

any schools.¹⁹⁹ Certain other statutory definitions apply as well.²⁰⁰ The SBA has defined for-profit libraries having \$7 million or less in annual receipts as small entities.²⁰¹ In funding year 2007 approximately 10,950 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 10,950 libraries might be affected annually by our action, under current operation of the program.

c. Telecommunications Service Providers

64. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁰² According to Commission data, 1,311 incumbent carriers reported that they were engaged in the provision of local exchange services.²⁰³ Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees.²⁰⁴ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

65. We have included small incumbent local exchange carriers in this RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."²⁰⁵ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.²⁰⁶ We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

66. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.²⁰⁷ This provides that

¹⁹⁹ 47 C.F.R. § 54.501.

²⁰⁰ *See id.*

²⁰¹ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 519120 (NAICS code 519120 was previously 514120).

²⁰² 13 C.F.R. § 121.201, NAICS code 517110.

²⁰³ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.5, Page 5-5 (August 2008) (*2008 Trends Report*).

²⁰⁴ *Id.*

²⁰⁵ 5 U.S.C. § 601(3).

²⁰⁶ *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC, dated May 27, 1999. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* U.S.C. § 632(a) (Small Business Act); 5 U.S.C.

§ 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

²⁰⁷ 13 C.F.R. § 121.201, NAICS Code 517110.

a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.²⁰⁸ According to the Commission's *2008 Trends Report*, 300 companies reported that they were engaged in the provision of interexchange services.²⁰⁹ Of these 300 IXC's, an estimated 268 have 1,500 or few employees and 32 have more than 1,500 employees.²¹⁰ Consequently, the Commission estimates that most providers of interexchange services are small businesses that may be affected by the rules and policies adopted herein.

67. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.²¹¹ This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.²¹² According to the *2008 Trends Report*, 1,005 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services.²¹³ Of these 1,005 CAPs and competitive LECs, an estimated 918 have 1,500 or few employees and 87 have more than 1,500 employees.²¹⁴ Consequently, the Commission estimates that most providers of competitive exchange services are small businesses that may be affected by the rules and policies adopted herein.

68. *Wireless Telecommunications.* Neither the Commission nor the SBA has developed a definition of small entities specifically for wireless telephony. The closest definition is the SBA definition for wireless telecommunications (except satellite).²¹⁵ Under this definition, a cellular licensee is a small entity if it employs no more than 1,500 employees.²¹⁶ According to the *2008 Trends Report*, 434 providers classified themselves as providers of wireless telephony, including cellular telecommunications, Personal Communications Service, and Specialized Mobile Radio (SMR) Telephony Carriers.²¹⁷ Of these 437 wireless telephony providers, an estimated 222 have 1,500 or few employees and 212 have more than 1,500 employees.²¹⁸ Consequently, the Commission estimates that more than half of the providers of wireless telephony services are small businesses that may be affected by the rules and policies adopted herein.

69. *Other Wireless Services.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to wireless services other than wireless telephony.²¹⁹ The closest

²⁰⁸ *Id.*

²⁰⁹ *2008 Trends Report*, Table 5.3, page 5-5.

²¹⁰ *Id.*

²¹¹ 13 C.F.R. § 121.201, NAICS Code 517110.

²¹² *Id.*

²¹³ *2008 Trends Report*, Table 5.3, page 5-5.

²¹⁴ *Id.*

²¹⁵ 13 C.F.R. § 121.201, NAICS Code 517210.

²¹⁶ *Id.*

²¹⁷ *2008 Trends Report*, Table 5.3, page 5-5.

²¹⁸ *Id.*

²¹⁹ The Commission has adopted a number of service-specific definitions of small businesses for various categories of wireless service, principally in the context of the Commission's rules governing spectrum auctions. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16

applicable definition under the SBA rules is again that of wireless telecommunications (except satellite), under which a service provider is a small entity if it employs no more than 1,500 employees.²²⁰ According to the *2008 Trends Report*, 69 providers classified themselves as wireless data carriers or other mobile service providers.²²¹ Of these 69 providers, an estimated 65 have 1,500 or few employees and 4 have more than 1,500 employees.²²² Consequently, the Commission estimates that most providers of wireless services other than wireless telephony are small businesses that may be affected by the rules and policies adopted herein.

70. *Paging and Messaging Service Providers.* In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.²²³ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.²²⁴ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to Commission data, 281 carriers reported that they were engaged in the provision of paging services, messaging services, or other mobile services.²²⁵ Of those, the Commission estimates that 279 are small, under the SBA approved small business size standard.²²⁶

d. Internet Service Providers

71. Under the category of Internet service provider, a small business is one having annual receipts of \$23 million or less.²²⁷ According to SBA data, there are a total of 2,829 firms with annual receipts of less than \$10 million, and an additional 111 firms with annual receipts of \$10 million or more.²²⁸ Thus, the number of On-line Information Services firms that are small under the SBA’s \$18

FCC Rcd 13525, Attachment A, paras. 31-54 (2001). For purposes of administering the E-rate program, however, we find that it is appropriate to address the various non-telephony wireless services as a group.

²²⁰ 13 C.F.R. § 121.201, NAICS Code 517212.

²²¹ *2008 Trends Report*, Table 5.3, page 5-5.

²²² *Id.*

²²³ *Amendment of Part 90 of the Commission’s Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70 paras. 291-295 (1997), 62 FR 16004 (Apr. 3, 1997), at paras. 291-295.

²²⁴ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at para. 98 (1999).

²²⁵ *2008 Trends Report*, Table 5.3, page 5-5.

²²⁶ *Id.*

²²⁷ 13 C.F.R. § 121.201, NAICS Code 518111.

²²⁸ 1997 Census Report, Establishment and Firm Size, U.S. Census Bureau, U.S. Department of Commerce, Economics and Statistics Administration, Document EC97S51S-SZ, <<http://www.census.gov/prod/ec97/97s51-sz.pdf>>, at 24.

million size standard is between 2,829 and 2,940. Further, some of these Internet Service Providers (ISPs) might not be independently owned and operated. Consequently, we estimate that there are fewer than 2,940 small entity ISPs that may be affected by the decisions and rules of the present action.

e. Vendors of Internal Connections

72. *Communications Equipment Manufacturers.* The Commission has not developed a definition of small entities applicable to the manufacturers of internal network connections. The most applicable definitions of a small entity are the definitions under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"²²⁹ and "Other Communications Equipment Manufacturing."²³⁰ According to the SBA's regulations, manufacturers of these types of communications equipment must have 750 or fewer employees in order to qualify as a small business.²³¹ The most recent available Census Bureau data indicates that there are 1,187 companies with fewer than 1,000 employees in the United States that manufacture radio and television broadcasting and communications equipment, and 271 companies with less than 1,000 employees that manufacture other communications equipment.²³² Some of these manufacturers might not be independently owned and operated. Consequently, we estimate that there are fewer than 1,458 small entity internal connections manufacturers that may be affected by the decisions and rules of the present action.

73. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees.²³³ Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments²³⁴ in this category.²³⁵ Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61 percent,²³⁶ so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.

²²⁹ 13 C.F.R. § 121.201, NAICS Code 334220.

²³⁰ 13 C.F.R. § 121.201, NAICS Code 334290.

²³¹ *Id.*

²³² 1997 Economic Census, Manufacturing, Industry Series, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Document No. E97M-3342B (August 1999), at 14; 1997 Economic Census, Manufacturing, Industry Series, Other Communications Equipment Manufacturing, Document No. EC97M-3342C (September 1999), at 14 (both available at <<http://www.census.gov/prod/www/abs/97ecmani.html>>).

²³³ 13 C.F.R. § 121.201, NAICS Code 334220.

²³⁴ The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical locations for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 1,089.

²³⁵ U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, "Industry Statistics by Employment Size," Table 4, NAICS code 334220 (issued August 1999).

²³⁶ *Id.* Table 5, "Industry Statistics by Industry and Primary Product Class Specialization: 1997."

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

74. The FNPRM does not result in additional recordkeeping requirements for small businesses. To the extent that new items are added to the ESL, schools, libraries and service providers will merely have additional choices of services eligible for discount when they voluntarily participate in the E-rate program. Likewise, removing or not adding a service to the ESL would have no additional impact on recordkeeping requirements.

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

75. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.²³⁷

76. In the FNPRM, we seek comment on a number of issues related to services eligible for E-rate discounts, including issues raised by the commenters that may not have been addressed as part of prior ESL proceedings. Specifically, we determine that anti-virus and anti-spam software and other services should not be added to the ESL. We believe that keeping these services off the ESL will not have an adverse impact on small entities since the services were never funded in the first place. Applicants and service providers have never had an expectation that E-rate discounts would apply to these services and will therefore not be harmed by a decision to maintain the status quo. We seek comment on this tentative conclusion.

77. We also make the tentative conclusion that web hosting be removed from the ESL. We propose, however, that this change should be implemented in the funding year following the rule change. This will give applicants affected by the removal of web hosting time to find alternative funds for the service, if necessary. Delaying the removal of web hosting will also mitigate any economic impact on those small entities providing the service. In addition, we propose additional outreach from USAC to inform and educate applicants and service providers on the change. We seek comment on these proposals to mitigate the impact of removing web hosting and seek comment generally on the economic impact of this tentative decision.

78. We also make tentative conclusions regarding administrative matters such as restructuring the eligible rules, requiring USAC to submit a proposed draft ESL to the Commission on March 30th of each year, and revising our rules to state that all products and services eligible for E-rate support will be named in the ESL. We believe these changes will have no economic impact on entities participating in the E-rate program and, indeed, will benefit participants by making the rules and application process easier to understand and administer. We welcome, however, comments from parties that have opinions different from those reached in this analysis.

²³⁷ See 5 U.S.C. § 603(c).

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

53. None.

E. *Ex Parte* Presentations

54. These matters shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²³⁸ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.²³⁹ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.²⁴⁰

F. Comment Filing Procedures

55. Pursuant to sections 1.415 and 1.419 of the Commission’s rules,²⁴¹ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS); (2) the federal government’s eRulemaking Portal; or (3) by filing paper copies.²⁴²

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
 - Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE, Suite 110,

²³⁸ 47 C.F.R. §§ 1.1200-1.1216.

²³⁹ 47 C.F.R. § 1.1206(b)(2).

²⁴⁰ 47 C.F.R. § 1.1206(b).

²⁴¹ 47 C.F.R. §§ 1.415, 1.419.

²⁴² See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-115, Report and Order, 13 FCC Rcd 11322 (1998).

Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

56. In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW, Room CY-B402, Washington, DC 20554; website: www.bcpiweb.com; phone: 1-800-378-3160. Furthermore, three copies of each pleading must be sent to Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-B521, Washington, DC 20554; e-mail: antoinette.stevens@fcc.gov.

57. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C., 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its website: www.bcpiweb.com, by e-mail at fcc@bcpiweb.com, by telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562 (tty), or by facsimile at (202) 488-5563.

58. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: (202) 418-0530 or TTY: (202) 418-0432.

59. For further information, contact James Bachtell or Cara Voth at (202) 418-7400 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

VI. ORDERING CLAUSES

60. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 through 154, 201 through 205, 254, 303(r), and 403, this further notice of proposed rulemaking IS ADOPTED.

61. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201 through 205, 254, 303(r), and 403, this report and order IS ADOPTED.

62. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201 through 205, 254, 303(r), and 403, sections 54.503, 54.507, and 54.517 of the Commission's rules, 47 C.F.R. §§ 54.503, 54.507 and 54.517, IS AMENDED as set forth in Appendix B, effective thirty (30) days after the publication of this report and order in the Federal Register.

63. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this report and order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

64. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this further notice of proposed rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marlene H. Dortch". The signature is fluid and cursive, with the first name being the most prominent.

Marlene H. Dortch
Secretary

APPENDIX A**List of Commenters**

Parties Filing Comments in Response to the *ESL NPRM*

Commenters

1. Acton Public Schools and Acton-Boxborough Regional School District
2. Agawam Public Schools
3. Alisal Union School District
4. American Library Association
5. Amherst-Pelham Regional Schools
6. Amherst Public Schools
7. Pelham Elementary School
8. Andover Public Schools
9. Atlantic City Schools
10. AT&T, Inc.
11. Attica Central School District
12. Avoyelles Parish School District
13. BASCOM Global Internet Services, Inc.
14. Belvidere Community Unit School District #100
15. Berkeley Albany YMCA
16. Berkeley County School District
17. Berryessa Union School District
18. Blackboard Inc. Blackboard
19. Black Oak Mine Unified School District
20. Boyertown Area School District
21. Brockton Public Schools
22. Calhoun County School District
23. Carrollton-Farmers Branch ISD
24. Castaic Union School District
25. Cedar Rapids Public Library
26. Central School District
27. Ceres Unified School District
28. Chaffey Joint Union High School District
29. Charles City Community School District
30. Chicopee Public Schools
31. City School District of New Rochelle
32. Clover Park School District
33. Comcast Corporation Comcast
34. Community Consolidated School District 93
35. Community Unit School District 95
36. Council of the great City Schools
37. Crespi Carmelite High School
38. Deer Park School District
39. eChalk eChalk
40. Edgecombe County Public Schools
41. Education and Libraries Network Coalition (EdLINC)
42. Elkin City Schools District
43. Embarq Corporation
44. Emerson Board of Education

45. Emerson Public Schools
46. E-Rate Central
47. E-Rate Service Providers Association (ESPA)
48. Everett School District #2
49. Fairfax County Public Schools
50. FiberTower Corporation
51. Fillmore USD
52. Flagstaff USD No. 1
53. Floyd County Schools
54. Folsom Cordova USD
55. Francis Howell R-III School District
56. Frenchtown School District #40
57. John P. Mazzola, Vice-Chair
58. Judy McKay, Principal/Director of Academics
59. Funds for Learning, LLC
60. Gaston County School District
61. Greater Lowell Technical High School
62. Greenfield Public Schools
63. Greenport Union Free School District
64. Gulfport School District
65. Gustine USD
66. Hamilton County School District
67. Hampden-Wilbraham Regional School District
68. Hanford Joint Union High School District
69. Henrico County Public Schools
70. Hickman County School System
71. Holbrook Public Schools
72. Indian Prairie School District #204
73. Indianapolis Public Schools
74. Isle of Wight County Schools
75. Jefferson-Scranton Community School District
76. Kaneland Community School District #302
77. Keansburg School District
78. Kershaw County School District
79. Lake Elsinore Unified School District
80. Lancaster School District
81. Lassen Union High School District
82. Lawndale Elementary School District
83. Lexington County School District Two
84. Lexington Public Schools
85. Lincoln Public School District
86. Livermore Valley Joint USD
87. Lower Moreland Township School District
88. Ludlow Public Schools
89. Lynnfield Public Schools
90. Madison School District #321
91. Magnolia School District
92. Marian High School
93. Marietta City Schools District
94. Martin County School District
95. Middle Country Central School District

96. Monroe County School District
97. Mooresville Graded School District
98. Murrieta Valley USD
99. Myers Memorial Library
100. National Cable & Telecommunications Association (NCTA)
101. National Emergency Response & Rescue Training Center
102. Newark Central School District
103. New Orleans Center for Creative Arts
104. Northampton Public Schools
105. Norwalk La Mirada USD
106. Nyack Union Free School District
107. One Communications Corp.
108. Orange County Public Schools
109. Oswego Community Unit School District 308 Oswego
110. Owen J. Roberts School District
111. Paterson Public Schools District
112. Pearland ISD
113. Pioneer Union School District
114. Pleasant Valley School District
115. Pollock Pines School District
116. Port Chester Rye UFSD School District
117. Prairie Valley Community School District
118. Qwest Communications International Inc.
119. Redding School District
120. Roanoke Rapids Graded School District
121. Rowland USD
122. Sampson County School District
123. Sanger USD
124. San Juan USD
125. Santa Maria-Bonita School District
126. Sapulpa Public Schools
127. School Administrative Unit 34 SAU #34
128. School Board of Polk County
129. Seymour Public Schools
130. Shaffer Union School District
131. Snowline Joint USD
132. Southampton Union Free School District
133. South Vermillion Community Schools
134. Sparta Elementary School
135. Spectrum Communications, Inc.
136. Spring ISD
137. Sprint Nextel Corporation
138. State E-Rate Coordinators Alliance (SECA)
139. Stokes County Schools District
140. Surry County Schools
141. Sylvan Union School District
142. Taylor County School District
143. Technology for Education
144. Tabettha Koerth, Inside Sales Account Manager
145. Daniel Kronke, Design Engineer
146. Crystal Pena, Inside Support Specialist

147. Jeff Strain, Sales Director
148. Jeremy E. Zahirniak, Account Executive, Texas Region XIII
149. Technology in Education Partnership
150. Tennessee School for the Blind
151. Thermalito Union School District
152. Tornillo ISD
153. Twin Rivers USD
154. Upper Arlington City Schools
155. Verizon and Verizon Wireless
156. Victor Valley Union High School District
157. Walton County Public Schools
158. Waterloo Central School District
159. Wayne Central School District
160. West Contra Costa USD
161. Western Boone County Community School Corporation
162. Western Dubuque County Community School District
163. Westport Public Schools
164. West Shore School District
165. Wethersfield Public School District
166. Wilmington Public Schools
167. Wisconsin Department of Public Instruction
168. Yosemite USD
169. Ysleta ISD
170. Yuma Elementary School District I

Reply Commenters

1. AT&T Inc.
2. Baltimore County Public Schools
3. Blackboard Inc. Blackboard
4. Chicago Public Schools
5. Indianapolis Public Schools
6. Larkspur School District
7. Richland Grade School District 88A
8. Seneca Falls Central School District
9. South Dakota Department of Education
10. Wisconsin Association of Distance Education Networks

Parties Filing Comments in Response to the 2010 ESL Public Notice

Commenters

1. AT&T Inc.
2. eChalk
3. E-Rate Central
4. E-Rate Management Professionals Association
5. E-Rate Service Providers Association
6. Funds for Learning, LLC
7. IBM Corporation

8. Library Video Company
9. SchoolSpeak Inc.
10. Sprint Nextel Corporation
11. State E-Rate Coordinators Alliance
12. VBrick Systems
13. Verizon and Verizon Wireless
14. VON Coalition

Reply Commenters

1. Edline
2. Qualcomm Incorporated
3. San Diego Unified School District
4. State E-Rate Coordinators Alliance

APPENDIX B

Final Rules

PART 54 -- UNIVERSAL SERVICE

1. Section 54.503 is revised to read as follows:

54.503 Other supported special services.

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

2. Section 54.504 is amended by revising subparagraph (b)(2)(iv) to read as follows:

54.504 Requests for Services

(b) *Posting of FCC Form 470.*

(2)(iv)

(iv) The technology plan(s) has/have been approved by a state or other authorized body; the technology plan(s) will be approved by a state or other authorized body; or no technology plan needed because the applicant is applying for voice mail, interconnected VoIP, or basic local, cellular, PCS, or long distance telephone service only.

3. Section 54.507 is amended by revising subparagraphs (g)(1)(i) and (ii) to read as follows:

54.507 Cap.

(g) *Rules of priority.* The Administrator shall act in accordance with paragraph (g)(1) of this section with respect to applicants that file an FCC Form 471, as described in § 54.504(c) of this part, when a filing period described in paragraph (c) of this section is in effect. The Administrator shall act in accordance with paragraph (g)(2) of this section with respect to applicants that file an FCC Form 471, as described in § 54.504(c) of this part, at all times other than within a filing period described in paragraph (c) of this section.

(1) When the filing period described in paragraph (c) of this section closes, the Administrator shall calculate the total demand for support submitted by applicants during the filing period. If total demand exceeds the total support available for that funding year, the Administrator shall take the following steps:

(i) The Administrator shall first calculate the demand for services listed under the telecommunications and Internet access categories on the eligible services list for all discount levels, as determined by the schools and libraries discount matrix in § 54.505(c). These services shall receive first priority for the available funding.

(ii) The Administrator shall then calculate the amount of available funding remaining after providing support for the telecommunications and Internet access categories for all discount levels. The Administrator shall allocate the remaining funds to the requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools

and libraries discount matrix in § 54.505(c) of this part. Schools and libraries eligible for a 90 percent discount shall receive first priority for the remaining funds, and those funds will be applied to their requests for internal connections.

(iii) To the extent that funds remain after the allocation described in §§ 54.507(g)(1)(i) and (ii), the Administrator shall next allocate funds toward the requests for internal connections submitted by schools and libraries eligible for an 80 percent discount, then for a 70 percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining.

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

54.517 Services provided by non-telecommunications carriers.

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

APPENDIX C**Proposed Rules**

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

PART 54 -- UNIVERSAL SERVICE

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. § 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

Subpart F -- Universal Service Support for Schools and Libraries

2. Section 54.502 is amended to place the existing text in paragraph (a) and adding paragraphs (b), (c) (formerly placed in section 54.506) and (d) (formerly placed in section 54.517) and is revised as follows:

54.502 Supported services.

(a) Telecommunications services - For purposes of this subpart, supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms. All supported telecommunications services are defined and listed in the Eligible Services List as updated annually in accordance with section 54.503 of the Commission's rules.

(b) Internet access and information services - For purposes of this subpart, supported Internet access and information services include basic conduit access to the Internet and all the services defined in section 54.5 of the Commission's rules as Internet access. All supported Internet access and information services are defined and listed in the Eligible Services List as updated annually in accordance with section 54.503 of the Commission's rules.

(c) Internal connections -

(1) For purposes of this subpart, a service is eligible for support as a component of an institution's internal connections if such service is necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch. Discounts are not available for internal connections in non-instructional buildings of a school or school district, or in administrative buildings of a library, to the extent that a library system has separate administrative buildings, unless those internal connections are essential for the effective transport of information to an instructional building of a school or to a non-administrative building of a library. Internal connections do not include connections that extend beyond a single school campus or single library branch. There is a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way. All supported internal connections are defined and listed in the Eligible Services List as updated annually in accordance with section 54.503 of the Commission's rules.

(2) Basic maintenance services - For purposes of this subpart, basic maintenance services shall be eligible as an internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services. Basic maintenance services do not include services that 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. All supported basic maintenance is defined and listed in the Eligible Services List as updated annually in accordance with section 54.503 of the Commission's rules.

(3) Frequency of discounts for internal connections services. Each eligible school or library shall be eligible for support for internal connections services, except basic maintenance services, no more than

twice every five funding years. For the purpose of determining eligibility, the five-year period begins in any funding year in which the school or library receives discounted internal connections services other than basic maintenance services. If a school or library receives internal connections services other than basic maintenance services that are shared with other schools or libraries (for example, as part of a consortium), the shared services will be attributed to the school or library in determining whether it is eligible for support.

(d) Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing the supported services described in paragraph (b) and (c) of this section for eligible schools, libraries, and consortia including those entities. Such services provided by non-telecommunications carriers shall be subject to all the provisions of this subpart, except Sections 54.501(a), 54.502(a), and 54.515.

3. Section 54.503 is amended to remove all of the text and replace it with the text from section 54.522 in subsection (a) and adding subsection (b) as follows:

54.503 Eligible services list.

(a) The Administrator shall submit by March 30 of each year a draft list of services eligible for support, based on the Commission's rules, in the following funding year. The Wireline Competition Bureau will issue a Public Notice seeking comment on the Administrator's proposed eligible services list. At least 60 days prior to the opening of the window for the following funding year, the final list of services eligible for support will be released.

(b) All supported services are defined and listed in the Eligible Services List as updated annually in accordance with subsection (a) of this section.

4. Sections 54.506, 54.517 and 54.518 are removed.

Eligible Services List Schools and Libraries Support Mechanism for Funding Year 2010

Overall Eligibility Requirements for All Categories of Service:

The Eligible Services List indicates whether specific products or services may be able to receive discounts under the Schools and Libraries Support Mechanism.

The List is organized into four sections that represent the four funding categories established by the Federal Communications Commission (FCC) plus a Miscellaneous section that is applicable to multiple categories:

Telecommunications Services

Internet Access

Internal Connections

Basic Maintenance

Miscellaneous

In addition, the following sections are provided:

Special Eligibility Conditions

Glossary, providing additional information about
the terms used in this Eligible Services List

Index

Funding may be provided only for eligible products or services that will be used for educational purposes. See 47 C.F.R. §§ 54.500(b), 54.504. The conditions for eligibility are described in the specific entries of this Eligible Services List. Services that are not eligible are listed at the end of each category.

All program participants are reminded to review the Special Eligibility Conditions at the end of this Eligible Services List in addition to all of the entries applicable to the services or products they are requesting. Additional information about eligibility requirements is available at USAC's website at

<<http://www.usac.org/sl/tools/reference-area.aspx>>, the reference area of the USAC website at <<http://www.usac.org/sl/tools/reference-area.aspx>>, and in Schools and Libraries News-briefs available at <http://www.usac.org/sl/tools/news-briefs/Default.aspx>. These documents are not incorporated by reference into the Eligible Services List.

This version of the Eligible Services List is dated December 2, 2009. Some eligibility information in this List represents a change from prior funding years and applies to funding requests for Funding Year 2010.

Eligibility Requirements for All Telecommunications Services:

To be eligible for support, Telecommunications Services must be provided by a telecommunications carrier, that is, a company that offers telecommunications services on a common carriage basis.

A telecommunications service is "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public..." [47 U.S.C. 153(46)]. Telecommunications is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received" [47 U.S.C. 153(43)].

All telecommunications carriers are required under FCC rules to be common carriers and to file FCC Form 499A (*Telecommunications Reporting Worksheet*).

Except as otherwise indicated in this section, support in this funding category is only available for telecommunications services or for services that are an integral component part of a telecommunications service. Support in this category of service is not available for equipment purchases by applicants. We include interconnected VoIP as an eligible service irrespective of whether the Commission has classified this service as a telecommunications service or an information service. The Commission has included both information services (*i.e.*, Internet access and voicemail services) and telecommunications services as Priority One services eligible for discounts under the universal service support mechanism. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9212, para. 29 (2003). As such, the regulatory classification of interconnected VoIP service does not affect our inclusion of this service as an eligible service here.

In addition, some service offerings provide a combination of both Internet Access and Telecommunications Services. For example, a service provider may offer local phone service, long distance service, cellular service, and Internet access for one price. For administrative convenience, such a combined offering, if provided by an eligible telecommunications carrier, may be requested in the Telecommunications Services category of service on the FCC Form 471. Alternatively, funding may be requested as two separate requests, with the price of the offering appropriately allocated between the Telecommunications Services and Internet Access categories.

If Internet access is being requested in the Telecommunications Services category, applicants must indicate that Internet access is being sought when filing FCC Form 470. Please note that funding of Internet access in the Telecommunications Services category does not relieve applicants of responsibilities they may have under the Children's Internet Protection Act.

Function	Description
Digital Transmission Services	<ul style="list-style-type: none"> A telecommunications service that provides transmission from an eligible school or library facility to other locations beyond the school or library is eligible for discount. Digital transmission services refer to data links that connect multiple points using any available technology. An eligible digital transmission service may be used to connect an eligible location to the Internet or <u>Internet2</u>. Digital transmission services used to link
	<p>local networks are commonly called "wide area networks" (WANs).</p> <p>Eligible digital transmission technologies include, but are not limited to:</p> <ul style="list-style-type: none"> <u>Asynchronous Transfer Mode (ATM)</u> <u>Broadband over Power Lines (BPL)</u> <u>Digital Subscriber Line (DSL)</u> <u>DS-1, DS-2, DS-3</u> <u>Ethernet</u> <u>Fiber optics</u> <u>Frame Relay</u> <u>Integrated Services Digital Network (ISDN, BRI, PRI)</u> <u>OC-1, OC-3, OC-12, OC-n</u> <u>Satellite service</u> <u>Switched Multimegabit Data Service (SMDS)</u> <u>T-1, T-2, T-3, Fractional T-1</u> Wireless <p>Components required as an integral part of a digital transmission service are eligible for discount, such as:</p> <ul style="list-style-type: none"> costs of a <u>permanent virtual circuit (PVC)</u> costs of <u>trunk lines</u> reasonable installation costs <p>The telecommunications component of:</p> <ul style="list-style-type: none"> a <u>distance learning</u> capability, <u>video</u>, or <u>interactive television</u> is eligible for discount.
Paging	<p><u>Paging</u> are eligible when integral, immediate, and proximate to the education of students. Services occurring at eligible locations are presumed to meet this standard, as well as, for example, paging services used by a bus driver delivering students to school, a library staff member in a mobile van, and teachers on field trips.</p>
Telephone Service	<p>"Telephone Service" refers to communication that takes place using the public switched telephone network. Costs to</p>

	<p>subscribe to a telephone service are generally eligible for discount. The following telephone services are "basic" for purposes of the schools and libraries program and do not require a technology plan:</p> <ul style="list-style-type: none"> • <u>800 service</u> • <u>Centrex</u> • <u>Local phone service</u> • <u>Long distance telephone service</u> • <u>Interconnected Voice Over Internet Protocol</u> • <u>POTS ("Plain Old Telephone Service")</u> • <u>Radio loop</u> • <u>Wireless telephone services, e.g., cellular service</u> and <u>Personal Communications Services (PCS)</u> Shared telephone service (only that portion of the shared service relating to the eligible use and location is eligible) • <u>Telecommunications services and voice mail services</u> used to provide a homework hotline service are eligible. For example, a toll-free telephone number for students to contact school regarding questions about homework <p>Various payment options may be used with these eligible services, and phone bills may include billing terms such as <u>flat rate</u>, <u>local measured service</u>, and <u>message rate service</u>. <u>Phone calling cards</u> may be used if they are used for an educational purpose.</p> <ul style="list-style-type: none"> • Service to an eligible location for educational or library purposes can provide voice communication, fax connections, modem connections, <u>911</u> or an <u>alarm</u>.
<p>Telephone Service Components</p>	<p>Telephone features indicated in this section are eligible for discount if they are a component part of a telephone service. Generally, this requirement means that these charges will appear on the same bill as the telephone service itself.</p> <ul style="list-style-type: none"> • <u>900 Calls</u> • <u>Text messaging</u> • <u>Custom calling services</u> • <u>Direct Inward Dialing (DID)</u> • <u>Directory assistance charges</u> • <u>Inside</u>. An inside wire maintenance plan is eligible as a component part of a telephone service only if charges are minimal. • <u>Installation charges</u>—see the entry for "<u>Installation and Configuration</u>" in the Miscellaneous section • <u>Network access register charges</u> • <u>PIC</u>
<p>Other Eligible Telecommunications Services</p>	<p>The telecommunications component of voice or video <u>conferencing services</u> that provide a means for multiple users to participate in group discussions can be eligible if the services are limited only to eligible educational or library</p>

purposes or if an auditable monitoring system is in place that provides a way to allocate between eligible and ineligible uses.

Maintenance and technical support appropriate to maintain reliable operation is eligible for discount when provided as a component of an eligible telecommunications service.

Please see the Miscellaneous section of this document for additional entries applicable to Telecommunications Services, such as charges for installation and configuration.

Ineligible for E-rate Funding as Telecommunications Services
(Not Eligible)

The following services are **NOT ELIGIBLE** for discount:

- 900
- Broadcast "Blast" Messaging
- Dark fiber service
- Direct Broadcast and other services that provide broadcast content or cable television
- Directory advertising
- Extra costs for directory listings
- Payphone
- Reverse directory assistance
- Non-telecommunications components of a distance learning service, video service, or interactive television service, such as a scheduling service or services for creation, maintenance, and storage of content
- Internet2 membership dues
- Residential telephone service is not eligible except in cases where state or local law or tariffs allow a school or library to receive local service at the residential rates
- Charges for creation, configuration, or maintenance of content
- Services that go beyond a telecommunications service, such as monitoring services for 911, E911, or an alarm telephone line
- Services that connect to a residential facility or home
- Services that provide voice, video, or data connectivity exclusively within school or library grounds are not eligible for funding as Telecommunications Services but may be eligible as Internal Connections
- Services to ineligible locations, such as telephone service to residential facilities

Please see the Miscellaneous section of this document for additional entries applicable to Telecommunications Services. For example, finance charges and termination charges are not eligible.

Internet Access

Eligibility Requirements for All Internet Access Services:

Internet access is an information service. Briefly, an information service is “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications....” [47 U.S.C. 153(20)].

Support in this funding category is only available for basic conduit access to the Internet or for services that are an integral component part of basic conduit access. Support in this category of service is not available for content, equipment purchases by applicants, or services beyond basic conduit access to the Internet.

To qualify as Internet access, all services must reach the boundary of public Internet space.

Service providers for Internet access need not be telecommunications carriers.

We include interconnected VoIP as an eligible service irrespective of whether the Commission has classified this service as a telecommunications service or an information service. The Commission has included both information services (*i.e.*, Internet access and voicemail services) and telecommunications services as Priority One services eligible for discounts under the universal service support mechanism. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9212, para. 29 (2003). As such, the regulatory classification of interconnected VoIP service does not affect our inclusion of this service as an eligible service here.

Function	Description
<p>Distance Learning and Video Conferencing</p>	<p>The basic conduit access to the Internet may be used to access Internet based distance learning and video conferencing services. However, the charges for web meetings or online collaboration solutions for the provision of distance learning or video conferencing charges (e.g. web meetings or online collaboration solutions) are NOT Eligible for discount.</p> <p>A point-to-point connection (e.g. ISDN line) for <u>distance learning</u> or video conferencing is NOT eligible as Internet Access and may only be provided by eligible telecommunication carriers.</p> <p>Videoconferencing components at customer sites may be eligible as Internal Connections. See the Video Components entry in the Internal Connections section of this Eligible</p>

	Services List.
E-mail Service	<p>Internet-based <u>e-mail</u> is eligible. Such a service is often included in the cost of basic conduit access to the Internet or may be provided at a separate cost, either as a fixed charge and/or on a per-user or other basis.</p> <p>Some e-mail services may include substantial ineligible features, such as collaboration tools, and services to ineligible users. Funding is limited strictly to the eligible e-mail portion. <u>E-mail archiving</u> is not eligible for discount. Any <u>cost allocation</u> must be based on tangible information that provides a reasonable and appropriate delineation between the eligible and ineligible components.</p>
Internet Access	<p>Basic conduit access to the Internet is eligible regardless of technology platform. Access technologies include but are not limited to:</p> <ul style="list-style-type: none"> • <u>Broadband over Power Lines (BPL)</u>-enabled Internet access service • <u>Cable Modem</u> • <u>Digital Subscriber Line (DSL)</u> • Telephone dial-up • <u>T-1</u> lines • Wireless <p>Eligible Internet access may include features typically provided for adequate functionality and performance when provided as a standard component of a vendor's Internet access service. Such features may include <u>Domain Name</u>, <u>Dynamic Host Configuration</u>, and <u>firewall</u> protection against unauthorized access.</p> <p>A wireless Internet access service is eligible under the same provisions as wired access to the Internet.</p> <p>Wide Area Network facilities can be eligible for funding as a part of Internet access if the service is limited to basic conduit access to the Internet and the offering is the most cost-effective means of accessing the Internet.</p> <p><u>GSP (Global Service Provider) fees</u> necessary to obtain Internet access are eligible.</p> <p>A wireless Internet access service designed for portable electronic devices is eligible to be funded if used for educational purposes.</p>
Web Hosting	<p>A <u>web hosting</u> service that provides a means for a school or library to display content on the Internet is eligible. Web hosting may include password protected pages.</p> <p><u>Domain name registration</u> necessary for the creation of a school or library website is eligible for discount.</p>