrier will be temporarily designated as an ETC for purposes of providing the Lifeline support set out in this Order.

22. We acknowledge that some FEMA-eligible subscribers may already possess a handset and not need an additional handset. In those instances, and at the subscriber's discretion, the subscriber may opt against receiving a new handset and opt instead for a Lifeline-supported package of greater than 300 minutes and the ETC may still receive support not to exceed $130 for its Lifeline package. Further,

[47] 47 U.S.C. § 160(a)(1).

[48] *See* 47 U.S.C. § 214(e).

[49] 47 U.S.C. § 160(a)(2).

[50] Service offerings pursuant to this special relief remain subject to Commission oversight for the duration of the offering.

[51] This special temporary ETC status applies only to the special Lifeline support adopted herein, and not to the Link-Up support.

[52] *See, e.g.*, 47 C.F.R. § 54.405(b) (advertising supported services).

it is acceptable for a carrier to offer a plan that includes a handset and a package of some greater amount of minutes (*e.g.*, 500, 750, or 1000 minutes or more) for the $130 in support. Additionally, a subscriber may opt for a plan that exceeds the $130 limit for a minimum of 300 minutes of use and a handset, but nevertheless use the $130 towards the higher minutes of use plus handset plan. This flexibility to the plan will allow eligible customers to purchase packages with more minutes of use, including packages that require the subscriber to pay any additional amount over the $130 threshold. Through this temporary change to the federal Lifeline/Link-Up support program, it is our intent and purpose through this wireless option to give access to affected subscribers with no out-of-pocket costs. The eligible customer, however, may choose otherwise by, for example, forgoing the handset in exchange for more minutes of use.

23. We balance the need for quick and decisive action with our overarching goals of protecting the program from waste, fraud, and abuse. For that reason, we require applicants for the temporary Lifeline support pursuant to this Order to certify that they were residents of counties that are designated by FEMA as eligible for individual assistance, that they are the head of their household, and that they are only receiving one Lifeline special support package. Applicants seeking Link-Up support must certify that they were residents of counties that are designated by FEMA as eligible for individual assistance.[53] We require ETCs receiving this temporary support to maintain all necessary documentation to verify that the support was used for the intended purpose of assisting victims of Hurricane Katrina. We also subject all ETCs receiving this temporary support to potential audit, and we require all carriers receiving $1 million or more of this support to undergo an audit or other investigatory review by the Commission's OIG (or the Administrator working under the oversight of the OIG) to verify the accuracy of all data submitted and that the support was used for intended purposes and to validate that the eligible telecommunications carrier has not obtained double-recovery from a single household.[54]

24. We find this action necessary to assist in the Hurricane Katrina disaster relief effort. Offering temporary support for this wireless service consumer offering will not only assist in the recovery from the economic damages caused by the hurricane, but it will promote public safety by ensuring that disaster victims have ready access to E911 capabilities in the event of emergency. We stress that this temporary designation to operate as an ETC solely for this temporary support mechanism does not grant or otherwise deem the carrier an ETC for any other USF support mechanism. Nor does this temporary designation prejudge or suggest that any application currently pending or to be filed in the future with the state commissions or the Commission results in designation as an ETC.

C. Health Care Support

1. Need for and description of temporary rules

25. In light of the compelling and unique circumstances caused by Hurricane Katrina, we find that it is necessary to adopt temporary rules, pursuant to section 254(h)(2)(A), to provide public and nonprofit health care providers – in both non-rural and rural areas[55] – in the affected areas and in areas where evacuees have relocated, as detailed below,[56] with a 50 percent discount off the monthly cost of

[53] A signed letter with these certifications will suffice.

[54] We note that the Commission's OIG may work with the Administrator to implement these audits using, for example, auditors working under contract.

[55] *See* note 3, *supra.*

[56] *See* para. 31, *infra.*

advanced telecommunications and information services necessary for the provision of health care services to victims of Hurricane Katrina. These temporary rules discussed below apply to health care providers in the federally declared Hurricane Katrina disaster areas in the states of Alabama, Louisiana, and Mississippi and in areas where evacuees have relocated as detailed below. Specifically, all rural and non-rural nonprofit and public health care providers, as defined in section 54.601(a)(2), located within the states of Alabama, Louisiana, and Mississippi are eligible for this additional support.[57] We establish different geographic eligibility criteria for the Health Care initiative because of the ability to use distance medicine applications to treat Hurricane Katrina victims. Furthermore, because the residents of the most devastated areas will likely have to relocate for an extended period of time, we expand eligibility for the purposes of these temporary rules to the rural and non-rural nonprofit and public health care providers located in areas that are likely to receive most of the citizens evacuated from the hardest hit areas. Initial reports show these areas to include all counties in Texas and Arkansas that are contiguous with Louisiana and Mississippi;[58] the counties of Escambia, Santa Rosa, Okaloosa, Walton, and Bay in Florida; the counties of Harris, Dallas, Tarrant and Bexar in Texas; the county of Pulaski in Arkansas; and the county of Shelby in Tennessee.[59] In addition, we find that rural and non-rural health care providers outside of these areas may be eligible for support to the extent they serve a substantial number of the evacuees when compared to their usual number of patients. Health care providers that believe they are eligible under this standard should file a request with the Commission.[60] We note that this temporary support does not extend to private or for-profit health care providers.

26. American Red Cross and other shelters are providing food, water, shelter and physical and mental health services to evacuees.[61] Tens of thousands of people displaced from their homes have taken refuge in shelters in several states.[62] Accordingly, for the purposes of these temporary rules, we find it in the public interest that American Red Cross or other shelters that also offer medical services are eligible for funds as community health centers or community mental health centers to the extent they

[57] On November 17, 2003, the Commission clarified that nonprofit entities that function as rural health care providers on a part-time basis and dedicated emergency departments of rural for-profit hospitals that participate in Medicare are both eligible to receive pro-rated rural health care support. *See Rural Health Care Support Mechanism,* WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24553-56, paras. 13-17 (2003) ("*Rural Health Care Report and Order*").

[58] The counties in Texas are Bowie, Cass, Marion, Harrison, Jefferson, Newton, Orange, Panola, Shelby and Sabine. The counties in Arkansas are Chicot, Clay, Crittenden, Desha, Greene, Lee, Mississippi, and Phillips.

[59] *See* USA Today, Sept. 2, 2005, page 6A.

[60] We believe that a ten percent increase in the number of patients as a result of treating evacuees should be sufficient to demonstrate that health care providers have been substantially affected. We expect that health care providers serving a relatively small or *de minimis* number of hurricane victims would not be eligible for these discounts.

[61] *See* Red Cross web site for description of services provided in the case of a disaster. (http://www.redcross.org/services/disaster/0,1082,0_319_,00.html, visited Sept. 6, 2005).

[62] "*Waves of evacuees swamp host cities,*" USA Today, Sept. 5, 2005, http://www.usatoday.com/news/nation/2005-09-05-cover-katrina_x.htm?POE=NEWISVA (The Red Cross is caring for 142,000 storm victims at 487 shelters in at least 12 states.); "*Red Cross says number of people in shelters growing,*" USA Today, Sept. 4, 2005, http://www.usatoday.com/news/nation/2005-09-04-katrina-shelters_x.htm.

serve a significant number of disaster victims using advanced telecommunications and information services for telemedicine applications.[63]

27. We also clarify that temporary or mobile health care providers are eligible for support under the 50 percent discount rule we adopt in this Order.[64] As we noted in the *Rural Health Care Second Report and Order*, mobile health care providers can provide essential health care services to underserved populations in remote locations.[65] Given the extensive damage to many health care facilities due to Hurricane Katrina, we envision that the recovery and rebuilding effort will require the use of temporary mobile health facilities due to the lack of permanent health care facilities.[66] Furthermore, many evacuees may be housed for some time in temporary shelters, and health care might be brought to these people via mobile health care providers.[67] The receipt of universal service funding will better enable mobile health care providers to rapidly diagnose and treat patients in the affected areas. We find this rule to be in the public interest because it will provide maximum flexibility to mobile health care providers to use the most-effective technology to provide service to hurricane victims, whether it is satellite, wireline, or wireless. In the *Rural Health Care Second Report and Order*, we established a methodology for calculating support that established discounts for rural mobile health care providers at the difference between the rate for satellite service and the rate for an urban wireline service with a similar bandwidth.[68] We find that such a calculation is not necessary here because, under the rules we adopt today, mobile health care providers will receive 50 percent discount off the cost of advanced telecommunications and information services.

28. In section 254 of the Telecommunications Act of 1996,[69] Congress sought to provide rural health care providers "an affordable rate for the services necessary for the purposes of telemedicine and instruction relating to such services."[70] Specifically, Congress directed telecommunications carriers "[to] provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State."[71] Congress also provided the Commission with

[63] *See* 47 C.F.R. § 54.601(a)(2)(ii), (iv).

[64] "Mobile" in this context does not mean that the health care provider has to move to serve different areas. It can also mean temporary providers that stay in one location for the entire year.

[65] *See Rural Health Care Second Report and Order*, 19 FCC Rcd at 24624-25, para. 24.

[66] *See, e.g.*, Ron Winslow, *On Wheels and in the Air, Rushing Medical Care to Victims*, Wall Street Journal, Sept. 7, 2005, at B1 (describing a mobile treatment center assembled in Waveland, Mississippi, to take over for the damaged local hospital).

[67] *See, e.g.*, "*Operation Assist*," Newsweek, Sept. 19, 200, at 10 ("[Dr. Redlener] had founded Operation Assist, sent two mobile medical clinics to Mississippi, and put another on its way to Louisiana.")

[68] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, 24626, para. 28 (2004) ("*Rural Health Care Second Report and Order*").

[69] Pub. L. No. 104-104, 110 Stat. 56 (1996).

[70] H.R. Conf. Rep. No. 458, 104th Cong. 2nd Sess. 133 (1996).

[71] *See* 47 U.S.C. §§ 151 *et seq.* (adding 47 U.S.C. § 254(h)(1)(A) to the Communications Act). The term "State" (continued....)

authority to enhance access to advanced telecommunications and information services for health care providers.[72]

29. The Commission implemented this statutory directive by adopting the rural health care support mechanism in the *1997 Universal Service Order*.[73] In the *Rural Health Care Report and Order*, the Commission provided a 25 percent discount off the cost of monthly Internet access for eligible rural health care providers under section 254(h)(2)(A).[74] Subsequently, on December 17, 2004, the Commission released a *Rural Health Care Second Report and Order* that, among other actions, changed the definition of "rural" for the purposes of the rural health care support mechanism.[75] The Commission also expanded funding for mobile rural health care providers by subsidizing the difference between the rate for the satellite service and the rate for an urban wireline service with a similar bandwidth.[76] In addition, on reconsideration, the Commission revised its rules to permit rural health care providers in states that are "entirely rural" to receive a 50 percent discount for advanced telecommunications and information services under section 254(h)(2)(A).[77]

30. As the Commission has recognized in the past, access to advanced telecommunications services and information services presents the most efficient, cost-effective way to provide many telemedicine services.[78] Specifically, telemedicine programs enable patients to receive health care services across distances that might otherwise be unaffordable, or physically impracticable or impossible to cross. For example, health care providers can use advanced telecommunications services to transmit x-rays and other medical information in real-time to doctors located in other areas for diagnosis and recommendations. Thus, patients benefit from access to timely health care services while they are spared the expense of lost wages and long-distance travel. In this instance, residents of the affected areas might be unable to travel for health care services because, for example, vehicles were lost in the flooding or gasoline is in short supply. Additionally, mobile health care providers can deliver cutting-edge technology and specialty care to citizens who are still living in areas that were damaged by the hurricane.[79] These mobile clinics literally can mean the difference between life and death for many people who are unable to travel to see a physician. Furthermore, universal service support for advanced

(Continued from previous page)
includes the District of Columbia and the territories and possessions. 47 U.S.C. § 153(40

[72] 47 U.S.C. § 254(h)(2)(A).

[73] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) ("*1997 Universal Service Order*").

[74] *See Rural Health Care Report and Order*, 18 FCC Rcd at 24557-62, paras. 22-29. This change was implemented beginning in Funding Year 2004 (July 1, 2004).

[75] *See Rural Health Care Second Report and Order*, 19 FCC Rcd at 24619-24, paras. 11-23. This new definition was effective as of Funding Year 2005 (July 1, 2005).

[76] *Rural Health Care Second Report and Order*, 19 FCC Rcd at 24625-29, paras. 26-34.

[77] *Id.* at 24631-34, paras. 38-44.

[78] *See Rural Health Care Report and Order*, 18 FCC Rcd at 24557-58, paras. 22-24.

[79] *See, e.g.*, Ron Winslow, *On Wheels and in the Air, Rushing Medical Care to Victims*, Wall Street Journal, Sept. 7, 2005, at B1 (describing a mobile treatment center assembled in Waveland, Mississippi, to take over for the damaged local hospital).

telecommunications and information services will enable health care providers in the affected areas to utilize their limited resources to provide additional care for hurricane victims and other patients.

31. We find that it is appropriate to adopt these rules on a temporary basis to expand funding to health care providers in the affected areas under section 254(h)(2)(A). As the Commission has determined in the past, we have the authority to provide funding for the provision of advanced telecommunications and information services under section 254(h)(2)(A).[80] Section 254(h)(2)(A) allows the Commission to establish competitively neutral rules to enhance access to advanced telecommunications and information services for health care providers.[81] Furthermore, section 254(h)(2)(A) gives the Commission broad discretionary authority to fulfill this statutory mandate. In prior orders, we have established rules under section 254(h)(2)(A) that further the Commission's mission of funding telecommunications and information services in order to promote telemedicine.[82] By adopting these temporary rules, therefore, we are working within the existing parameters of the rural health care program. We find that the circumstances caused by Hurricane Katrina create a special need for the Commission to use its discretion to provide universal service support to health care providers in the affected areas.[83]

32. Section 254(h)(2)(A) allows the Commission to establish competitively neutral rules to enhance access to advanced telecommunications and information services to the extent those rules are technically feasible and economically reasonable.[84] We find that providing universal service support as discussed herein is both technically feasible and economically reasonable. Access to these services is technically feasible because eligible health care facilities either are already being provided or were being provided advanced telecommunications and information services prior to the hurricane. In addition, the Commission's actions are economically feasible, in light of the circumstances. First, the temporary

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[80] *See* 47 U.S.C. § 254(h)(2)(A); *see also Rural Health Care Second Report and Order*, 19 FCC Rcd at 24631-32, para. 39. In *Texas Office of Public Utility Counsel v. FCC*, the court upheld the Commission's authority under section 254(h)(2)(A) to provide universal service support for "advanced services" to non-rural health care providers. *TOPUC v. FCC*, 183 F.3d 393, 446 (5th Cir. 1999), *aff'g in part, rev'g in part, and remanding in part, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 (1997) ("*TOPUC*"). Specifically, the court affirmed the Commission's decision to provide support for advanced telecommunications and information services by subsidizing telephone calls to Internet service providers. *Id.*

[81] *See* 47 U.S.C. § 254(h)(2)(A).

[82] *See id.; see also TOPUC* 183 F. 3d at 444 ("We are convinced that Congress intended to allow the Commission broad authority to implement this section of the Act."). The Commission has determined that section 254(h)(2)(A), in conjunction with section 4(i), authorizes universal service support for advanced services provided by non-telecommunications carriers to enable schools and libraries to select the most cost-effective provider of Internet access and internal connections. *1997 Universal Service Order*, 12 FCC Rcd at 9084-87, paras. 589-94. The Commission has also concluded that section 254(h)(2)(A) authorizes the establishment of a universal service support mechanism for infrastructure development to enhance access to advanced telecommunications and information services, as long as the mechanism is competitively neutral, technically feasible, and economically reasonable. *Id.* at 9109, para. 634. In addition, the Commission has determined that it is authorized under section 254(h)(2)(A) to provide support for Internet access for rural health care providers. *See Rural Health Care Report and Order*, 18 FCC Rcd at 24457-462, paras. 22-28.

[83] The current rules set the amount of universal service support as the difference between the urban rate and the rural rate charged for the service. 47 C.F.R. § 54.609.

[84] *See* 47 U.S.C. § 254(h)(2)(A).

support is for a limited amount of services used for the express purpose of treating disaster victims, i.e., advanced telecommunications and information services used in telemedicine applications. Second, we estimate that we would disburse approximately $28 million in support under this temporary rule.[85] The Commission has established a cap of $400 million for the rural health care support mechanism.[86] Given that currently the program is disbursing about $30 million a year, we do not envision that the additional funding provided for in this Order will exceed the Commission's cap.[87] We further note that we are not funding all telecommunications services, as provided for under 254(h)(1)(A), but only advanced telecommunications and information services that are used directly to provide telemedicine services to treat patients.[88] Third, based on past experience, we believe a flat 50 percent discount is easy to administer and consistent with section 254(h)(5), which requires a specific, sufficient and predictable mechanism.[89] Fourth, the 50 percent discount limits the amount of support per provider, provides incentives for health care providers to make prudent economic decisions concerning their telemedicine needs and will deter wasteful expenditures.[90] Finally, we find that a 50 percent discount is slightly less than the average discount rural health care providers current receive for telecommunications services under section 254(h)(1)(A).[91]

33. We find that both rural and non-rural health care providers in affected areas should be eligible for this temporary support. Section 254(h)(1)(A) limits support to health care providers in "rural" areas.[92] In allowing the Commission discretion to establish competitively neutral rules to enhance access to advanced telecommunications and information services under section 254(h)(2)(A), however, Congress did not specifically limit such access to rural health care providers.[93] Thus, we find that providing health care universal service support to public or nonprofit health care providers that are not

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[85] We estimate that there are approximately 2,300 health care providers, including American Red Cross shelters, that are eligible for funding under this Order based on their geographic location. We estimate that these facilities could receive up to $12,000 each for the Funding Year ending June 30, 2006. Thus, this would have approximately a $28 million impact on the rural health care fund.

[86] *See* 47 C.F.R. § 54.623.

[87] The Administrator estimates that the demand will be approximately $30 million for Funding Year 2004. *See* Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2005, available at <http://www.universalservice.org/overview/filings> (filed Aug. 2, 2005). We also limit this additional support to Funding Year 2005.

[88] As such, this support will not fund basic telephone services, sometimes known as POTS. In addition, as noted above, the advanced telecommunications and information services must be necessary for the provision of health care services to victims of Hurricane Katrina.

[89] 47 U.S.C. § 254(b)(5). *See Rural Health Care Second Report and Order*, 19 FCC Rcd at 24634, para. 44; *Rural Health Care Report and Order*, 18 FCC Rcd at 24460-61, para. 27.

[90] *See Rural Health Care Second Report and Order*, 19 FCC Rcd at 24634, para. 44; *Rural Health Care Report and Order*, 18 FCC Rcd at 24460-61, para. 27.

[91] The average discount nationwide is 66 percent of service cost. *Rural Health Care Second Report and Order*, 19 FCC Rcd at 24634, n.167.

[92] *See* 47 U.S.C. § 254(h)(1)(A).

[93] *See* 47 U.S.C. § 254(h)(2)(A).

necessarily serving "rural areas," as defined in the 2004 *Rural Health Care Second Report and Order*, is consistent with federal court precedent and the mechanism's goal to provide health care providers with access to modern telecommunications for medical and health maintenance purposes.[94] These areas have experienced the destruction of the telecommunications network infrastructure and the obliteration of many buildings, including homes, medical, and other professional facilities, as well as the displacement of a significant percentage of the population. Therefore, we find that, in light of these extraordinary circumstances, both rural and non-rural health care providers are eligible to receive rural health care universal service support to serve the medical needs in the affected areas. Consistent with the Commission's principles of competitive neutrality, we find that eligible health care providers may receive discounts for any advanced telecommunications and information service, regardless of the platform as long as these services are used to treat disaster victims with telemedicine applications.[95]

34. In administering the universal service fund, we must ensure that the goals of section 254 are met while preventing waste, fraud, and abuse.[96] For this reason, health care providers seeking support pursuant to this Order shall certify that they meet the eligibility requirements outlined herein.[97] We also note that our rules require applicants to select the most cost-effective, commercially available service.[98] We will carefully monitor the use of funds disbursed to eligible entities under these new rules to ensure that all support is utilized in accordance with Commission rules, and to ensure that service providers do not charge unjust or unreasonable rates or seek to lock health care providers into long-term contracts beyond Funding Year 2005. We reserve the right to recover any monies not used for their intended purposes or, upon review, we determine were used wastefully.

2. Applicable time period

35. *Additional Certifications*. To qualify for this support, a health care provider should submit documentation to demonstrate that it used advanced telecommunications and information services for telemedicine applications and to treat victims of Hurricane Katrina. The health care provider should also certify that it used the services for the intended purposes. Such health care providers should comply with the program's document retention requirements and should maintain sufficient documentation to demonstrate the reasonableness of costs in light of the exigent circumstances. As noted above, all parties are subject to potential audit by the Commission's OIG (or the Administrator working under the OIG's oversight), and any party receiving more than $1 million in support will be automatically audited.

36. As noted below, these temporary rules are effective immediately upon release of this Order and continue through the end of Funding Year 2005.[99] Temporary health care support funding is

[94] As noted above, the Commission has authority under section 254(h)(2)(A) to provide universal service support for "advanced services" to non-rural health care providers. *TOPUC*, 183 F.3d at 446.

[95] *See Rural Health Care Second Report and Order*, 19 FCC Rcd at 24634, para. 44; *Rural Health Care Report and Order*, 18 FCC Rcd at 24460-61, para. 28.

[96] *See* 47 U.S.C. §§ 151 *et seq.*; *see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 1914, para. 3 (2002).

[97] We note that a signed letter containing this certification will suffice.

[98] *See* 47 C.F.R. § 54.613.

[99] The end of Funding Year 2005 is June 30, 2006. If health care providers in these areas are unable to provide the necessary relief to victims of Hurricane Katrina after this time period has elapsed, we will revisit extending the time period for providing expanded support.

available from August 29, 2005 until June 30, 2006, which is the end of Funding Year 2005. Further, all health care providers eligible under these new rules are permitted to amend their Funding Year 2005 applications to apply for additional support, no later than 60 days after the release of this Order.[100] Applicants seeking support to obtain advanced telecommunications and information services for telemedicine applications used to treat victims of Hurricane Katrina should submit their FCC Form 465 postmarked no later than 60 days after release of this Order.[101] Applicants should comply with all program rules and requirements, including the competitive bidding requirements.

D. Schools and Libraries Support

1. *Need for and description of temporary rules*

7. In this Order, we adopt temporary modifications to the schools and libraries universal service support mechanism to meet the needs of schools and libraries damaged by Hurricane Katrina. Approximately 600 schools and libraries in Alabama, Louisiana, and Mississippi may have been affected by the hurricane and subsequent flooding.[102] Many schools and libraries in other states, although not damaged by the hurricane, have an influx of hurricane evacuee students (and library patrons).[103] We are, on our own motion, waiving certain rules relating to the schools and libraries universal service support mechanism (commonly referred to as the E-rate program) on an emergency interim basis, as described below. Waiver of these rules will preserve and advance universal service by allowing schools and

[100] In adopting these temporary rules we do not intend to limit, in any way, available support or administrative deadlines currently applicable to rural health care providers under the existing rules.

[101] 47 C.F.R. § 54.603(b)(vi)(3). FCC Form 465 is the means by which health care providers request bids from service providers for services to be used for the provision of health care. FCC Form 465 is the health care provider's certification that it meets program eligibility requirements.

[102] The E-rate coordinators for Alabama, Mississippi, and Louisiana estimate that approximately 113 schools and libraries will not require Funding Year 2005 monies because they were destroyed and will have to be rebuilt. *See* Letter from Gary Rawson, Mississippi Department of Information Technology Services to Chairman Kevin Martin, FCC (Sept. 19, 2005) ("Rawson Letter"). The E-rate coordinators for Alabama, Mississippi, and Louisiana estimate that such rebuilding will start after July 1, 2006. *Id.* We estimate the following number of schools, libraries, school districts, and consortia in Alabama, Louisiana, and Mississippi are at the 90 percent discount level for Funding Year 2005: Louisiana – 255 schools, 61 libraries, and 96 school districts; Alabama – 188 schools, 94 libraries, 129 school districts, and 1 consortium; Mississippi – 74 schools, 55 libraries, 150 school districts, and 6 consortia. These numbers are for the states of Louisiana, Mississippi, and Alabama in their entirety, and not the number of schools and libraries in the area FEMA declared eligible for individual disaster assistance. We note that the relief granted in this Order is limited to those counties designated as eligible by FEMA as eligible for individual assistance. These counties are listed in note 3, *supra*.

[103] *See, e.g.*, "*New Accents in the Halls of Area Schools*," Washington Post, Sept. 20, 2005 at 1B (Maryland and Virginia public schools have taken in at least 1,488 Hurricane Katrina evacuees); "*Storm and Crisis: Education; Plan Will Pay 90 % of Costs for Students Hit by Storm*," New York Times, Sept. 17, 2005 (over 372,000 schoolchildren who attended public and private schools were displaced and now enrolled in schools throughout the country); "*Schools Hope for Share of Evacuee Aid*," Atlanta Journal and Constitution, Sept. 17, 2005 (more than 7,000 students resettled in Atlanta-area schools).

libraries in affected areas to restore quickly their ability to provide students and communities with needed telecommunications and information services.[104]

38. Specifically, we (1) re-open the Funding Year 2005 filing window for schools and libraries, and consortia of schools and libraries, that were directly or indirectly affected by Hurricane Katrina;[105] (2) treat all schools and libraries directly affected by Hurricane Katrina at the highest level of priority for Priority Two services (*i.e.*, 90 percent) for Funding Years 2005 and 2006;[106] (3) allow affected parties in eligible counties/parishes in Alabama, Louisiana, and Mississippi to "restart the clock" for the purposes of calculating compliance with the "two-in-five" rule; (4) allow program participants in affected areas to substitute services or products in one broad category for another; and (5) allow schools and libraries serving displaced students and citizens to amend their Funding Year 2005 applications to account for the unexpected increase in population by filing a special supplementary FCC Form 471 request for additional funding.[107]

39. *Additional Certifications.* In taking these actions, we balance the need for quick and decisive action to restore the provision of telecommunications and information services to schools and libraries with our overarching need to protect the program against waste, fraud, and abuse. We emphasize, however, that we will continue to be vigilant to ensure program integrity and to detect and

[104] The E-rate coordinators of the states of Alabama, Louisiana, and Mississippi, along with the education and library agencies of the three states, jointly submitted a proposal to the Commission, which included data on the destruction, recommendations on moving forward, and requests for waivers of the schools and libraries rules to permit re-opening the Funding Year 2005 filing window for applicants affected by the hurricane, a 90 percent discount for eligible services, waiver of technology plan approval for services requested; extensions of form deadlines, waiver of the "two-in-five" rule, waiver of the rules governing transfer of equipment, waiver of certifications, waiver of recordkeeping rules, allowing Block 4 data to follow new construction, flexibility in determining the contract end date for services requested, waiver of the LOA requirement for filing a state consortium Form 470, waiver of 28-day rule, waiver of service start date, and waiver of Item 25 certification on Form 471. *See* Rawson Letter. *See also* Letter from The Honorable Haley Barbour, Governor, State of Mississippi to Chairman Kevin Martin, FCC (Sept. 15, 2005); Letter from The Honorable Kathleen B. Blanco, Governor, State of Louisiana to Chairman Kevin Martin, FCC (Sept. 15, 2005); Letter from Joseph B. Morton, State Superintendent of Education, State of Alabama to Chairman Kevin Martin, FCC (Sept. 16, 2005). Most of these requested waivers are addressed in this Order or in the Wireline Competition Bureau's recently released *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 05-2484 (rel. Sept. 21, 2005).

[105] By "directly affected", we mean those schools and libraries located in the counties and parishes FEMA declared as eligible for individual disaster assistance and incurred substantial damage as a result of Hurricane Katrina. *See supra* note 3. By "indirectly affected", we mean those schools and libraries handling increased students or patrons who evacuated from the Hurricane Katrina disaster area.

[106] This relief is limited to schools and libraries that incurred substantial damage in the counties and parishes listed in note 3, *supra*.

[107] We estimate that this will have a $132 million impact on the schools and libraries fund, based on an estimated $96 million for 600 schools and libraries in the Gulf Coast region affected by the hurricane and an estimated $36 million for 2,400 schools and libraries serving evacuees throughout the country for Funding Year 2005. E-rate coordinators of the states of Alabama, Louisiana, and Mississippi, estimate that 122 schools and libraries will not require Funding Year 2005 dollars because they have been destroyed and will have to be rebuilt, which the coordinators estimate will occur after July 1, 2006. *See* Rawson Letter. The E-rate coordinators for Alabama, Mississippi, and Louisiana also expect that many schools and libraries in the affected areas will need to cancel funding request numbers ("FRNs") because of the dramatically changed circumstances. *Id.*

deter waste, fraud, and abuse, and pursue enforcement action when appropriate.[108] Our intent is not to allow double recovery for damages related to telecommunications and information services equipment funded under the schools and libraries universal service support mechanism. For this reason, schools and libraries affected by Hurricane Katrina requesting funding for the restoration of their telecommunications and information systems pursuant to the direction contained in this Order shall certify that the school or library incurred substantial damage as a result of Hurricane Katrina and that the services and products sought in their applications will be solely used to restore the network to the functional equivalent of the pre-Katrina degree of functionality (*i.e.*, prior to August 29, 2005) and that other resources (*e.g.*, insurance or public assistance monies provided by FEMA) are not available for restoration.[109] In addition, schools and libraries affected by Hurricane Katrina shall certify that any alternative funding (*e.g.*, insurance payments, FEMA support, community resources) in excess of the cost for products or services requested on their applications will be returned to the federal Universal Service Fund. To the extent that schools and libraries are handling increased populations of evacuees, schools and libraries shall certify that: (1) there are more than a *de minimis* number of Hurricane Katrina victims; and (2) the entity experienced an associated increase in demand for supported services.

40. At the outset, we note that, in a number of instances, our rules explicitly provide participants in the schools and libraries program with specific requirements for requesting extensions of deadlines or waivers of certain Commission rules due to the occurrence of unforeseen events such as Hurricane Katrina.[110] Thus, we emphasize that the actions taken here do not represent the entirety of the relief that may be available to E-rate program participants in affected areas. We are committed to addressing all requests for hurricane assistance in an expeditious manner.

41. *Funding Year 2005 filing window.* Under the Commission's rules, universal service funds are available to fund discounts for eligible schools and libraries and consortia of such eligible entities on a first-come, first-served basis.[111] Each year, the Administrator implements an initial filing period that treats all schools and libraries filing within that period as if their applications were

[108] The E-rate coordinators of the states of Alabama, Louisiana, and Mississippi represent that they will coordinate the application process for disaster-struck schools and libraries to limit the potential for waste, fraud, and abuse. *See* Rawson Letter. The E-rate coordinators also indicate that they will perform this review for both schools and libraries in the three states. *Id.* Under state law, state educational and library administrative authorities have the ability to determine how and for what services member schools and libraries may apply.

[109] We note that it will be sufficient to satisfy this requirement to submit signed letters stating that services and products will be solely used to restore the network would be and that any alternate funding (*e.g.*, insurance, FEMA, community resources) in excess of 90 percent of the cost for products or services requested on the application will be returned to the Universal Service Fund. Insurance or FEMA funds, for example, can be used to pay the ten percent not covered by the 90 percent USF discount. Schools and libraries are not permitted to recover more than the costs of the supported services. We note that the E-rate coordinators for Alabama, Mississippi, and Louisiana provided sample certifications. *See* Rawson Letter.

[110] For example, a program applicant may request an extension of the implementation deadline for funding requests when the applicant's service provider is unable to complete implementation for "reasons beyond the service provider's control." 47 C.F.R. § 54.507(d)(3). In addition, eligible services and equipment components of eligible services may be transferred to another eligible school or library in the event that the particular location where the service originally was received is permanently or temporarily closed. 47 C.F.R. § 54.513(c).

[111] 47 C.F.R. § 54.507(c).

simultaneously received.[112] The initial filing period begins on the date that the Administrator begins to receive applications for support, and concludes on a date to be determined by the Administrator.[113]

42. In light of the extensive property damage, including damage to the telecommunications and information systems employed by participants in the schools and libraries universal service support mechanism, caused by Hurricane Katrina in the Gulf Coast states, we waive section 54.507(c) of our rules and re-open the Funding Year 2005 filing window for schools and libraries, and consortia of schools and libraries, that were directly or indirectly affected by Hurricane Katrina to the extent set forth in this Order.[114] The filing window shall be open for sixty days following the date of release of this Order. By waiving section 54.507(c) of our rules, and reopening the filing window for Funding year 2005 for schools and libraries affected directly by Hurricane Katrina, affected program participants in Alabama, Louisiana, and Mississippi can begin repairing and restoring needed telecommunications and information services quickly and rapidly. Moreover, as described more fully below, we recognize that certain schools and libraries may require additional funding to support the needs of students and citizens displaced by Hurricane Katrina although they have not been directly affected by these events. Accordingly, for the reasons stated above, we find that due to this natural disaster, good cause exists for waiving section 54.507(c) for these schools and libraries and that such waiver is in the public interest.[115]

43. *Priority level for schools and libraries in the Hurricane Katrina disaster area.* Under the Commission's rules, eligible schools and libraries may receive discounts ranging from 20 percent to 90 percent of the pre-discount price of eligible services, based on indicators of need.[116] Schools and libraries in areas with higher percentages of students eligible for free or reduced-price lunch through the National School Lunch Program (or a federally approved alternative mechanism) qualify for higher discounts for eligible services than applicants with low levels of eligibility for such programs. Schools and libraries located in rural areas also generally receive greater discounts.[117] The Commission's priority rules provide that requests for telecommunications services, voice mail and Internet access for all discount categories shall receive first priority for the available funding (Priority One services). The remaining funds are allocated to requests for support for internal connections (Priority Two services), beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix. Currently, the most disadvantaged schools and libraries are eligible for a 90 percent discount on eligible services, and thus must pay only 10 percent of the cost of the service. To the extent funds remain after discounts are awarded to entities eligible for a 90 percent discount, the rules provide that the Administrator shall continue to allocate funds for discounts to applicants at each

[112] *Id.*

[113] *Id.*

[114] *See Request for Review of the Decision of the Universal Service Administrator, Ysleta Independent School District, El Paso, TX*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26406, 26436, para. 66 (2003) (re-opening filing window for Funding Year 2002 in order to permit Ysleta, and similarly situated applicants in the caption who appealed SLD's denial of their funding requests, to re-bid for services, to the extent such services had not been provided).

[115] *See also supra* at paras. 6-7 (providing reasons for waiver).

[116] *See* 47 C.F.R. § 54.505.

[117] *Id.* The Commission recently sought comment on altering the discount mechanism. *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, 26936-39 (2003).

descending single discount percentage. The Commission's rules also provide that if sufficient funds do not exist to grant all requests within a single discount percentage, the Administrator shall allocate the remaining support on a *pro rata* basis over that single discount percentage level.[118]

44. In light of the extensive property damage, including damage to the telecommunications and information systems employed by participants in the schools and libraries universal service support mechanism, caused by Hurricane Katrina in the Gulf Coast states, we find good cause to waive section 54.507 of our rules and treat all schools and libraries directly affected by Hurricane Katrina[119] at the highest level of priority for Priority Two services (*i.e.*, 90 percent) for Funding Years 2005 and 2006.[120] We recognize that program participants in Alabama, Louisiana, and Mississippi most affected by Hurricane Katrina may have need for an immediate indication of whether they are likely to receive funds for Priority Two services. By waiving section 54.507 of our rules, and treating all affected schools and libraries at the highest level of priority, affected program participants in Alabama, Louisiana, and Mississippi can fully anticipate the amount of funding they will receive from the universal service fund, and begin the task of developing a cogent, feasible, and sustainable plan to resume the provision of needed telecommunications and information services. We anticipate that treating all affected schools and libraries at the highest priority level could result in the disbursement of approximately $96 million in E-rate funds for the approximately 600 schools and libraries in Alabama, Louisiana, and Mississippi affected by Hurricane Katrina.[121] We note that these funds have already been collected by the Universal Service Fund, and would not have an impact on the long-term viability of the universal service program. Accordingly, we find that good cause exists for waiving section 54.507 for affected entities and that such waiver is in the public interest.

45. We expect that the neediest schools and libraries will receive requested funding for Funding Year 2005 for both Priority One and Priority Two services. We note that, after applications from the disaster-struck schools and libraries are submitted and reviewed, we may be able to authorize funding nation-wide requests for any deferred requests for Priority Two internal connections service for Funding Year 2005. The Commission's rules require the Administrator to report the amount of unused funds available from prior funding years on a quarterly basis.[122] Based on our past experience, significant funds are identified as available for use in future funding years.[123] In fact, the E-rate

[118] 47 C.F.R. § 54.507(g)(1)(i-iv); *see also Federal-State Joint Board on Universal Service*, CC Docket 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14938, para. 36 (1998).

[119] *See* note 3, *supra*, for a list of counties and parishes that were directly affected by Hurricane Katrina. Only schools and libraries that sustained substantial damage in those counties are eligible for this relief.

[120] Priority Two services are internal connections and equipment; the type of services that would need to be replaced due to the hurricane. Priority One services are recurring services and typically would be requested each year. We limit this treatment to those schools and libraries in the Hurricane Katrina disaster area that are in counties or parishes designated as eligible for FEMA individual housing assistance. The list of these counties and parishes is in note 3, *supra*.

[121] *See* note 87, *supra*.

[122] *See* 47 C.F.R. § 54.507(a)(1).

[123] *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2005, available at <http://www.universalservice.org/overview/filings>(USAC Filing for Second Quarter 2005 Projections). For 2d Quarter, 2005: http://www.universalservice.org/overview/filings/2005/Q2/2Q05%20Demand%20FINAL.pdf. For 2d Quarter, (continued....)

Coordinators from Alabama, Louisiana, and Mississippi estimate that unused funds from prior funding years will be available to carry over for Funding Year 2005 and could be used to fund Hurricane Katrina restoration.[124] Because we are re-opening the funding year 2005 filing window, such funds previously identified as unused by the Administrator may be available to provide support to the disaster-struck schools and libraries. We recognize that demand for services from the schools and libraries struck by Hurricane Katrina may vary after these entities complete their internal reviews and prepare the necessary program applications. We will closely monitor this situation and, to the extent unused funds from prior funding years are available, we anticipate that these funds will be used and that Priority Two funding may be available for additional applicants.

46. *Prohibition on free services.* Finally, we note that the Commission requires that an entity must pay the entire undiscounted portion of the cost of any services it receives through the schools and libraries program.[125] Moreover, our rules prohibit the provision of free services to an eligible entity by a service provider that is also providing discounted services to the entity.[126] The Commission has previously found that, for the purpose of this program, the provision of unrelated free services by a service provider to an eligible entity constitutes a rebate of the undiscounted portion of the costs of services, in violation of our rules.[127] We clarify that to the extent schools and libraries receive FEMA assistance for projects, such assistance may be applied to the undiscounted portion of the bill. As part of our efforts to respond to the damage caused by Hurricane Katrina, we will continue to examine whether waiver of this rule is warranted to aid affected schools and libraries to restore the provision of service to students and communities.

47. *Frequency of discounts for internal connections services.* Under the Commission's rules, eligible entities may receive commitments for discounts on Priority Two services (internal connections) no more than twice every five funding years (the "two-in-five" rule).[128] For the purpose of determining eligibility, the five-year period may begin in any funding year in which the school or library receives discounted internal connections services other than basic maintenance services.[129]

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2004: http://www.universalservice.org/overview/filings/2004/Q2/2Q04%20FINAL.doc. We estimate that approximately 600 schools and libraries could be eligible for this support.

[124] Rawson Letter at 3. Specifically, E-rate Coordinators from Alabama, Louisiana, and Mississippi state that funding should be provided with unused rollover funds that are available to the Administrator. The Coordinators also state that the cancellation of many of the existing FRNs currently held by the affected entities should make available adequate funds to cover these special needs. *Id.*

[125] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9035-36, para. 493 (1997); *see also* http://www.sl.universalservice.org/reference/obligation.asp.

[126] http://www.sl.universalservice.org/reference/freeservices.asp (the "Free Service Advisory" notes that requests that do not account for free services will result in a denial and may result in criminal penalties).

[127] *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, 26929, para. 41 (2003) ("*Schools and Libraries Third Report and Order*").

[128] 47 C.F.R. § 54.506(c).

[129] *Id.* Certain basic maintenance costs that are "necessary to the operation of the internal connections network" are eligible for Priority Two support. *See Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26921-22, paras. 22-23. Basic maintenance services are "necessary" if, but for the maintenance at issue, the connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services without e-rate discounts. *Id.* Basic maintenance services do not include services that (continued....)

48. We find that due to the damage to information and telecommunications systems caused by Hurricane Katrina in the Gulf Coast states, many participants in the schools and libraries universal service support mechanism are likely to need to replace their internal connections services, and thus will seek commitments for discounts on Priority Two services despite already receiving such commitments in the recent past. For these entities, we waive our rule pertaining to the frequency of discounts for internal connections services to allow affected parties in Alabama, Louisiana, and Mississippi to "restart the clock" for the purposes of calculating compliance with the "two-in-five" rule. For such participants, Funding Year 2006 will thus serve as the first year of the five-year period for determining eligibility for funding for these services. We recognize that program participants in Alabama, Louisiana, and Mississippi affected by Hurricane Katrina may need funding to replace damaged or destroyed internal connections services, and should not be denied support payments simply due to the timing and frequency of previous requests for funding for internal connections. We limit this relief to schools and libraries in the Hurricane Katrina disaster area that incurred substantial damage as a result of the hurricane. Accordingly, for the reasons stated above, we find that due to this natural disaster, good cause exists for waiving section 54.506(c) for affected entities and that such waiver is in the public interest.[130] To qualify for this waiver, parties should submit a request describing the damage incurred to the equipment that needs to be replaced.

49. *Service substitution requests.* Section 54.504(f) of the Commission's rules allows the Administrator to grant a request by an applicant to substitute a service or product for another where the service or product has the same functionality; the substitution does not violate any contract provisions or state or local procurement laws; the substitution does not result in an increase in the percentage of ineligible services or functions; and the applicant certifies that the requested change is within the scope of the controlling FCC Form 470.[131] On our own motion, we waive the requirement that, for purposes of section 54.504(f), the substituted service or product must have the same functionality as the service it is replacing.[132] Thus, program participants in affected areas may substitute services in one broad category (*e.g.*, telecommunications service, Internet access, and internal connections) for those in another. Along these same lines, we will permit the use of approved funds for any facilities or services that need to be replaced due to the natural disaster to the extent that they were initially funded under the program. We recognize that program participants in Alabama, Louisiana, and Mississippi affected by Hurricane Katrina may seek needed funding to replace damaged or destroyed services and equipment, and that it is in the public interest to allow the replacement of such services and equipment with funds previously granted for other services and equipment. Accordingly, we find that due to this natural disaster, good cause exists for waiving section 54.504(f) for affected entities and that such waiver is in the public

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maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information. On-site technical support is not necessary to the operation of the internal connection network when off-site technical support can provide basic maintenance on an as-needed basis. Services such as 24-hour network monitoring and management also do not constitute basic maintenance. Such services are therefore ineligible for discounts under the schools and libraries universal service mechanism. *Id.*

[130] *See also supra* at paras. 6-7.

[131] 47 C.F.R. § 54.504(f).

[132] We are waiving section 54.504(f)(i) of the Commission's rules, but not other aspects of this rule. The applicant still has a duty to: ensure that the substitution does not violate any contract provisions or state or local procurement laws; ensure that the substitution does not result in an increase in the percentage of ineligible services or functions; and certify that the requested change is within the scope of the relevant Form 470. We also note that this waiver is not automatic; it still depends on the applicant making a request to the Administrator.

interest. For any eligible school, library or consortium in affected areas, such service substitutions will be limited to funds received from applications from Funding Year 2005.

50. *Increased funding for schools indirectly affected by Hurricane Katrina.* Certain schools, although not directly affected by Hurricane Katrina, may have been indirectly impacted nonetheless due to the influx of displaced students into their district. For example, additional students may make use of school services and resources in a manner originally unanticipated when the schools' technology plans were developed and funding requested, thereby taxing information and telecommunication services beyond their usual capability. In some instances, the addition of students displaced due to Hurricane Katrina may cause a school to become eligible for a higher discount level due to an increase in the percentage of the student body eligible for the National School Lunch Program. To provide an opportunity for schools to handle the unforeseen consequences of Hurricane Katrina and the influx of new students and patrons, [133] we will allow schools and libraries serving displaced students and citizens to amend their Funding Year 2005 applications to account for the unexpected increase in population by filing a special supplementary FCC Form 471 request for additional funding. In accordance with our direction here, such schools may amend their original funding requests.[134] We instruct the Schools and Libraries Division ("SLD") of the Administrator to accept and immediately process requests for additional funding from such schools for sixty days following the date of this Order. We recognize that certain schools and libraries may need to adjust their requests for USF support in light of Hurricane Katrina even though they have not been directly damaged by these events. Accordingly, we find that due to this catastrophic natural disaster, good cause exists for waiving section 54.507(c) for these schools and libraries and that such waiver is in the public interest. Schools and libraries affected by Hurricane Katrina requesting additional funding to support the needs of displaced citizens shall submit a certification indicating the approximate number of additional students or citizens expected to be served by the telecommunications and information services, and that the services and products sought in their applications are necessary to serve these additional, unanticipated needs.[135] We estimate that this increase in funding will be approximately $36 million.[136] We note that these funds have already been collected and should not have an impact on the long-term viability of the universal service program.

51. Because we want to ensure the schools and libraries harmed by Hurricane Katrina receive targeted support, we direct the Administrator, in reviewing revised or supplemented requests for E-rate support, to determine whether the impact of Hurricane Katrina was *de minimis* (*e.g.*, a small number of students or patrons that necessitates no increased demand for supported services.) Schools and libraries should not submit revised applications if they are getting a *de minimis* increase in students or patrons as a result of Hurricane Katrina.[137] We recognize that this determination may depend upon

[133] *See "Teachers Look to Panhandle for New Jobs," Pensacola News Journal*, Sept. 10, 2005 ("As of Friday, 4,548 students from schools damaged by the Aug. 29 hurricane had enrolled in Florida schools, the state Department of Education reported.")

[134] Although we will treat schools and libraries damaged by Hurricane Katrina at the highest level of priority, we do not believe it necessary to afford such treatment to schools and libraries handling evacuees. Instead, these entities may supplement their applications using their existing discount rates.

[135] A certification in a signed letter stating that services and products will be solely used to restore the network is sufficient to satisfy this requirement.

[136] *See* note 87, *supra*.

[137] We find that an increase of at least ten percent in the number of students or library patrons who are evacuees should generally be sufficient to demonstrate that schools or libraries have been substantially affected.

specific facts and circumstances. Thus, applicants should submit the number of increased students and library patrons (both pre-Hurricane Katrina and post-Hurricane Katrina) and certify that the number is accurate. We also require schools and libraries to maintain documentation in support of these increased numbers. We authorize the state E-rate coordinators for Alabama, Louisiana, and Mississippi to review e-rate applications to ensure that schools and libraries were substantially damaged and that their requests will be free of waste, fraud, and abuse. In addition, for those schools and libraries handling increased students/patron evacuees, we authorize these E-rate coordinators to review whether the schools/libraries are handling more than a *de minimis* number of increased students/patrons. We note that the state E-rate coordinators for Alabama, Mississippi, and Louisiana will coordinate the application process to limit the potential for waste, fraud, and abuse. We authorize this additional oversight review activity. We expect such review efforts would include verifying that schools and libraries in their states seeking this temporary relief meet the *de minimis* standard.[138] We will carefully monitor the use of funds disbursed to ensure that all support is utilized in accordance with Commission rules, and to ensure that service providers do not charge unjust or unreasonable rates. We reserve the right to recover any monies not used for their intended purposes or, upon review, we determine were used wastefully.

2. Eligibility

52. These temporary rules adopted and waivers granted herein apply to schools, libraries, and consortia of schools and libraries in the federally-declared Hurricane Katrina disaster areas in the states of Louisiana, Mississippi, and Alabama and in surrounding areas, for the counties/parishes designated by FEMA as eligible for individual assistance. Furthermore, because the residents of the most devastated areas will likely have to relocate for an extended period of time, we expand eligibility of funds from the schools and libraries support mechanism to schools and libraries (and consortia of eligible schools and libraries) located in areas that receive citizens evacuated from the hardest hit areas. Initial reports show these areas to include all counties in Texas and Arkansas that are contiguous with Louisiana and Mississippi;[139] the counties of Escambia, Santa Rosa, Okaloosa, Walton, and Bay in Florida; the counties of Harris, Dallas, Tarrant and Bexar in Texas; the county of Pulaski in Arkansas; and the county of Shelby in Tennessee.[140] Schools and libraries that believe they are eligible under this standard should retain documentation of the number of additional students and citizens to be supported by telecommunications and information services.

53. *Summary of applicable time periods and deadlines*. The E-rate Funding Year 2005 application window is reopened for certain schools, libraries, and consortia directly and indirectly affected by the hurricane, as set out above. The window reopens on the release date of this Order and closes 60 days after. Any application or amended application from an eligible school, library, or consortium, as discussed above, that is postmarked by 60 days after the release date of this Order will be deemed accepted as timely filed within the Funding Year 2005 window. For Funding Years 2005 and 2006, all eligible schools, libraries, or consortia, as discussed above, will be treated at the highest level of priority, or 90 percent, for Priority Two services. For all eligible schools, libraries, or consortia, as discussed above, the clock shall be restarted in terms of applying the two-in-five rule of receiving Priority Two services. Therefore, applicants that qualify for Priority Two services under this Order will be deemed to have Funding Year 2006 as their first funding year, for purposes of the two-in-five calculation.

[138] *See* Rawson Letter.

[139] The counties in Texas are Bowie, Cass, Marion, Harrison, Jefferson, Newton, Orange, Panola, Shelby and Sabine. The counties in Arkansas are Chicot, Clay, Crittenden, Desha, Greene, Lee, Mississippi, and Phillips.

[140] *See* USA Today, Sept. 2, 2005, page 6A.

For any eligible school, library or consortium, as discussed above, service substitutions will be limited to funds received from applications from Funding Year 2005.

E. High-Cost Support

54. The high-cost program provides support to carriers (incumbent LECs as well as competitive carriers) operating in high-cost and rural areas. Under the Commission's rules, rural carriers receive support based on their embedded costs and non-rural carriers receive support based on forward-looking economic costs, as determined by the Commission's cost model.[141] Federal high-cost model support is provided to non-rural carriers in states where costs exceed a nationwide cost benchmark.[142] After the amount of support available in a state is determined, that support is "targeted" to high-cost wire centers.[143] Section 254(e) of the Act provides that carriers receiving federal universal service support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[144] The Commission has previously declined to establish "elaborate rules for compliance with section 254(e)" but, rather, has relied on the states, through the certification process, to ensure that carriers are using support for the purposes in which it is intended.[145] Indeed, the Commission has stated that as long as the uses prescribed by the state are consistent with section 254(e), states should have the flexibility to decide how carriers use support provided by the federal non-rural

[141] *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) ("*Rural Task Force Order*"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) ("*Ninth Report and Order*"), *remanded, Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2003) ("*Qwest*"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559 (2003), *remanded, Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005); *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, 14 FCC Rcd 20156 (1999) ("*Tenth Report and Order*"), *affirmed, Qwest*, 258 F.3d 1191. We note that, under the existing rules and high-cost formulas, rural carriers may be able to recover additional costs caused by Hurricane Katrina through the normal operation of the Commission's rules.

[142] The nationwide cost benchmark currently is set at two standard deviations above the national average cost per line.

[143] Targeting support ensures that non-rural carriers serving the highest-cost wire centers in the state receive support. Targeting also determines the amount of per-line support available to competitive eligible telecommunications carriers serving high-cost wire centers. *See Ninth Report and Order*, 14 FCC Rcd at 20471, para. 70. BellSouth is projected to receive annually approximately $99.6 million in Mississippi and $25 million in Alabama in high-cost model support. *See* USAC Quarterly Administrative Filing 2005, Fourth Quarter (4Q) Appendix, HC01, filed August 2, 2005, at http://www.universalservice.org/overview/filings. In addition BellSouth is projected to receive $ 32.9 million in interstate access support in Alabama, Louisiana, and Mississippi. *Id.*

[144] 47 U.S.C. § 254(e).

[145] *Ninth Report and Order*, 14 FCC Rcd at 20482-83, paras. 95-96; *Rural Task Force Order*, 16 FCC Rcd at 11317-18, para. 187. *See also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8877, paras. 46-51 (1997) (subsequent history omitted) (finding that, beyond the statutory language, no guidelines were necessary to interpret section 254(e)'s requirement that a carrier that receives universal service support shall only use that support for the facilities and services for which it is intended).

high-cost mechanism.[146]

55. The rules for the high-cost program therefore do not explicitly address the use of high-cost funds for disaster relief and restoration purposes but, instead, codify section 254(e)'s requirement that carriers shall use universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.[147] Here we determine such costs to be a purpose for which high-cost support is intended. In addition, we find that high-cost carriers currently operating in the disaster area are coping with enormous challenges. More than 200,000 customer lines remain out of service. Carriers sustained significant damage to their outside plant facilities and switching equipment, in some cases losing entire central offices. Because commercial power is not fully available, many carriers continue to operate on back-up power. We conclude that these carriers are now operating in an area like a high-cost area. We conclude that a clarification of the use restrictions in our rules is appropriate given the overwhelming public interest in assisting those high-cost areas struck by the worst natural disaster in the nation's history. This action does not provide additional support to high-cost carriers harmed by Hurricane Katrina and thus will not affect the size of the fund. It will, however, provide high-cost carriers with the flexibility to use some of their support to assist in disaster restoration. We therefore clarify that using high-cost support to repair and rebuild facilities and services damaged by Hurricane Katrina is consistent with the statutory directive contained in section 254(e).[148] Alternatively, we waive Commission Rule 54.7 for the limited purposes discussed herein.[149] To the extent necessary and for only the relief provided herein, we also forbear from section 254(e).

56. *Additional Certifications.* Carriers getting this support should certify that: (1) the carrier is serving in the area; and (2) the carrier incurred substantial damage as a result of Hurricane Katrina.[150]

F. Other Issues

57. *Administration.* As we note in the sections above, we are working within the existing parameters of the low-income, health care, E-rate, and high-cost USF programs. Except where noted herein, we expect to apply all existing processes and procedures to those applying for benefits. For example, schools and libraries would need to prepare technology plans, submit applications, and maintain documentation. Similarly, carriers seeking support for providing the supported wireless service

[146] *Ninth Report and Order*, 14 FCC Rcd at 20482-83, paras. 95-96 (noting that states could, among other things, use federal support to lower intrastate rates or to require carriers to upgrade facilities in rural areas).

[147] 47 C.F.R. § 54.7. In the May 2001 *Rural Task Force Order*, the Commission declined to adopt the Rural Task Force's proposal to adopt specific rules that would allow rural carriers to request additional support to recover the costs of hurricanes, floods and other natural disasters. *See Rural Task Force Order*, 16 FCC Rcd at 11296, para. 128 & n.332.

[148] We expect that this clarification will enable the rural and non-rural carriers operating throughout the disaster area to use their more than $240 million in estimated annual high-cost support to assist in restoration efforts. This action does not modify or otherwise permit these carriers to use high-cost support disbursed to one state to meet the needs in another state.

[149] We find that the damage inflicted by Hurricane Katrina is sufficient for a deviation from our general rule.

[150] We note that a signed letter containing this certification will suffice.

consumer offering will seek reimbursement pursuant to the Commission's existing low-income rules.[151] Those programs that have caps specified in the Commission's rules – *i.e.*, the $2.25 billion E-rate program and the $400 million rural health care program – will continue to operate under the existing caps and applicable rules. In addition, we take no steps to modify or change the Administrator's disbursement processes. All carriers and service providers receiving USF monies remain subject to audit, and we may recover funds that we later determine were used improperly.[152] At this time, we do not anticipate a need to adopt any specific forms because of the temporary nature of these support initiatives; parties receiving benefits are required, however, to maintain all documentation needed to verify the accuracy of their applications and the amount of monies received. Nor do we anticipate requiring the Administrator to revise its quarterly filings, although the Commission may require supplemental or additional information on an as-needed basis consistent with our standard operating procedures. We also adopt safeguards tailored to these temporary support programs, including certification requirements, document retention requirements, eligibility criteria relying on FEMA determinations, and audits of disbursed funds.

58. On September 21, 2005, the Administrator filed a letter with the Commission, detailing certain implementation concerns regarding relief related to Hurricane Katrina.[153] We note that many of the issues raised in that letter are addressed in the scope of this Order. Because we are applying the USF programs' existing processes and procedures to these initiatives, we do not anticipate significant administrative issues to implement. We recognize, however, that some implementation issues may arise. We therefore require the Administrator to work with the Wireline Competition Bureau to resolve any such issues (*e.g.*, the content of certifications) expeditiously. We note that the proposal of the E-rate coordinators from Alabama, Louisiana and Mississippi does not address schools and libraries affected by evacuees.[154] We direct the Wireline Competition Bureau to coordinate with the E-rate coordinators of the states eligible for relief as a result of a substantial number of evacuees to develop review process comparable to that of the E-rate coordinators for Alabama, Louisiana and Mississippi.[155]

59. *Safeguards against waste, fraud, and abuse*. In this Order, we adopt a number of measures to safeguard the USF from misuse of funds. In particular, we rely on the FEMA disaster designation and application processes to determine eligibility for the temporary support initiatives, and the checks and balances built into FEMA's internal controls and procedures to ensure parties that are ineligible for support are rejected. Similarly, we target the temporary support to the counties, parishes, and individuals that suffered the most from the worst natural disaster in the Nation's history. We also adopt specific certification and document retention requirements pertaining to this temporary support.[156]

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[151] *See, e.g.*, 47 C.F.R. § 54.707(a) (stating that carriers' "support for providing Lifeline shall be provided directly . . . based on the number of qualifying low-income consumers [a carrier services], under administrative procedures determined by the Administrator.").

[152] As noted above, we expect the Administrator will conduct audits or other reviews of beneficiaries and service providers obtaining a significant amount of this temporary support. Improperly used funds may be recovered.

[153] *See* Letter from Lisa M. Zaina, Chief Executive Officer, USAC to Chairman Kevin J. Martin, *et al.* (Sept. 21, 2005).

[154] *See* Rawson Letter.

[155] *See supra*, note 137 (defining eligibility for schools and libraries substantially affected by evacuees).

[156] We recently waived recordkeeping requirements to the extent such records were lost due to Hurricane Katrina and subsequent flooding. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-06, *Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Lifeline and Link-Up*, WC Docket No. 03- (continued....)

In addition, all beneficiaries and service providers receiving these monies are subject to potential audit, and those that receive more than $1 million will automatically be audited by the Administrator to ensure the funds are used for their intended purposes. All eligible telecommunications carriers, service providers, or beneficiaries requesting support under these temporary rules shall be subject to audit or investigation by the Commission's Office of Inspector General ("OIG"), or other authorized federal or state governmental agency and, upon request, must make available any documentation and records necessary to verify compliance with these rules. For the E-rate program, we also rely on the representations of the E-rate coordinators for Alabama, Mississippi, and Louisiana that they will coordinate the application process to limit the potential for waste, fraud, and abuse, and we authorize this additional oversight review activity.[157] Finally, this support is temporary and limited for the purposes specified in this Order.

60. We also rely, however, on the existing safeguards and measures in the USF programs. Thus, to the extent recovery is sought from USF stakeholders, and such stakeholders do not make payments, they will be subject to our "red light" rule.[158] Parties must still submit applications and maintain appropriate documentation, as required by the existing program rules. The Administrator will subject all applications to the normal review processes so that E-rate applications, for example, will go through the Program Integrity Assurance ("PIA") review process and selective review procedures pursuant to the Administrator's standard operating procedures. All information collection efforts, document retention, and certification requirements that normally apply to applications for low-income, rural health care, high-cost, or E-rate support will continue to apply for these temporary USF support initiatives. We recognize that we have already initiated a proceeding to examine these procedures to determine what additional measures can be taken to further safeguard the USF from waste, fraud, and abuse.[159]

61. We are committed to ensuring that the funds disbursed as a result of these temporary support initiatives are used for their intended purposes and that unscrupulous persons do not seek to gain from these disaster relief measures. Therefore, to the extent we find through audits or other means that funds were not used properly, we will require the Administrator to recover such funds through its normal processes. For the E-rate program, for example, we will continue to apply the recovery standard adopted in the *Schools and Libraries Fifth Report and Order*.[160] Thus, amounts disbursed "in violation of the statute or a rule that implements the statute or a substantive program goal" will be recovered in full.[161] We emphasize that we retain the discretion to evaluate the uses of USF monies and to determine on a

(Continued from previous page)
109, and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, DA 05-2484 (WCB rel. Sept. 21, 2005) at para. 3. We emphasize that our waiver of recordkeeping requirements in that Order does not alleviate universal service recipients' responsibility to continue to follow our recordkeeping requirements.

[157] *See* Rawson Letter.

[158] 47 C.F.R. § 1.1910.

[159] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005).

[160] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15835, ¶ 80 (2004) ("*Schools and Libraries Fifth Report and Order*").

[161] *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15815, 15835, paras. 20, 80.

case-by-case basis that waste, fraud, or abuse of USF monies occurred and that recovery is warranted.

III. EFFECTIVE DATE

62. The waivers granted herein shall be effective upon the release date of this Order. The rule modifications or additions adopted herein shall be effective upon the release date of this Order. Pursuant to section 553(d)(3) of the Administrative Procedure Act, we find good cause to make these rule modifications or additions effective upon release of this Order.[162] As explained above, Hurricane Katrina caused significant damage in Alabama, Louisiana, and Mississippi including flooding in some areas of these states and significant property damage and personal injury. The rule changes promulgated in this Order represent a critical step in facilitating the Nation's response to the disaster wrought by Hurricane Katrina. We note, moreover, that this Order does not mandate new burdens or obligations. Accordingly, no entity will be adversely affected by making the order effective at the earliest possible date. We delegate authority to the Wireline Competition Bureau to work with the Universal Service Administrator to make the necessary programmatic changes to implement this Order.

63. Given the urgent need, the rules set forth herein shall take effect immediately upon release, and without prior public notice and comment. Section 553 of the Administrative Procedures Act (APA)[163] permits any agency to implement a rule without public notice and opportunity for comment "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[164] Commission rules permit us to render an order effective upon release where good cause warrants.[165] As a general matter, we firmly believe that public notice requirements are an essential component of our rulemaking process. We find, however, that while receipt of public comment clearly is necessary to the formulation of final rules, the devastation caused by Hurricane Katrina and the need for prompt attention for the victims of Hurricane Katrina present good cause to make this Order effective upon publication in the Federal Register publication and to adopt the temporary rules described herein immediately.

IV. CONGRESSIONAL REVIEW ACT

64. The Commission will send a copy of this Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). For the reasons stated herein, we find good cause for the rule changes made by this Order to take effect upon the release of this Order, *see* 5 U.S.C. § 808(2).

V. PROCEDURAL MATTERS

65. This Order contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Pursuant to 5 C.F.R. § 1320.18(d), the

[162] *See* 5 U.S.C. § 553(d)(3).

[163] *See* 5 U.S.C. § 500 *et seq.*

[164] 5 U.S.C. §§ 553(b)(3)(B) (allowing for implementation without notice and comment or publication in the Federal Register if good cause exists); 553(d)(3) (allowing for effective date to occur prior to 30 days after publication for good cause).

[165] *See* 47 C.F.R. §§ 1.103(a), 1.427(b).

Office of Management and Budget (OMB) has granted the Commission a temporary waiver of the PRA requirements for this rulemaking. Accordingly, this Order will not be submitted to OMB for review.

VI. ORDERING CLAUSES

66. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 201-205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 160, 201-205, 214, 254, 303(r), and 403 this Order IS ADOPTED, and the temporary rules SHALL BECOME EFFECTIVE immediately upon release of this Order, pursuant to U.S.C. §§ 408, 553(d)(3), 47 U.S.C. §§ 408, 553(d)(3).

67. Accordingly, IT IS ORDERED, pursuant to 4(i) and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 251(e), and sections 1.1 and 1.3 of the Commission's rules, 47 C.F.R. §§ 1.1 and 1.3, that our procedural rules relating to the universal service fund are waived to the extent herein described.

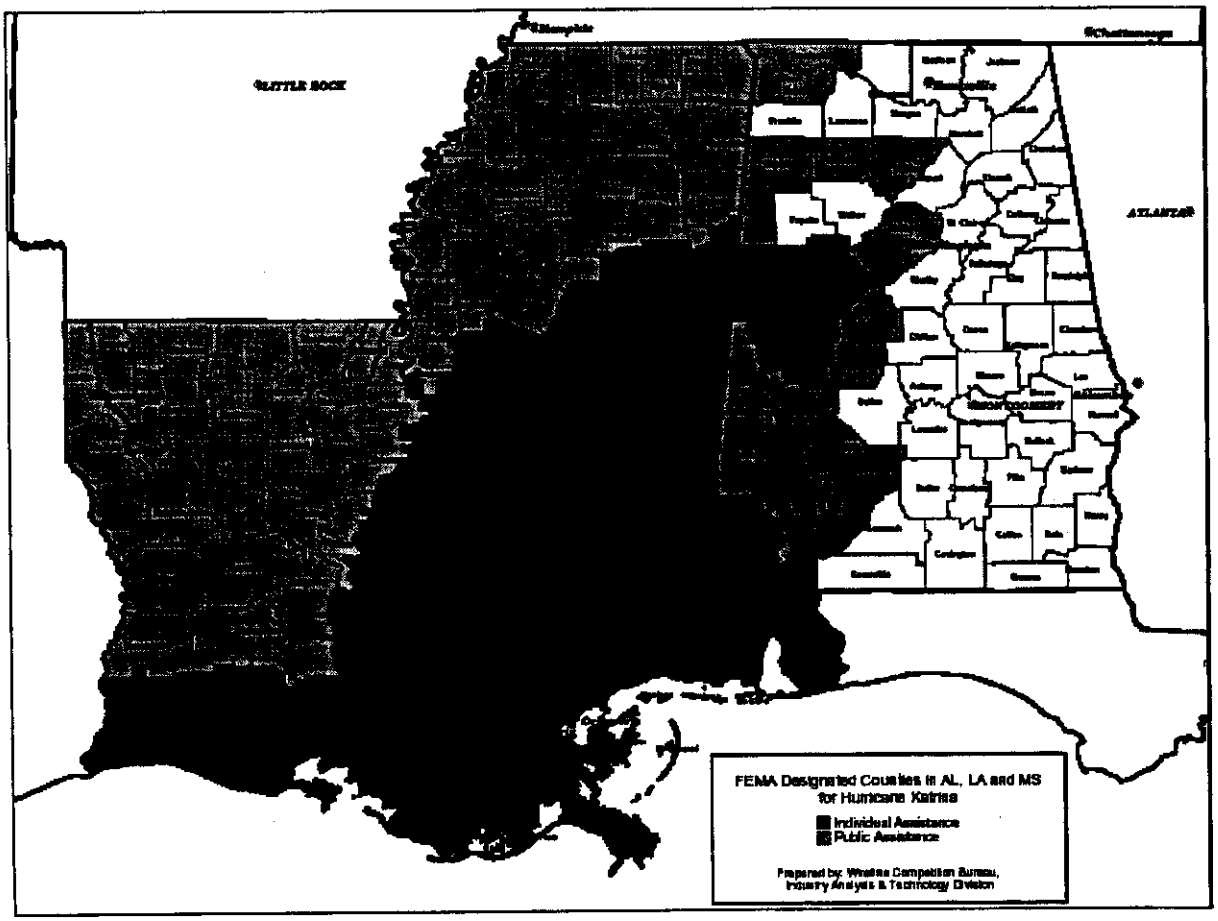
68. Furthermore, IT IS ORDERED, pursuant to sections 1, 4(i), 251(b)(2),and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251(b)(2) and 251(e), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that section 54.603(b)(vi)(3) of the Commission's rules is waived to the extent herein described.

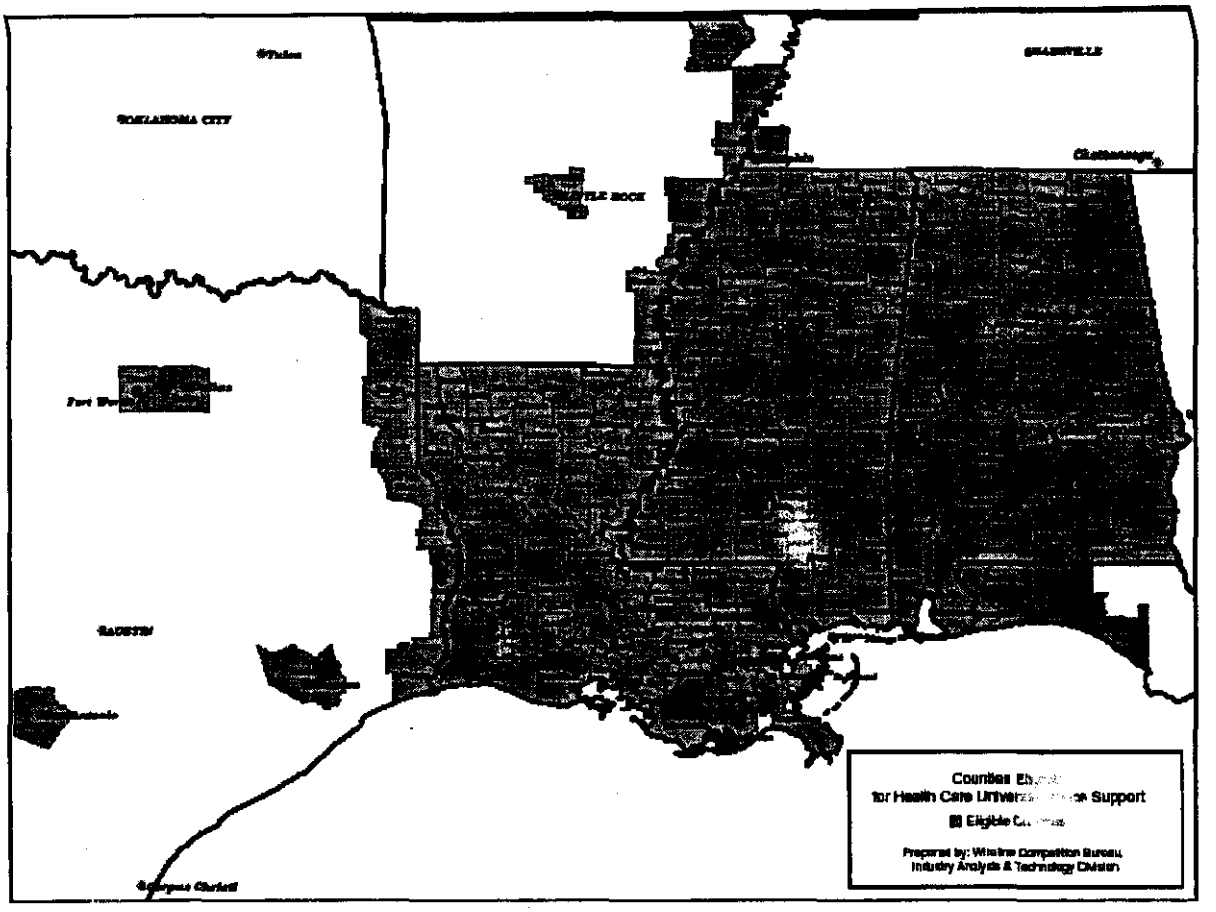
FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX
Maps of Affected Counties




Prepared by: Wireline Competition Bureau
Industry Analysis & Technology Division