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

MAILED
MAY 2010
FCC Mail Room

In the Matter of	)	
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Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
	)	
A National Broadband Plan For Our Future	)	GN Docket No. 09-51
	)	

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NOTICE OF PROPOSED RULEMAKING

Adopted: May 20, 2010 **Released: May 20, 2010**

Comment Date: (30 days from publication in the Federal Register)
Reply Comment Date: (45 days from publication in the Federal Register)

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker issuing separate statements.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we initiate one in a series of rulemaking proceedings to implement the National Broadband Plan's (NBP) vision of improving and modernizing the universal service programs.[1] The Joint Statement on Broadband, released with the National Broadband Plan, identifies comprehensive universal service fund (USF) reform as an essential goal for the Federal Communications Commission (Commission).[2] Upgrading the E-rate program (more formally known as the schools and libraries universal service support mechanism), the second largest component of USF, represents a significant initiative to meet that goal. With more than a decade of experience with the current E-rate program and a national imperative to maximize the utilization of broadband, it is time to re-examine what is working well and what can be improved in the current program. This NPRM also seeks comment on several potential reforms that would cut red tape by eliminating rules that have not effectively served their intended purpose, while continuing to protect against waste, fraud, and abuse.

2. Access to broadband at key anchor institutions, including schools and libraries, is a critical component of enabling everyone in this country to develop the digital skills they need to prosper in the 21st century, as important functions of everyday life – including applying for jobs, interacting with federal, state and local government agencies, and searching for health-related information — increasingly migrate online. Broadband is also an important tool to help educators, parents and students meet challenges in education. The long-term success of our workforce and our country depend upon improving learning for both K-12 students and adults. With broadband, students and teachers can expand instruction beyond the confines of the physical classroom and the traditional school day. Broadband can provide more customized learning opportunities, enabling students and adults to access high-quality, low-cost and personally relevant educational materials. Broadband can also improve the flow of educational information, allowing teachers, parents and organizations to make better decisions tied to each student's needs and abilities. Simply put, broadband can enable new ways of teaching and learning, as well as new ways for individuals to interact with government institutions.

3. Since its inception 12 years ago, the E-rate program has been extremely successful in enabling virtually all schools and libraries to provide telecommunications services and Internet access to

[1] Federal Communications Commission, *Connecting America: The National Broadband Plan*, (rel. Mar. 16, 2010) (National Broadband Plan or NBP), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (last visited May 20, 2010). In this NPRM, we incorporate comments filed in response to the NBP Public Notice #15, the *Comprehensive Review NPRM,* and the *Schools and Libraries Second NPRM. See Comment Sought on Broadband Needs in Education, Including Changes to E-Rate Program to Improve Broadband Deployment, NBP Public Notice #15*, GN Docket No. 09-51, 24 FCC Rcd 13560 (2009) (*NBP Public Notice #15*); *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) (*Comprehensive Review NPRM*); *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 (2003) (*Second FNPRM*). A list of the commenters and reply commenters is included in Appendices B-D. *See* Appendices B-D.

[2] *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, FCC 10-42, para. 3 (rel. March 16, 2010) (*Joint Statement on Broadband*).

students and communities across America.[3] But there is more to be done to ensure that this program helps our children and communities prepare for the high-skilled jobs of the future and take advantage of the modern communications era.

4. This NPRM represents the first step in increasing the availability and use of broadband by children and our communities through the E-rate program to create more opportunities for educational advances, economic growth, government delivery of services, and civic engagement. Other reforms recommended in the National Broadband Plan will be proposed in future rulemakings. Our intent is to proceed thoughtfully in stages to allow participants – both recipients and service providers – time to adjust and give the Commission time to evaluate the impact of individual reforms before proceeding to the next step.

5. The reforms proposed in this NPRM fall into three conceptual categories: streamlining the E-rate application process, providing greater flexibility to choose the most cost-effective and educationally useful broadband services, and expanding the reach of broadband to the classroom. Streamlining the application process can reduce the cost of participating in the program and thereby make the program more accessible, particularly to smaller school districts and libraries that are often located in more rural areas and do not have dedicated staff to manage E-rate applications and related activities. Millions of households in rural areas do not have access to broadband at home;[4] for those areas, using broadband at schools and libraries may be the only option. It is critical that we simplify the process of participating in E-rate so that rural communities, as well as urban areas, can easily participate and obtain higher bandwidth services that will support more advanced applications.

6. By giving applicants more flexibility in selecting broadband services funded by E-rate, schools and libraries in both urban and rural areas will be able to leverage their finite E-rate dollars to get more services for less money. By focusing spending on more efficient uses that better serve the current needs of schools and libraries, E-rate recipients will be able to obtain higher bandwidth services that will enable more customized interactive online learning to engage increasingly computer-savvy students. For example, proposed reforms to expand access to lower-cost fiber will benefit communities that have invested in fiber infrastructure that can be used to provide broadband to their schools and libraries.

7. The E-rate program is currently subject to an annual funding cap of $2.25 billion, but demand for funding far exceeds available funding every year. This year, funding year 2010, approximately $2 billion alone was requested for telecommunications and internet access, leaving very little funding available for the internal connections that are necessary to bring higher bandwidth connectivity from a single location in the school to every classroom.[5] It is likely this year that only school districts with

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[3] The National Center for Education Statistics (NCES) found nearly 100 percent of public schools in the United States had Internet access, and 97 percent of these schools used broadband connections to access the Internet. "Internet Access in U.S. Public Schools and Classrooms: 1994-2005," U.S. Dept. of Education, Institute of Education Sciences, NCES 2007-020, at 4-5 (NCES Study), available at http://nces.ed.gov/Pubsearch/pubsinfo.asp?pubid=2007020 (last visited May 20, 2010).

[4] *See* Testimony of Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, before the House Commerce Committee Hearing "The National Broadband Plan: Deploying Quality Broadband Services to the Last Mile" (Apr. 21, 2010) (estimating that between 14 and 24 million people lack access to terrestrial broadband at home); National Broadband Plan at 136 (14 million lack access to infrastructure capable of delivering broadband services). *See generally* Omnibus Broadband Initiative, The Broadband Availability Gap (OBI Technical Paper No. 1) at 1-3, available at http://www.broadband.gov/plan/broadband-working-reports-technical-papers.html (last visited May 20, 2010).

[5] *See* Letter from Mel Blackwell, Schools and Libraries Division, USAC, to Sharon Gillett, Wireline Competition Bureau (dated Mar. 10, 2010), available at
(continued....)

nearly 75 percent of students eligible to receive free or reduced price school lunch will receive any funding for internal connections. In future years, in fact, it is likely that requests for telecommunications and internet access services will exceed the cap, with the result that no funding for internal connections will be available for any applicants. This NPRM seeks comment on how to provide stability and certainty for the funding of internal connections that are necessary to deliver higher bandwidth services to the classroom and how to expand access to funding for internal connections for schools and libraries serving impoverished populations. The NPRM seeks comment on indexing the funding cap to inflation, which would make additional funding available to support current and new services to deliver the full benefits of the Internet to all.

8. We also are taking other steps outside of the rulemaking process to make the E-rate program more user-friendly, working closely with the Universal Service Administrative Company (USAC), which administers the E-rate program under Commission direction. We soon will be seeking comment on revisions to our application forms. USAC is also significantly upgrading the quality of its online forms system.[6] The Bureau is also reviewing USAC's program integrity procedures to ensure that requests for information are targeted and not duplicative.

9. In sum, this NPRM seeks comment on a package of potential reforms to the E-rate program that could be implemented in funding year 2011 (July 1, 2011 – June 30, 2012). These proposed reforms include:

- streamlining the application and competitive bidding processes for telecommunications and internet access in an effort to further reduce the administrative burden on applicants, while at the same time maintaining appropriate safeguards to mitigate potential waste, fraud, and abuse;
- codifying the requirement developed in Commission precedent that competitive bidding processes be "fair and open" to enhance the Commission's ability to enforce its rules in cases involving waste, fraud and abuse;
- simplifying the way schools calculate their discounts and conforming the E-rate definition of "rural" to the Department of Education's definition;
- supporting 24/7 online learning by eliminating the current rule that requires schools to allocate the cost of wireless Internet access service between funded, in-school use and non-funded uses away from school premises;
- providing greater flexibility to recipients to choose the most cost-effective bandwidth solutions for their connectivity needs by allowing the leasing of low-cost fiber from municipalities and other entities that are not telecommunications carriers;
- expanding the reach of broadband in residential schools that serve populations facing unique challenges, such as Tribal schools or schools for children with physical, cognitive, or behavioral disabilities;

(Continued from previous page)
http://www.universalservice.org/_res/documents/sl/pdf/FY2010%20Demand%20Estimate%20Letter.pdf (last visited May 20, 2010); 47 C.F.R. § 54.507(a).

[6] USAC has outlined a timeline for the implementation of the upgrades, including replacing the online FCC Form 471 with one allowing users to copy data from the previous year and eventually putting all program forms online, including the FCC Form 500. *See* January 25, 2010 Minutes, Schools & Libraries Committee Meeting; available at http://www.usac.org/_res/documents/about/pdf/board-minutes/sl-committee/2010/012510-SL-Meeting-Minutes.pdf (last visited May 20, 2010).

- creating a new, predictable funding mechanism for internal connections so that more schools and libraries have the ability to use the most technologically advanced applications, including video streaming to the classroom, to provide superior learning opportunities;
- indexing the current $2.25 billion cap on E-rate disbursements to inflation to maintain the purchasing power of the current program and enable continued support for high speed broadband and internal connections in the future; and
- creating a process for schools and libraries to dispose of obsolete equipment without running afoul of the prohibition on reselling equipment and services purchased using E-rate funds.

Each of these proposals is explained further below. We encourage input from Tribal governments on all of these issues, and specifically ask whether there are any unique circumstances in Tribal lands that would necessitate a different approach.[7] Similarly, we request comment on whether there are any unique circumstances in insular areas that would necessitate a different approach.

II. STREAMLINING THE APPLICATION PROCESS

A. Background

10. Under the E-rate program, eligible schools and libraries may receive discounts for eligible services used for educational purposes.[8] To request funding, schools and libraries must follow an application process that includes developing a technology plan, seeking competitive bids, and filing application forms.

11. An applicant applying for services other than basic telecommunications services must first develop a technology plan.[9] The technology plan must include five elements, including a strategy for

[7] For the purposes of this NPRM, we define "Tribal lands" as any federally recognized Indian tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments. The term "Tribe" means any American Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village or Community which is acknowledged by the Federal government to have a government-to-government relationship with the United States and is eligible for the programs and services established by the United States. *See Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd 4078, 4080 (2000). Thus, "Tribal lands" includes American Indian Reservations and Trust Lands, Tribal Jurisdiction Statistical Areas, Tribal Designated Statistical Areas, and Alaska Native Village Statistical Areas, as well as the communities situated on such lands. This would also include the lands of Native entities receiving Federal acknowledgement or recognition in the future. Although Native Hawaiians are not currently members of federally-recognized Tribes, we also seek comment on whether there are any unique circumstances that would warrant an alternative approach in Native Hawaiian homelands.

[8] 47 C.F.R. §§ 54.502, 54.503.

[9] *See* 47 C.F.R. § 54.504; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9054, para. 529 (1997) (*Universal Service First Report and Order*) (subsequent history omitted). The Commission currently does not require a technology plan if the applicant is seeking discounts only for basic telecommunications services. *See Request for Review by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 18812, at para. 11 (2001). Basic telecommunications services include digital transmission services, paging services, telephone service, telephone service components, and other eligible telecommunications services. *See* USAC website, Schools and Libraries, Eligible Services List for Funding Year 2010, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-105A2.pdf (last visited May 20, 2010).

using telecommunications and information technology to improve education or library services.[10] To ensure that the technology plan is based on the reasonable needs and resources of the applicant and is consistent with the goals of the E-rate program, the Commission requires technology plans to be approved by either the applicant's state or another USAC-certified technology plan approver.[11] An applicant whose technology plan has not been approved when it files the FCC Form 470 must certify that it understands that its technology plan must be approved prior to the commencement of service.[12]

12. Next, the Commission's competitive bidding rules require an eligible school, library, or consortium that includes eligible schools and libraries to seek competitive bids for all services eligible for support.[13] The applicant must submit to USAC a completed FCC Form 470 setting forth, among other things, the services for which it seeks discounts. The applicant must describe the desired services with sufficient specificity to enable potential service providers to submit bids.[14] The applicant provides this description on its FCC Form 470 or indicates on the form that it has a Request for Proposal (RFP) available providing detail about the requested services.[15] The FCC Form 470 is then posted to USAC's website for all potential competing service providers to review.[16]

13. After submitting an FCC Form 470, the applicant must wait at least 28 days before making a commitment with its selected service providers.[17] The applicant must consider all submitted bids prior to entering into a contract and price must be the primary factor in selecting the most cost-effective proposal.[18] The Commission's competitive bidding requirements apply in addition to state and local competitive bidding requirements, and are not intended to preempt such state and local requirements.[19] Pursuant to section 54.504(c) of the Commission's rules, an applicant requesting support for eligible

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[10] 47 C.F.R. § 54.508(a).

[11] 47 C.F.R. § 54.508(d); *Universal Service First Report and Order*, 12 FCC at 9078, para. 574; *see also* USAC website, Schools and Libraries, Technology Plans, available at http://www.universalservice.org/sl/applicants/step02/ (last visited May 20, 2010).

[12] 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), 54.508(c); *see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15826-30, para. 56 (2004) (*Schools and Libraries Fifth Report and Order*). An applicant whose technology plan has not been approved when it files the FCC Form 471 must, once again, certify that it understands its technology plans must be approved prior to the commencement of service. 47 C.F.R. § 54.504(c)(1)(iv)-(v). Additionally, in order to comply with the requirements of the Protecting Children in the 21st Century Act, to be eligible for E-rate discounts for Internet access and internal connection services, schools and libraries that have computers with Internet access must certify that they have in place certain Internet safety policies and technology protection measures. *See* Protecting Children in the 21st Century Act, Pub. L. No. 110-385, Title II, 122 Stat. 4096 (2008).

[13] 47 C.F.R. §§ 54.504, 54.511(c).

[14] *Id.*

[15] *See* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (May 2003) (FCC Form 470); *see also* USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/ res/documents/sl/pdf/470.pdf (last visited May 20, 2010). The RFP must be available to all potential bidders for the duration of the bidding process. *Id.*

[16] 47 C.F.R. § 54.504(a).

[17] 47 C.F.R. § 54.504(b)-(c).

[18] 47 C.F.R. § 54.511(a); *see Request for Review by Ysleta Independent School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407 (2003) (*Ysleta Order*).

[19] 47 C.F.R. § 54.504(a).

products and services must sign a contract for eligible services prior to filing its FCC Form 471.[20] An applicant also must certify on the FCC Form 471 that it has entered into a service contract that complies with state and local contract laws.[21] Tariffed services and certain month-to-month services do not require a signed contract.[22]

14. After entering into a contract for eligible services, the applicant files an FCC Form 471 to request funding. The form specifies the services that have been ordered, the service providers with whom the applicant has entered into an agreement, the eligible discount rate, and an estimate of funds needed to cover the discounts to be given for eligible services.[23] The filing window for the FCC Form 471 is established by USAC each year and typically closes in early February preceding the start of the funding year.[24] An applicant must file a new FCC Form 471 each year.[25] A new FCC Form 470 is not required to be posted each funding year if the applicant is seeking discounts on services provided under a multi-year contract executed under an FCC Form 470 posted in a prior funding year.[26] USAC assigns a funding

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[20] 47 C.F.R. § 54.504(c). The instructions for the FCC Form 471 require an applicant to have a "signed contract" or a "legally binding agreement" with the service provider for all services ordered on the FCC Form 471. FCC Form 471 Instructions at 4; USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf (last visited May 20, 2010). State law governs the determination of whether a binding contract exists between parties. To the extent state contract law does not require two signatures and two dates for a valid contract, Commission rules do not impose such a requirement. We note that, in detailing document retention requirements, the Commission required both beneficiaries and service providers to retain executed contracts that are "signed and dated by both parties." *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15825, para. 48. We note that this language was not intended to establish a new rule regarding the validity of a contractual agreement. *See Requests for Waiver by Adams County School District 14, et al., Schools and Libraries Universal Service Support Mechanisms*, CC Docket No. 02-6, Order, 22 FCC Rcd 6019 (2007).

[21] 47 C.F.R. § 54.504(c)(1)(vi).

[22] *See* FCC Form 471 Instructions at 23; USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf (last visited May 20, 2010). An applicant taking service from a filed tariff is not required to have a binding contract because the service is offered by the service provider to all parties at set rates and conditions that are filed with the Commission or the relevant state public utility commission. If the services are month-to-month, an applicant may submit copies of standard monthly bills as proof, if required, that it has a binding, legal arrangement with a service provider. *See* FCC Form 471 Instructions at 19; USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf (last visited May 20, 2010). An applicant is instructed to indicate that such situations exist by filling in the abbreviation "MTM" in Item 15 of the FCC Form 471. *Id.*

[23] This form is used to request discounts on eligible services and contains the discount calculation worksheet and the discount funding request. The FCC Form 471 must be filed each time a school or library orders telecommunications services, Internet access, or internal connections. *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471); USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/471_FY05.pdf (last visited May 20, 2010); *see also* 47 C.F.R. § 54.504(c).

[24] 47 C.F.R. § 54.507(c); *see also* USAC website, Schools and Libraries Deadlines, available at http://www.usac.org/sl/tools/deadlines/default.aspx (last visited May 20, 2010) (USAC Schools and Libraries Deadlines website).

[25] 47 C.F.R. § 54.507(d).

[26] To be used in multiple years, the FCC Form 470 posted in the previous funding year must have indicated that the applicant was seeking to enter into a multi-year contract. *See* USAC website, Schools and Libraries, Contract Guidance, available at http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx (last visited May 20, 2010) (USAC Contract Guidance website); *see also* Instructions for Completing the Schools and Libraries (continued....)

request number (FRN) to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.

15. After USAC reviews the application, it informs the applicant whether funding has been granted, and if so, the amount that has been approved. Once the applicant informs USAC that it is receiving services, USAC accepts invoices from service providers and begins to disburse funds.

B. Discussion

16. In this section, we discuss several proposals designed to improve and simplify the current E-rate application process. It is the intent that the adoption of these proposals will result in greater E-rate participation and will reduce the costs associated with administering the E-rate program. To the extent we can minimize the potential for inadvertent errors that do not fundamentally threaten program integrity, we should reduce the number of appeals of funding decisions that consume resources at both USAC and the Commission, resulting in faster decisions on funding and greater certainty for both applicants and service providers. About 15 percent of appeals to the Commission involve issues relating to alleged non-compliance with technology plan and competitive bidding requirements.

17. Specifically, we propose to eliminate technology plan requirements for priority one applicants that otherwise are subject to state and local technology planning requirements. We also propose to eliminate the FCC Form 470 posting and the 28-day waiting period before applicants can enter into contracts for those priority one applicants that are subject to public procurement requirements. We propose to retain our current technology planning and competitive bidding requirements for applicants seeking priority two services. In order to provide greater clarity regarding our competitive bidding requirements for priority one and priority two services, we propose to codify a rule requiring all applicants to conduct competitive bidding processes that are fair and open. We also seek comment on other proposals that streamline the application process. For instance, we propose to significantly streamline the FCC Form 470 and 471 online application process and require that those forms be completed and submitted electronically. We also propose to revise our discount rules so that schools will calculate discounts on supported services by using the average discount rate for the entire school district rather than the weighted average for each school building. Finally, we propose to adopt a new definition of "rural area" for the purpose of determining whether an E-rate applicant qualifies for the rural discount.

1. Technology Plans

18. We propose to amend section 54.508 of our rules to eliminate E-rate technology plan requirements for priority one applicants that otherwise are subject to state and local technology planning requirements. We seek comment on this proposal.[27] The provision of priority one services (i.e., telecommunications services and Internet access) is fairly straightforward for many applicants and, therefore, a technology plan for these services may represent an unnecessarily complex and burdensome

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Universal Service Description of Services Requested and Certification Form (FCC Form 470), OMB 3060-0806 (October 2004) (FCC Form 470 Instructions) at 3-4; USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/ res/documents/sl/pdf/470i.pdf (last visited May 20, 2010). Section 54.507(e) of the Commission's rules states that "[i]f schools and libraries enter into long term contracts for eligible services, [USAC] shall only commit funds to cover the pro rata portion of such a long term contract scheduled to be delivered during the funding year for which universal service support is sought." 47 C.F.R. § 54.507(e); *see also Universal Service First Report and Order*, 12 FCC Rcd at 9062, para. 544.

[27] *See* Appendix A, 47 C.F.R. 54.508; ALA NBP Public Notice #15 Comments at 16-17 (stating that the Commission should not be involved in shaping the process of technology planning on a local, regional, or state level).

program requirement.[28] According to one commenter, the U.S. Department of Education and most, if not all, states already require technology planning, and therefore our requirement is largely duplicative.[29]

19. We recognize, however, that the selection of the optimal package of telecommunications and Internet access solutions can be more complicated for larger school districts that typically have a greater array of competitive options for their broadband connectivity. We seek comment on whether a separate E-rate mandated technology plan requirement remains useful for larger telecommunications and Internet access service priority one funding requests, even for those applicants that are subject to other state or local requirements. For example, should we retain the E-rate technology plan requirement for applicants that request more than a specified amount of funding for priority one services, such as $1 million.

20. We propose to retain the FCC technology plan requirement for all priority two service requests and seek comment on this proposal.[30] Priority two services and equipment are specifically tailored to the needs and requirements of the individual applicant. The FCC requirement for a detailed technology plan for internal connections therefore may continue to serve valuable purposes. They can help the school, school district, or library ensure that (i) it is requesting the appropriate amount of equipment necessary to satisfy network demands, (ii) it has taken into account any unique installation requirements, appropriate placement of facilities, and time demands, including possible disruption to the classroom or library services during installation, and (iii) it has considered and selected the most cost-effective implementation methods. We also seek comment on whether the current third-party approval process should be retained to the extent that we continue to require technology plans.

2. Competitive Bidding Process

21. *FCC Form 470*. We propose to simplify significantly the application process for priority one services, e.g., telecommunications services and Internet access services by adding section 54.510 to our rules.[31] Specifically, we propose to eliminate the requirement that applicants for priority one services file an FCC Form 470 and wait 28 days before signing a contract with their selected service provider, as long as those applicants are subject to public procurement requirements.[32] That is, for priority one services, an applicant that is subject to public procurement requirements would no longer be required to comply with section 54.504(b) of the Commission's rules.[33] Instead, the applicant would initiate the application

[28] *See, e.g.*, NEILSA Comprehensive Review NPRM Comments at 7 (explaining that developing a technology plan for priority one services is a waste of applicant time and energy); Wisconsin DPI Comprehensive Review NPRM Comments at 9 (explaining that use of the technology plan as a methodology to address waste, fraud, and abuse is ineffective and a misuse of the purpose to have a plan). We acknowledge that, in the *Schools and Libraries Fifth Report and Order*, the Commission retained the technology plan requirement for those applicants seeking Internet access, stating that certified plans are important to ensuring that applicants have carefully considered how to employ the service. *See Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15829, para. 62. We seek comment on whether increased use and familiarity with Internet access in the intervening six years makes this requirement unnecessary in today's environment.

[29] *See* SECA Comprehensive Review NPRM Comments at 59-61.

[30] *See* Appendix A, 47 C.F.R. 54.508; *but see* ALA Comprehensive Review NPRM Comments at 11-12 (stating that technology plans should be removed from all E-rate requirements).

[31] *See* Appendix A, 47 C.F.R. § 54.510; *see also* AASA & AESA NBP Public Notice #15 Comments at 7; SECA NBP Public Notice #15 Comments at 25-27; TETN NBP Public Notice #15 Comments at 4; WV DOE NBP Public Notice #15 Comments at 13-14.

[32] *See* Appendix A, 47 C.F.R. § 54.510. By "public," we mean state or local procurement regulations established by another governmental body that the applicant must follow to obtain goods and services.

[33] 47 C.F.R. § 54.504(b). In addition, it will no longer be necessary for USAC to send these applicants the FCC Form 470 Receipt Notification Letter. *See* 47 C.F.R. § 54.504(b)(4). The FCC Form 470 Receipt Notification (continued....)

process for priority one services by filing an FCC Form 471.[34] Applicants for priority one funding would still comply with their state and local procurement laws and processes when entering into E-rate eligible service contracts and with the Commission's requirement that the competitive bidding process be fair and open.[35] We emphasize that compliance with local and state procurement requirements would remain a condition of receiving E-rate funding.[36]

22. The elimination of the FCC Form 470 process and the 28-day waiting period for most priority one applicants could streamline the application process and make it easier for eligible institutions to receive support for essential priority one services such as telecommunications and Internet access services.[37] The complexity of the FCC Form 470 and its associated deadlines, category selections, multi-year contract and contract extension requirements, in and of themselves, have been the basis for a multitude of funding request denials by USAC.[38] Eliminating these requirements for priority one services could reduce the number of unnecessary application funding denials and reduce the administrative burden

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Letter informs program participants of the date on which (1) USAC received the applicant's FCC Form 470; (2) the FCC Form 470 was posted to USAC's website; and (3) the applicant may enter into a contract for eligible services. *See* USAC website, Schools and Libraries, FCC Form 470 Receipt Notification Letter, available at http://www.usac.org/sl/applicants/step03/form470-filing-receipt-notification-letter.aspx (last visited May 20, 2010).

[34] *See* Appendix A, 47 C.F.R. § 54.504 as proposed herein.

[35] By "local," we mean city, county or other form of public governmental subdivision. *See, e.g.*, *Schools and Libraries Third Report and Order*18 FCC Rcd at 26939, paras. 66 (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources); *MasterMind Internet Services*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033-34, paras. 10-11 (2000) (*MasterMind Order*) (finding that a competitive bidding process may be undermined when an applicant does not make a bona fide request for services).

[36] *See Universal Service First Report and Order,* 12 FCC Rcd at 9030, para. 482 (noting that Commission requirements do not "exempt eligible schools or libraries from compliance with any state or local procurement rules, such as competitive bidding specifications"); 47 C.F.R. § 54.504(a) (stating that the program's "competitive bidding requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements"). All applicants must certify on the FCC Form 471 application, under penalty of perjury, that they have complied with state or local procurement requirements and that they have complied with the Commission's FCC Form 470 posting and 28-day waiting period requirements. *See* FCC Form 471 at 5-6, available at http://www.usac.org/_res/documents/sl/pdf/471_FY05.pdf (last visited May 20, 2010).

[37] *See, e.g.*, NEILSA Comprehensive Review NRPM Comments at 5-7; Pennsylvania DOE Comprehensive Review NPRM Reply Comments at 3; SECA Comprehensive Review NRPM Comments at 18; ALA Comprehensive Review NRPM Comments at 11-13. As for the FCC Form 470, commenters argue that the form is cumbersome for applicants, which often deters them from applying for E-rate support. *See, e.g.*, ALA Comprehensive Review NRPM Comments at 13.

[38] *See, e.g.*, *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*) (funding denied due to applicant's failure to timely file a certification related to an FCC Form 470); *Request for Review of the Decision of the Universal Service Administrator by Aberdeen School District, et al.*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, FCC 07-63 (rel. May 8, 2007) (*Aberdeen School District Order*) (28-day rule violation); *Request for Review by Brunswick County Schools, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 20 FCC Rcd 8152 (2005) (28-day rule violation); *Request for Review by Our Lady of Victory Academy, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 19 FCC Rcd 2389 (2004) (untimely FCC Form 470 certification); *Request for Waiver by Olathe Public Library, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 19 FCC Rcd 2170 (2004) (FCC Form 470 not properly certified).

on program participants and USAC during the application process. Fewer unnecessary reviews should also result in faster processing of applications for priority one services.

23. Eliminating the FCC Form 470 and 28-day waiting period for priority one applications should not jeopardize the integrity of the fund in those situations where state and local governments already have prescribed procurement regulations in place that public schools and libraries must follow before entering into a contract for goods or services.[39] Purchasing thresholds also are set by state and local policymakers to ensure that bidding occurs for desired products and services and the most cost-effective bids are selected.[40] In addition, public schools and libraries are held accountable by state and local authorities for violating state and local procurement regulations.[41] Further, priority one services such as telecommunications and Internet access are more likely to be purchased as commodities based on volume and distance, as opposed to being priced by project. Commenters note there have been relatively few instances of alleged waste, fraud, or abuse associated with priority one requests.[42] Eliminating these requirements could free up USAC program resources now spent applying these rules to priority one service applications, and allow more resources for reviewing other areas in which there is a greater chance of waste, fraud, and abuse. Nevertheless, we invite comment as to whether this proposed change would inadvertently increase instances of waste, fraud, and abuse.

24. We propose that priority one applicants not subject to state or local bidding requirements – for example, private schools or some charter schools – continue to be required to follow the current E-rate competitive bidding process by posting an FCC Form 470 and waiting 28 days to select a service provider. We believe that this would be less burdensome than requiring those applicants to learn and follow state or local procurement requirements that do not actually apply to them. We also propose that an applicant located in a state that does not have procurement rules in place would still need to follow the Commission's existing Form 470 process to satisfy the E-rate competitive bidding requirement. We seek comment on these proposals.

25. We propose to retain, for the present time, the Commission's existing competitive bidding requirements as set forth in section 54.504 of the Commission's rules for applications requesting support for priority two services.[43] We can re-evaluate the need for these requirements after gaining practical experience from the outcome of the rule changes proposed here. Unlike most priority one services, priority two services are specifically tailored to the needs and requirements of the individual applicant. Configurations and prices can vary widely. In addition, on average, priority two requests generally

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[39] *See, e.g.*, West Virginia DOE Comprehensive Review NPRM Comments at 5; Chicago Public Schools Comprehensive Review NPRM Comments at 20; Miami-Dade County Public Schools Comprehensive Review NPRM Comments at 7.

[40] *See* ALA Comprehensive Review NPRM Comments at 13.

[41] *See* West Virginia Comprehensive Review NPRM Comments at 5; HITN Comprehensive Review NPRM Comments at 6.

[42] *See, e.g.*, SECA Comprehensive Review NRPM Comments at 20, Verizon Comprehensive Review NRPM Comments at 14. *See also USF Comprehensive Review NPRM*, 20 FCC Rcd at 11324, para. 37.

[43] Priority two services include internal connections products and services. *See* 47 C.F.R. § 54.506. Because of the different requirements for priority one and priority two services, USAC already recommends separate FCC Form 471s for priority one and priority two services. *See* Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (November 2004) (FCC Form 471 Instructions) at 5, available at http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf (last visited May 20, 2010).

involve greater amounts of money, per applicant, than priority one requests.[44] We seek comment on these proposals.

26. *Fair and Open Competitive Bidding Rule*. The Commission previously has addressed specific situations in which the fairness of an applicant's competitive bidding process has been compromised because of improper conduct by the applicant, service provider, or both.[45] Although the Commission has held in numerous orders that the competitive bidding process must be fair and open, there is currently no codified Commission rule specifically requiring that the competitive bidding process be conducted by an E-rate applicant in a fair and open manner.[46]

27. We therefore propose to amend 54.510 of our rules to codify the requirement that an applicant must conduct a fair and open bidding process when seeking bids for services eligible for E-rate support.[47] This rule will apply to all applicants for both priority one and priority two services – including applicants not filing FCC Forms 470 – and will apply in addition to state and local procurement requirements.[48] In addition, all applicants for both priority one and priority two must still comply with the Commission's rule requiring the careful consideration of all bids submitted, the selection of the most cost-effective bid for services or equipment, with price as the primary factor considered, and the selection of the service that is the most cost-effective means of meeting educational needs and technology plan goals.[49] Because we are proposing merely to codify an existing requirement, this should not increase the

[44] For example, the average request for telecommunications services in funding years 2006, 2007, and 2008 was $17,000, $18,000, and $19,000, respectively. The average request for priority two services was much larger. In funding years 2006, 2007, and 2008, for example, the average request for internal connections was $69,000, $76,000, and $97,000, respectively. *See also* Letter from Mel Blackwell, Vice President, Schools and Libraries Division, USAC, to Thomas J. Navin, Chief, Wireline Competition Bureau, Federal Communications Commission, available at http://www.universalservice.org/_res/documents/sl/pdf/2007-03-08-FY2007-Demand-Estimate.pdf (dated March 8, 2007) (estimating that demand for priority one requests for funding year 2007 was $1.79 billion, while demand for priority two requests was $1.9 billion) (last visited May 20, 2010).

[45] *See, e.g.*, *MasterMind Order*, 16 FCC Rcd 4028 (finding that the FCC Form 470 contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process); *Request for Review by Approach Learning and Assessment Center, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 22 FCC Rcd 5296, 5303, para. 19 (Wireline Comp. Bur. 2007) (*Approach Learning Order*) (finding that service provider participation suppressed fair and open competitive bidding); *Request for Review by Consorcio de Escuelas y Bibliotecas de Puerto Rico, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 13624, 13627, para. 8 (2002) (finding that a competitive bidding violation occurs when naming an "optional" contact person in Item 11 of the FCC Form 470 is also a representative of a service provider participating in the bidding process as a bidder).

[46] *See, e.g.*, *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26939, para. 66 (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources); *MasterMind Order*, 16 FCC Rcd at 4033-34, paras. 10-11 (finding that a competitive bidding process may be undermined when an applicant does not make a bona fide request for services); *Request for Review by Dickenson County Public Schools, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 17 FCC Rcd 15747, 15748, para. 3 (2002) (noting that an applicant impairs its ability to hold a fair and open competitive bidding process when the applicant's FCC Form 470 contact person is also a service provider participating in the bidding process as a bidder).

[47] *See* Appendix A, 47 C.F.R. §§ 54.510(a),(b).

[48] We therefore propose changing 47 C.F.R. § 54.504(a). *See* Appendix A.

[49] *See* 47 C.F.R. § 54.504(c)(1)(xi).

burden on E-rate applicants that are already following our competitive bidding rules. We propose to codify this requirement to emphasize that, even without a Commission-established competitive bidding process in some instances, the Commission still requires any and all competitive bidding processes in which E-rate applicants participate to be conducted in a fair and open manner. We seek comment on this proposal.

28. We are deeply concerned about practices that thwart Commission and other public competitive bidding policies and create conditions for waste of funds intended to promote access to telecommunications and information services. As the Commission has observed, competitive bidding is vital to limiting waste and assisting schools and libraries in receiving the best value for their limited funds.[50] Codifying the requirement for a fair and open bidding process will assist in our continuing effort to ensure that the fund is being utilized by applicants as Congress intended, without waste, fraud, or abuse, by deterring program participants from engaging in any conduct that undermines the Commission's competitive bidding process as well as any state or local procurement processes. We do not believe that the Commission's fair and open process requirement will conflict with state and local procurement laws.[51]

29. If we codify this rule, we propose to provide illustrative guidance of the types of conduct that would satisfy or violate the rule, which could be updated periodically based on experience gained through investigations involving waste, fraud and abuse. Generally speaking, all potential bidders and service providers should have access to the same information, they should be treated in the same manner throughout the procurement process, and they should not have additional information beyond the contents of an applicant's FCC Form 470 or RFP, if the applicant uses these documents to initiate bidding.[52] While the lists set forth below are not exhaustive, we propose that the following behaviors constitute inappropriate conduct during the competitive bidding process.[53] Moreover, we believe that any party with a potential financial interest in the E-rate program (for example, a subcontractor to a service provider) also could not engage in the prohibited activities described below:

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[50] *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 480; *see also Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5425-26, para. 185 (1997) (stating that the competitive bidding process is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates.).

[51] *See, e.g.*, West Virginia DOE Comprehensive Review NPRM Comments at 5-6.

[52] The Commission's rules do not require an applicant to develop an RFP. However, if the applicant does create an RFP or other document (*e.g.*, Request for Quotes, Scope or Work) that provides additional information regarding the desired services, it must indicate this fact in the appropriate place on the FCC Form 470. Moreover, an applicant that posts an RFP, in addition to posting an FCC Form 470, must post the RFP for at least 28 days before selecting a service provider or signing a contract. *See* 47 C.F.R. § 54.504; FCC Form 470 at 3, available at http://www.usac.org/_res/documents/sl/pdf/470.pdf (last visited May 20, 2010). This ensures that all service providers are aware of any additional bid information. It also ensures that the competitive bidding process is open and fair to all service providers. To the extent we adopt a requirement that would eliminate the need to post an FCC Form 470, applicants would be required to make an RFP available for whatever period of time is specified under state or local procurement requirements.

[53] These scenarios are intended to provide examples of actions that are known to be issues in the competitive bidding process or address questions that have been raised by participants.

- An applicant may not have a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information;[54]

- An applicant may not turn over its responsibility for ensuring a fair and open competitive bidding process to a service provider.[55]

- Applicant employees or board members may not serve on any board of any type of telecommunications, Internet access, or internal connections service provider that participates in the E-rate program in the same state;

- Service providers may not offer or provide gifts, including meals, to employees or board members of the applicant;[56]

- Applicant employees with any role in the selection of vendors may not have an ownership interest in a vendor that is seeking to provide products or services.

- Once a contract for products or services is signed by the applicant and service provider, a different service provider may not circumvent the bidding process and offer a new, lower price for the same products and services.

30. In addition, we seek comment on a proposal that applicants using the FCC Form 470 bidding process should also comply with the following requirements.[57]

- An applicant using the FCC Form 470 bidding process must describe the desired products and services with sufficient specificity to enable interested parties to submit responsive bids;[58]

- An applicant must identify the correct category of service on the FCC Form 470, *e.g.*, telecommunications, Internet access, or internal connections so that it can receive bidders for the services it seeks;[59]

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[54] *See, e.g., Approach Learning Order,* 22 FCC Rcd at 5302, para 16 (finding no competitive bidding violation where the named contact person on the FCC Form 470 was not an employee of the selected service provider or any other service provider).

[55] *See, e.g., Mastermind Order*, 16 FCC Rcd at 4033, paras. 10-11.

[56] *See, e.g.,* 47 C.F.R. §§ 1.3001, 1.3002. For example, prohibited gifts would include meals, tickets to sporting events, or trips. An applicant also must not violate its own ethical regulations relating to the acceptance of gifts from a vendor.

[57] Again, this list is not exhaustive.

[58] *See* Appendix A, 47 C.F.R. § 54.510(a). Schools and libraries should avoid making the descriptions on the FCC Form 470 that are (1) excessively specific such that some parties would effectively be excluded from placing bids, or (2) overly broad such that some parties would not know the products and services for which they would be submitting bids. *See, e.g., Ysleta Order*, 18 FCC Rcd at 26418-26420, paras. 24-28 (stating that an FCC Form 470 that lists virtually all E-rate eligible products and services violates the Commission's competitive bidding requirements). If an applicant intends to develop and release an RFP, the RFP should provide potential bidders with specific information about the desired services and functions. The applicant should also provide at least a general description of the desired services and functions on its FCC Form 470. *See* FCC Form 470 Instructions at 11-13, available at http://www.usac.org/_res/documents/sl/pdf/470i.pdf (last visited May 20, 2010). Any RFP must be made available to all potential bidders for the duration of the bidding process. *See* FCC Form 470 at 3, available at http://www.usac.org/_res/documents/sl/pdf/470.pdf (last visited May 20, 2010).

- Only an applicant or an authorized representative of the applicant can prepare, sign, and submit the FCC Form 470 and certification;[60]

- An applicant cannot list a service provider representative as the FCC Form 470 contact person and allow that service provider to participate in the competitive bidding process;[61]

- A service provider may not help an applicant prepare the FCC Form 470 or participate in the bid evaluation or vendor selection process in any way;[62]

- A service provider may provide information to an applicant about products or services – including demonstrations – before the applicant posts the FCC Form 470, but not during the bid selection process.

31. We reiterate that these lists do not include every possible scenario in which we would find an applicant in violation of our competitive bidding rules. We seek comment on whether these proposed requirements and examples are appropriate and whether there are others we should specifically adopt as part of a codified rule to provide guidance to program participants.

3. Application Process Streamlining

32. We note that the Commission is currently seeking comment on significantly streamlined FCC Forms 470 and 471 for funding year 2011.[63] Additionally, we are working with USAC in developing an improved online system that provides applicants with the tools and access to data necessary to participate more effectively and efficiently in the program. All forms should be available for online submission, and applicants should be able to upload requested information electronically. Applicants also should be able to save, retrieve, and edit previously filed applications and use these forms as the basis for future funding requests, thereby improving the efficiency of submission and processing of applications. We seek feedback from all interested parties on these planned user enhancements.

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[59] *See, e.g., Request for Review by Aberdeen School District No. 5, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-327601, CC Docket No. 96-45, 19 FCC Rcd 22910 (2004) (finding that the applicant violated the Commission's competitive bidding rules by failing to list its funding request on the FCC Forms 470 and 471consistently).

[60] *See* Appendix A, 47 C.F.R. § 54.510(a); *see also Approach Learning Order*, 22 FCC Rcd 5296 (concluding that the Commission's competitive bidding rules were violated because there was a connection between the contact person listed on the FCC Form 470 and the selected service provider).

[61] *Approach Learning Order*, 22 FCC Rcd at 4032, para. 9 (stating that "to the extent a [service provider] employee was listed as the contact person on the FCC Form 470 that initiated a competitive bidding process in which [the service provider] participated, such Forms 470 were defective and violated our competitive bidding requirements. In the absence of valid Forms 470, the requests for support were properly denied.").

[62] *See* Appendix A, 47 C.F.R. § 54.510(a). *See, e.g., Approach Learning Order*, 22 FCC Rcd at 5303-04, para. 19 (finding competitive bidding violation where there was a connection between the contact person on the FCC Form 470 and the service provider). An applicant should note that USAC will investigate the appearance of impropriety. For example, an FCC Form 470 that is filed from a service provider's computer or mailed from a service provider's office would seem to indicate that the service provider assisted the applicant in the preparation of the form.

[63] Federal Register publication for the 60-day notice of revisions to FCC Forms 470 and 471, OMB Control No. 3060-0806, is pending.

33. Because these forms and systems upgrades will dramatically improve the online experience for applicants, we propose to require all applicants to file their FCC Forms 470 and 471 electronically.[64] We believe that the electronic submission of these forms will improve the efficiency of submitting and processing applications. It will also save administrative costs as USAC will not have to enter data into its electronic system from paper submissions, which will free up additional funding for supported services. Electronic completion and submission also would likely result in fewer errors on the form. We seek comment on this proposal.

4. Discount Matrix Streamlining

34. *Discount calculation*. We propose to revise our discount rules so that schools will calculate discounts on supported services by using the average discount rate for the entire school district rather than the weighted average for each school building.[65] Currently, school districts, library systems, or other billed entities are required to calculate discounts for services that are shared by two or more of their schools, libraries, or consortia members by calculating an average based on the discounts of all member schools and libraries.[66] School districts, library systems, or other billed entities are required to ensure that, for each year in which an eligible school or library is included for purposes of calculating the aggregate discount rate, that eligible school or library receives a proportionate share of the shared services for which support is sought.[67] For schools, the average discount is the weighted average of the applicable discount of all schools sharing a portion of the shared services, with the weighting based on the number of students in each school.[68] For libraries, the average discount is a simple average of the applicable discounts to which the libraries sharing a portion of the shared services are entitled.[69]

35. We agree with E-rate Provider Services (EPS) that calculating discounts by individual school adds a significant level of complexity to the application process, as the discounts must be calculated separately by school and checked individually by USAC.[70] Accordingly, we propose to revise section 54.505(b)(4) of our rules to require applicants to: (1) calculate a single discount percentage rate for the entire school district by dividing the total number of students eligible for the National School Lunch Program[71] by the total number of students in the district; and (2) then compare that single figure against the discount matrix to determine the school district's discount for priority one and priority two services.[72] All schools and libraries within that school district would then receive the same discount rate. We seek comment on our proposal. We also seek comment on whether there should be a similar requirement for library systems and how this proposed rule would affect consortium applications.

36. This proposed discount percentage rate calculation could streamline the application process by simplifying the way in which schools compute their discount percentage rate and reduce the administrative burden on USAC by no longer requiring USAC to verify each individual school's discount

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[64] *See* EdLiNC NBP Public Notice #15 Comments at 5-6; SECA NBP Public Notice #15 Comments at 19; Texas State Library NBP Public Notice #15 Comments at 1.

[65] *See* Appendix A, 47 C.F.R. § 54.505.

[66] *See* 47 C.F.R. § 54.505(b)(4) (2009).

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] EPS NBP Public Notice #15 Comments at 5-6.

[71] *See infra* para. 60 in which the NSLP is discussed further.

[72] *See* Appendix A; 47 C.F.R. § 54.505.

percentage rate.[73] Additionally, it could significantly reduce the amount of information necessary for block 4 of the FCC Form 471 application.[74] This proposal could also eliminate applicants' submission of multiple FCC Form 471 applications at different discount levels. Moreover, it could reduce the incentive for districts to purchase priority two equipment at a 90 percent discount rate and transfer it after three years to a school with a lower discount rate.[75] We also seek comment on other ways to accomplish these goals. We also seek comment on how to determine if a school district can receive the additional discount available for some applicants located in rural areas. Currently, the urban/rural designation is based on the physical address of each individual school or library. Some applicants have a mixture of urban and rural entities on the same application. Should these districts be considered urban? Should their urban/rural status depend on the number of entities within the district that fall within each category?

37. *Rural Definition*. We propose to adopt a new definition of "rural area" for the purpose of determining whether an E-rate applicant qualifies for the rural discount. A school's E-rate discount level is determined in part by whether it is classified as urban or rural.[76] In some discount bands, schools and libraries in rural areas receive 5 percent to 10 percent more in discounts than those schools and libraries in urban areas.[77] We look at this proposed change with the recognition that the reason certain discounts are provided to schools and libraries located in rural areas is because those schools and libraries sometimes face significant challenges due to their remote location. As we seek comment on this proposed change in definition, it is not with the intent to reduce discounts to certain rural schools but rather to ensure that the funds are targeted appropriately.

38. In 1997, the Commission adopted for the E-rate program the definition of "rural area" used by the U.S. Department of Health and Human Service's Office of Rural Health Care Policy (ORHP).[78] Under ORHP's definition, an area is rural if it is not located in a county within a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget (OMB), or if it is specifically identified as "rural" in the Goldsmith Modification to Census data.[79] In the 2003 *Schools and Libraries Third Report and Order*, the Commission sought comment on a new definition of "rural area."[80] At that time, the Commission commented that a new definition was necessary because ORHP was no longer using the definition adopted by the Commission and had not updated the Goldsmith Modification to the 2000 Census data.[81]

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[73] *See* EPS NBP Public Notice #15 Comments at 6 (stating that this proposed approach condenses more than 1,000 schools in New York City to a single discount rate).

[74] See FCC Form 471, Block 4 (providing the discount calculation worksheet for schools, libraries, and consortia). *See also* USAC Website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf (last visited May 20, 2010).

[75] *Schools and Libraries Third Report and Order*, 18 FCC Rcd 26912 at 26923-24, paras. 26-28; 47 C.F.R. § 54.513(c).

[76] 47 C.F.R. § 54.505(b)(3).

[77] 47 C.F.R. § 54.505(b)(3)(c).

[78] *See Universal Service First Report and Order*, 12 FCC Rcd at 9042, para. 504.

[79] 47 C.F.R. § 54.505(b)(3).

[80] *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26939-41, paras. 67-69.

[81] *Id.* at para. 67. ORHP subsequently updated the Goldsmith Modification to the 2000 Census data, and has also developed the Rural Urban Commuting Area (RUCA) code system for designating rural areas eligible for rural health grants.

39. We now propose that, for E-rate purposes, an area will be considered rural based on the methodology and locale codes used by the U.S. Department of Education's National Center for Education Statistics (NCES), also known as urban-centric locale codes.[82] We propose that any school or library that is within a territory that is classified as "town-distant," "town-remote," "rural-distant," or "rural-remote" by an NCES urban-centric locale code will be considered rural for purposes of calculating its E-rate discount level. We propose revising section 54.505(b)(3) and 54.5 of our rules to reflect this approach.[83]

40. First, it is reasonable for the E-rate program, which benefits schools and libraries, to use the Department of Education's definition because it is specifically targeted to schools.[84] By contrast, the current ORHP definition defines rural areas for rural health grant purposes only.[85] Second, commenters have noted that the urban-centric locale codes pinpoint more precisely whether a school is located in a rural area.[86] Rather than determining whether the school's county or census tract is located in a rural area under the ORHP definition, the urban-centric locale codes determine whether a particular address is rural based on its proximity to metropolitan areas and on population size and density.[87] The locale codes can be more specific because they are based solely on settlement patterns and are not constrained by political or geographic boundaries such as census tracts.[88] Third, one of the reasons proffered by the Commission for selecting its original definition of "rural area" – that it was less burdensome to schools and libraries and that the information was readily available to the public – applies to the new definition as well.[89] In particular, it should be administratively straightforward for a school to discover its categorization, because the Department of Education's website has the coding system broken down by state, and the information is readily available.[90] We seek comment on this proposal.

III. PROVIDING GREATER FLEXIBILITY TO SELECT BROADBAND SERVICES

A. Background

41. Section 254 of the Communications Act of 1934, as amended (the Act), gives the Commission the authority to designate "telecommunications services" and certain additional services eligible for support under the E-rate program.[91] The Commission annually issues a list of services and

[82] *See* U.S. Dept. of Education website, National Center for Education Statistics, available at http://nces.ed.gov/ccd/rural_locales.asp (last visited May 20, 2010) (Identification or Rural Locales).

[83] *See* Appendix A and 47 C.F.R. §§ 54.5, 54.505(b)(3).

[84] *See* Identification or Rural Locales.

[85] *See* U.S. Dept. of Health and Human Services website, Office of Rural Health Policy, available at http://ruralhealth.hrsa.gov/funding/eligibilitytestv2.asp (last visited May 20, 2010).

[86] *See, e.g.,* AASA & AESA Second FNPRM Comments at 6; EdLiNC Second FNPRM Comments at 6-7; Rural School and Community Trust Second FNPRM Comments at 2-3..

[87] *See* U.S. Dept. of Education website, National Center for Education Statistics, available at http://nces.ed.gov/ccd/rural_locales.asp#justification (last visited May 18, 2010) (Justification for New Classificatory Scheme Locale Codes).

[88] *Id.*

[89] *See Universal Service First Report and Order*, 12 FCC Rcd at 9042-43, paras. 504-506. The Commission also adopted the definition in the *Universal Service First Report and Order* because it was consistent with the rural definition adopted for the rural health care support mechanism. *Id.* at 9042-43, para. 505. The Commission rejected alternatives as likely to be more administratively burdensome. *Id.* at 9043, para. 506.

[90] *See* AASA & AESA Second FNPRM Comments at 5; Rural School and Community Trust Second FNPRM Comments at 4.

[91] 47 U.S.C. § 254(c)(1), (c)(3), (h)(2)(A).

products eligible to receive discounts under the E-rate program, known as the Eligible Services List (ESL).[92]

42. Applicants can receive E-rate support for any services selected from the ESL. In addition to determining if requested services are eligible, schools and libraries must use the services for "educational purposes."[93] In the *Schools and Libraries Second Report and Order*, the Commission determined that activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as "educational purposes."[94] The Commission adopted a presumption that, under this standard, reasonable requests for any supported service – over any technology platform – to be used by any student, library patron, or school or library staff member while in a library, classroom, or on school or library property shall be eligible for discounts.[95] Moreover, the Commission concluded that, in certain limited instances, the use of services off school or library property would also be integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, would be considered as an "educational purpose".[96]

43. The National Broadband Plan recommended that the Commission review the eligibility of some services to improve the efficiency of the E-rate program.[97] First, the NBP recommended that the E-rate program "support online learning by providing wireless connectivity to portable devices so students can engage in learning while not at school."[98] Second, the NBP recommended that the Commission give schools and libraries more flexibility to purchase the lowest-cost broadband solutions.[99] That recommendation suggested allowing schools and libraries the ability to lease or purchase dark fiber, among other options.[100] The NBP also recommended that federal and state policies should facilitate the "use of state, regional and local networks when that is the most cost-efficient solution for anchor institutions to meet the connectivity needs."[101]

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[92] 47 C.F.R. § 54.522. The ESL currently is divided into five main categories – telecommunications services, Internet access, internal connections, basic maintenance of internal connections, and miscellaneous. *See, e.g.,* Eligible Services List, Schools and Libraries Support Mechanism for Funding Year 2010, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-105A2.pdf (last visited May 20, 2010) (2010 ESL).

[93] 47 U.S.C. § 254(h)(1)(B).

[94] *See Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, para. 17 (2003) (*Schools and Libraries Second Report and Order*); 47 C.F.R. § 54.500(b).

[95] *Schools and Libraries Second Report and Order, 18 FCC Rcd.* at 9208-9209, para. 19.

[96] *Id.* The Commission provided the following examples of off-site activities that would be considered integral, immediate, and proximate to the education of students or the provision of library services to library patrons: a school bus driver's use of wireless telecommunications services while delivering children to and from school, a library staff person's use of wireless telecommunications service on a library's mobile library unit van, and the use by teachers or other school staff of wireless telecommunications service while accompanying students on a field trip or sporting event. *Id.* at para. 19, n. 29.

[97] National Broadband Plan at 235-240.

[98] *Id.* at 239 (NBP Recommendation 11.23).

[99] *Id.* at 237 (NBP Recommendation 11.17).

[100] *Id.*

[101] *Id.* at 153 (NBP Recommendation 8.20).

B. Discussion

44. We propose to support wireless Internet access service even when the portable device is used off school property, provide greater flexibility to use low-cost fiber for broadband connectivity, and expand access to broadband for students who live at their schools due to geographic challenges or in order to receive specialized instruction. Each of these proposals is described in further detail below. We also seek comment on additional ways in which the Commission can better allocate E-rate funding to support educational purposes more directly and to more effectively target our funding to broadband services.

1. Wireless Services Outside of School

45. We propose to adopt the National Broadband Plan recommendation to provide full E-rate support for wireless Internet access service used with a portable learning devices that are used off premises.[102] We seek comment on this proposal. Currently, the E-rate program supports wireless Internet access on school grounds.[103] If a device that provides wireless Internet access service, such as a laptop, is taken off school grounds, however, applicants are required to cost-allocate the dollar amount of support for the time that the device is not at school.[104] If that same device is left at school all of the time, the program would pay 100 percent of the applicant's non-discount share. As such, our rules prevent students from fully utilizing learning opportunities that the devices can provide in the home.

46. Advances in technology have enabled students to continue to learn well after the school bell rings and from virtually anywhere. As noted in the NBP, "Online educational systems are rapidly taking learning outside the classroom, creating a potential situation where students with access to broadband at home will have an even greater advantage over those students who can only access these resources at their public schools and libraries."[105] We propose to modify our rules so that we can lessen the digital divide between those who are fortunate enough to subscribe to broadband at home and those who do not.

47. Recent data demonstrates that the widespread availability of wireless laptop computing for students is linked to improved educational outcomes. For example, the Maine Learning and Technology Initiative (MLTI) provided a laptop to every seventh- and eighth-grade student in the state as part of its mission to transform teaching and learning in Maine's public schools.[106] A study of the MLTI conducted

[102] National Broadband Plan at 239 (NBP Recommendation 11.23).

[103] *See* 2010 ESL at 8.

[104] *See* USAC website, Schools and Libraries, Step 6: Cost Allocation Guidelines for Products and Services, available at http://www.usac.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx (last visited May 20, 2010); *see also* 2010 ESL at 17 (homes or other non-school or non-library sites are provided as examples of ineligible locations) and 25 (explanation of cost allocation).

[105] National Broadband Plan at 254.

[106] *See* The Maine Learning With Laptops Studies, http://www.mcmel.org/MLLS/ (last visited May 20, 2010). The Maine Learning with Laptop Studies project (MLLS) is a small group of educators, educational technologists, and scholars producing research, documentation, evaluation, and advocacy of one laptop to one student (1-to-1) learning with technology initiatives. Also, the California Emerging Technology Fund (CETF) and The Children's Partnership in California launched the School2Home initiative. The initiative is a statewide program to close the achievement gap and the digital divide by integrating the use of laptop computers and broadband technology into teaching and learning at 539 low-performing middle schools in California. As part of this program, portable laptop computers are used and home broadband connectivity is emphasized so that homework and Internet research can be performed at home as well as school. *See* Testimony of Rachelle Chong, Special Counsel, Advanced Information and Communications Technology, State of California, May 13, 2010, available at http://energycommerce.house.gov/index.php?option=com_content&view=article&id=2001:hearing-on-qthe-national-broadband-plan-promoting-broadband-adoptionq&catid=134:subcommittee-on-communications-technology-and-the-internet&Itemid=74 (last visited May 20, 2010).

by the Maine Education Policy Research Institute at the University of Southern Maine found that eighth-grade student writing, as measured by the Maine Educational Assessment (MEA), the state's standardized assessment, improved significantly after laptop implementation in middle schools.[107] Laptop initiatives have been deployed at the regional and district level as well. In Henrico County in Richmond, Virginia, a three-year study released in 2008, revealed that 1-to-1 laptop use was associated with higher test scores in biology, history, chemistry, reading and Earth science.[108] Both of these laptop programs have incorporated student connectivity to the Internet in home and school environments.

48. We emphasize that this proposal only relates to support for Internet access monthly service, and not the purchase of devices or equipment, such as mobile broadband cards, smartphones, or e-books. This proposal, therefore, would allow E-rate funding for Internet access services, which are already eligible, to be used to facilitate learning both on and off premises. It also would permit funding for connectivity that schools may increasingly utilize in the future to provide customized educational content to students.

49. We note that that the requirements of the Children's Internet Protection Act and the Protecting Children in the 21st Century Act still would apply to services being used off-premises.[109] In addition, consistent with the Act, the Commission requires schools and libraries to certify, among other things, that services obtained through discounts from the E-rate program will be used solely for educational purposes.[110] We recognize that usage in the school or library typically occurs under the supervision of school or library personnel. We seek comment on what other safeguards, if any, we should consider imposing to mitigate against the risk of non-educational use at home that is not directly supervised by the recipient of funding.

50. We seek comment on whether recipients of funding should be required to have policies and procedures in place to mitigate the risk that E-rate funded wireless connectivity is not used for educational uses off-premises. For instance, should recipients be required to have policies relating to acceptable use off-premises? We seek comment on whether the residents of the households of students may use E-rate funded connectivity (so long as it is for educational purposes) because, for example, such use may be fundamental to promoting digital literacy skills for both the students and the other household members who support the child's educational experience, and whether such use is consistent with the educational purposes requirement of the statute. In our recent decision to permit schools to make E-rate funded

[107] *See* Maine's Middle School Laptop Program: Creating Better Writers, by David Silvernail and Aaron Gritter, October 2007, available at http://www.usm.maine.edu/cepare/Impact_on_Student_Writing_Brief.pdf at 9 (last visited May 20, 2010).

[108] *See* Documenting Outcomes from Henrico County Public School's Laptop Computing Initiative: 2005-06 through 2007-08, Final Technical Report, Monday, November 24, 2008, by Dale Mann, Ph.D., Managing Director, Interactive, Inc., available at http://www.henrico.k12.va.us/pdf/DataAndReports/technicalreport112408.pdf (last visited May 20, 2010). Henrico's laptop initiative began in 2001, providing laptops to each middle and high-school student in county schools. *See Report Praises Henrico Schools' Laptop Initiative*, Lisa Crutchfield, Richmond Times-Dispatch, published Nov. 20, 2008, available at http://www2.timesdispatch.com/rtd/news/local/education/article/LAPS29_20081028-213116/112465 (last visited May 20, 2010).

[109] Thus, laptops being used off-premises would need to be CIPA-compliant. Congress included the Children's Internet Protection Act (CIPA) as part of the Consolidated Appropriations Act, 2001, Pub. L. No. 106-554 §§ 1701 *et seq*. Section 1721 of CIPA amends section 254(h) of the Act. 47 U.S.C § 254(h); Protecting Children in the 21st Century Act, Pub. L. No. 110-385, Title II, 122 Stat. 4096 (2008). *See also* 47 C.F.R. § 54.520. The Council of Great City School notes that filtering and CIPA-compliant access can be provided outside of school buildings. Council of Great City Schools NBP Public Notice #15 Comments at 3.

[110] 47 U.S.C. § 254 (h)(1)(B); 47 C.F.R. § 54.504(b)(2)(v); 47 C.F.R. § 54.504(c)(1)(vii).

connections available to the community,[111] in order to reduce the likelihood of waste, fraud, and abuse, and to guard against potential additional costs being imposed on the E-rate program, we set forth certain conditions regarding other uses of school facilities that choose to allow the community to use their E-rate funded services.[112] Among other things, the Commission required that: (1) schools participating in the E-rate program not be permitted to request funding for more services than are necessary for educational purposes; and (2) consistent with the Act, a school's discounted services or network capacity may not be "sold, resold, or transferred by such user in consideration for money or any other thing of value."[113] Should similar or other requirements be imposed if we expand support for wireless connectivity off-premises to guard against waste, fraud, and abuse?

51. We seek comment on whether providing E-rate funds for wireless Internet access to portable devices in offsite locations would result in increased demand for wireless connectivity in the E-rate program, and if so, how that would affect other requests for E-rate funding, given the overall annual funding cap. According to one 2008 survey, more than 27 percent of school districts were implementing in at least one grade or on pilot basis some form of one-on-one computing program with Internet connected wireless devices for use in the classroom and at home.[114] We seek comment on how funding for wireless connectivity might increase over the next several years if we were to adopt this rule. If commenters believe that this rule change would limit the ability of eligible users to obtain other services, we seek comment on whether the Commission should limit wireless Internet access for mobile devices on a trial basis by, for example, capping the number of monthly service contracts per school district or some other method of allocating funding. We seek comment on whether we should implement this proposal on an interim basis for funding year 2011 and subsequently evaluate how to implement a permanent rule based on that experience.

2. Expanded Access to Low-Cost Fiber

52. We seek comment on permitting recipients to receive support for the lease of fiber, even if unlit, from third parties that are not telecommunications carriers, such as municipalities and other community or anchor institutions, to allow schools and libraries more flexibility to select the most cost-effective broadband solutions.[115] Dark fiber was conditionally eligible for E-rate discounts prior to Funding Year 2004.[116] In the *Schools and Libraries Third Report and Order*, released in 2003, however,

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[111] *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 1740 (2010) (*E-rate Community Use Order and NPRM*).

[112] *See id.* at paras. 11-13.

[113] *Id.;* 47 U.S.C. § 254 (h)(3).

[114] Summary of 2008 America's Digital Schools survey, available at http://www.fetc.org/FETC2009/Documents/Hayes.pdf (last visited May 20, 2010).

[115] The Commission first sought comment on whether dark fiber should be eligible for E-rate funding in the *Schools and Libraries Third Report and Order. See Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26934, paras. 76-77. On July 31, 2008, the Commission released a notice of proposed rulemaking which, among other things, asked commenters to refresh the record on whether dark fiber should be an eligible service. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, 23 FCC Rcd 11703, 11710-11, para. 17 (2008).

[116] The ESL for funding year 2003 stated that "[s]ervice providers can lease fiber capacity that does not include modulating electronics to schools and libraries, if the applicant provides the electronics to modulate the fiber." *See* USAC website, Schools and Libraries, Eligible Services List of the Schools and Libraries Universal Support Mechanism, available at http://www.universalservice.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList_101802.pdf, at 33 (last visited May 20, 2010) (Funding Year 2003 ESL)

the Commission found that, pending resolution of the regulatory status of dark fiber, it would not be eligible for E-rate discounts.[117]

53. Fiber networks are used by both the public sector and governmental agencies for broadband Internet access today. A number of commenters in the record of the National Broadband Plan asserted that dark fiber may be a more cost-effective option for applicants – and therefore the program – in many instances. Several commenters expressed support for giving recipients more flexibility to use dark fiber as part of their broadband solutions.[118] In order to provide greater flexibility to E-rate participants to reduce their overall cost of broadband and increase their bandwidth, we now propose to make leased dark fiber from any source eligible for funding as a priority one service.

54. We propose to add leased dark fiber to the ESL, pursuant to section 254(h)(2)(A) of the Act. We propose to add leased fiber with the same conditions as when it was on the ESL previously.[119] That is, applicants would be able to lease fiber capacity that does not include modulating electronics, as long as they provide the electronics.[120] In addition, the leased fiber must be used immediately.[121] Under such an approach, applicants would, for instance, be able to lease dark fiber that may be owned by state, regional or local governmental entities, when that is the most cost-effective solution to their connectivity needs. We also seek comment on any other operational issues that may arise with the addition of leased fiber, such as dark fiber, to the ESL.

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[117] *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26943-44, paras. 76-77. The ESL released for funding year 2004 stated that "[t]he FCC has not resolved whether unlit dark fiber is a telecommunications service. Pending resolution of this issue, it is not eligible for funding." *See* USAC website, Schools and Libraries, Eligible Services List of the Schools and Libraries Universal Support Mechanism, available at http://www.universalservice.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList_101003.pdf, at 30 (last visited May 20, 2010). *See Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994) (finding that the Commission had failed to provide a sufficient analysis for concluding that dark fiber service was a common carrier service and suspending the Commission order pending proceedings on remand). In 2008, the Commission released an order on remand finding inadequate evidence in the record to conclude that certain dark fiber arrangements constituted common carriage. *Local Exchange Carriers' Individual Case Basis DS3 Service Offerings*, CC Docket No. 88-166, Order on Remand, 23 FCC Rcd 569 (2008) (*Dark Fiber Remand Order*). As a consequence, the Commission vacated prior Commission orders that subjected Bell operating companies' dark fiber offerings to common carrier regulation. *Id.* at 573, para. 8. In other proceedings, dark fiber has been treated differently depending on context. *See* Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, February 2010, at 29, available at http://www.universalservice.org/_res/documents/fund-administration/pdf/forms/form-499A-fy2010-instructions.pdf (last visited May 20, 2010) (instructing universal service contributors not to include revenues for dark fiber services as telecommunications revenues). *But see Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd 15435, 15473-74, paras. 74-75 and n.189 (2001) (declaring that a dark fiber service with respect to cross-connects is a common carrier service under the second prong of *NARUC II*); *see National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601,608-609 (D.C. Cir. 1976) (*NARUC II*).

[118] The Council of Great City Schools observed, "The rapid growth and increased availability of fiber networks in recent years has the potential to help urban districts develop greater capabilities to offer high-quality and modern instructional services to inner-city students, and the broadband access the Commission is seeking," noting the flexibility to lease dark fiber from providers and own the related equipment would permit "the most cost-effective pricing" for schools and libraries. Council of Great City Schools NBP Public Notice #15 Comments at 5. The state of Wisconsin said E-rate should prefer the most cost-effective solution. Wisconsin Department of Public Instruction NBP Public Notice #15 Comments at 3.

[119] 47 U.S.C. § 254(h)(2)(A).

[120] *See Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26944, n.156; Funding Year 2003 ESL.

[121] *See* Council of Great City Schools NBP Public Notice #15 Comments at 5.

3. Expanding Access for Residential Schools that Serve Unique Populations

55. We seek comment on whether we should allow schools that serve unique populations to receive E-rate funding for priority one and priority two services delivered to residential areas. In the *Schools and Libraries Second Report and Order*, recognizing that the technology needs of participants in the E-rate program are complex and unique to each participant, the Commission clarified the scope of educational purposes.[122] Specifically, the Commission defined educational purposes as "[A]ctivities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as "educational purposes."[123] The Commission concluded that activities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services to library patrons.[124] The Commission thus concluded that in certain limited instances, the use of telecommunications services offsite would be considered integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, would be considered to be an educational purpose.[125]

56. In the *Universal Service First Report and Order*, the Commission limited the eligibility of internal connections by limiting support for a service "only if it is necessary to transport information all the way to individual classrooms."[126] The Commission subsequently elaborated on this policy in the *Universal Service Fourth Order on Reconsideration*, explaining that E-rate support is "not available for internal connections in non-instructional buildings used by a school district unless those internal connections are essential for the effective transport of information within instructional buildings."[127] Consistent with these orders, funding for internal connections to dormitory rooms, study centers within dormitories, teachers' centers, and residential programs have been found to be ineligible for support under the E-rate program.[128]

57. We recognize, however, that this rule does not take into account the special circumstances of institutions that provide residential living arrangements to meet the unique challenges of certain student

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[122] *See Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

[123] *Id.*; 47 C.F.R. § 54.500(b).

[124] 47 C.F.R. § 54.500(b).

[125] *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-09, para. 19.

[126] *See Universal Service First Report and Order* 12 FCC Rcd at 9017-18, 9021, para. 459; *see also Federal-State Joint Board on Universal Service,* CC Docket Nos. 96-45, 96- 262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, 5440 at para. 209 (1997) (*Universal Service Fourth Order on Reconsideration*).

[127] *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5440, para. 210; *see also* 47 C.F.R. § 54.506(a).

[128] *See Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612, paras. 6-7 (Com. Car. Bur. 2000) (*Anderson School Order*) (finding that study centers in dormitories are neither traditional classrooms nor computer learning centers, and that the dormitory buildings at issue were physically separated from the classrooms and not necessary for the effective transport of information to the classrooms); *Request for Review of the Decision of the Universal Service Administrator by New York City Board of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-200310, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 8578, 8581, para. 9 (Wireline Comp. Bur. 2002) (denying funding for a teachers' center, despite its occasional use for student classroom instruction); *See Requests for Review of the Decisions of the Universal Service Administrator by Eagle Hill School, et al.*, File No. SLD-84941, et al., 24 FCC Rcd 12714 (Wireline Comp. Bur. 2009) (denying funding to dormitory and residential facilities).

populations. We propose to revise our rules to allow schools with residential areas on their grounds to receive E-rate funding for priority one and priority two services in those residential areas in circumstances where the students do not have access to comparable schooling or training if they were to reside at home. Specifically, we seek comment on whether the use of priority one and priority two services at a dormitory on a school campus could be considered integral, immediate, and proximate to the education of students, and thus, considered to be used for educational purposes, when the school is serving students with medical needs, cognitive, or behavioral disabilities, or who have no option but to live at school due to challenging terrain or their home's distance from a school.[129] For example, in West Virginia, students at the West Virginia School for the Deaf and Blind reside in dormitories on the same campus as the school, away from their parents, to receive schooling.[130] These students are unable to go home or to a public library to access the Internet after school hours.[131] The West Virginia School for the Deaf and Blind, however, pursuant to our rules, is unable to receive funding for services provided to these residential facilities, thus, requiring the school to cost-allocate between the eligible and ineligible uses of its services on the school's campus.[132] Currently, our rules state that service is eligible for support as a component of the institution's internal connections only if it is necessary to transport information all the way to individual classrooms.[133] We invite comment on whether we should amend our eligibility limitation imposed on internal connections, and if so, how we should amend that limitation with regard to schools described above. In addition, should we require that support for services to dormitories be limited to only to those schools whose operating expenses are funded, in whole or in part, with state or federal funds? We seek comment on any other possible conditions or limitations to extending support to schools for services provided to dormitories located on a school's campus to target finite funding to those schools for which funding may be truly necessary to access advanced telecommunications and information services and to minimize the potential for waste, fraud, and abuse.

4. Targeting Support for Broadband Services

58. Finally, we seek comment on other ways to reallocate funding so that finite amounts of E-rate dollars can be better targeted to satisfy the educational needs of students and library patrons. We recognize that schools and libraries face significant challenges in obtaining higher bandwidth necessary to support emerging needs at a time when budgets are stagnant or declining. According to one report, more than half of school districts surveyed faced problems in obtaining funding for higher bandwidth services, and two-thirds of those surveyed reported conserving bandwidth by restricting certain online applications such as streaming video.[134] At the same time, more advanced applications such as media streaming and video conferencing, distance or online learning, multimedia applications that make learning more engaging and relevant, and one-to-one programs that enable students to engage in continuous learning

[129] For example, schools in this category could include hospital schools, schools for children with special needs and schools in Tribal lands or insular areas.

[130] *See* Request of the West Virginia Department of Education for a Waiver of Commission's Rule 54.506 and Clarification of the Definition of Educational Purpose, to Federal Communications Commission, CC Docket. No. 02-6 (filed Apr. 29, 2010).

[131] *Id.*

[132] *Id.* Schools located on Tribal lands, such as the Crow Creek Sioux Tribal High School in Stephan, South Dakota, often have the same cost allocation issues for residential schools that serve a student body drawn from a geographically dispersed area.

[133] 47 C.F.R. § 54.506(a).

[134] *Researchers identify key ed-tech trends*, E-School News (May 15, 2008) (summarizing 2008 America's Digital Schools survey), available at www.eschoolnews.com/2008-05/15/researchers-identify-key-ed-tech-trends/ (last visited May 20, 2010).

hold great promise for educating the next generation. We therefore seek comment on specific proposals to re-prioritize E-rate funding to support higher bandwidth connectivity that will enable such applications to be delivered to students and libraries across the country.

59. In the short-term, the demand for wireless services and increased bandwidth for broadband will likely increase. We seek comment on whether there are specific telecommunications services, Internet access services, or priority two services on the current ESL that should receive a lower priority in E-rate funding so that we can target funding toward higher bandwidth connectivity. For example, should dial-up Internet access continue to be funded as a priority one service or instead, should greater priority be given to applicants seeking support for broadband services? Similarly, should we give a higher priority to advanced telecommunications and broadband services, rather than voice telecommunications services? We recognize that budgets are challenged for state and local authorities around the country, but also emphasize that our objective in managing this finite program is to achieve the maximum benefits of access to the full range of content and applications that the Internet can deliver, not to fund voice telephone service that schools and libraries across the country were paying for in full before the inception of the E-rate program. We seek comment on these and any other proposals commenters might suggest to meet the goal of generating the most return for each E-rate dollar.

IV. EXPANDING THE REACH OF BROADBAND TO THE CLASSROOM

A. Background

60. When the E-rate program was created in the *Universal Service First Report and Order*, the Commission established an annual funding cap on E-rate disbursements.[135] The Joint Board recommended that an annual cap be set at $2.25 billion, based on third-party estimates of the cost of services eligible for discounts.[136] The Commission adopted the Joint Board's recommendation, but noted that the $2.25 billion figure was only an estimate because of the lack of real data, technology's rapid development, and the difficulty in predicting demand for the services to be offered.[137] The Commission's current priority rules provide that requests for all eligible services other than internal connections and basic maintenance for internal connections shall receive first priority for funding.[138] The remaining funds are allocated to requests for support for internal connections and basic maintenance of internal connections (priority two services), beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.[139]

61. 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.[140] Schools and libraries in areas with higher percentages of students eligible for free or reduced price lunch through the National School Lunch Program (NSLP) or an alternative mechanism qualify for higher discounts for eligible services than applicants with low levels of eligibility for such programs.[141] For example, the most disadvantaged schools and libraries where at least 75 percent of children are eligible

[135] *Universal Service First Report and Order*, 12 FCC Rcd at 9055, para. 530; 47 U.S.C. 254(b)(5).

[136] *Universal Service First Report and Order*, 12 FCC Rcd at 9054-55, paras. 530-31 (extrapolating from data provided by the McKinsey Report, Rothstein Thesis, and NCLIS Report).

[137] *Id.* at 9055, para. 530.

[138] 47 C.F.R. § 54.507(g)(1)(i).

[139] 47 C.F.R. § 54.507(g)(1)(ii); 47 C.F.R. § 54.505(c).

[140] 47 C.F.R. §§ 54.505(a)-(b).

[141] 47 C.F.R. § 54.505(b).