

“small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁵ Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹⁶ The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁷ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹⁸ We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”¹⁹ Thus, we estimate that most governmental jurisdictions are small.

8. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services, including telecommunications service providers, Internet Service Providers (ISPs), and vendors of the services and equipment used for internal connections.²⁰

a. Schools

9. As noted, “small entity” includes non-profit and small governmental entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools, an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”²¹ A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.²² For-profit schools, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program.²³ Certain other restrictive definitions apply as well.²⁴ The SBA has also defined for-profit, elementary and secondary schools having \$7 million or less in annual receipts as small entities.²⁵ In funding year 2007, approximately 105,500 schools received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these additional entities that would qualify as small entities under SBA’s size standard, we estimate that fewer than 105,500 such schools might be affected annually by our action, under current operation of the program.

b. Telecommunications Service Providers

10. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has

¹⁵ 5 U.S.C. § 601(4).

¹⁶ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁷ 5 U.S.C. § 601(5).

¹⁸ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

¹⁹ We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

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

²¹ 47 C.F.R. § 54.500(c).

²² 47 C.F.R. § 54.500(k).

²³ 47 C.F.R. § 54.501.

²⁴ *See id.*

²⁵ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 611110.

developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁶ According to Commission data, 1,311 incumbent carriers reported that they were engaged in the provision of local exchange services.²⁷ Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees.²⁸ Thus, under this category and associated small business size standard, we estimate that the majority of entities are small.

11. We have included small incumbent local exchange carriers in this RFA analysis. A “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”²⁹ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.³⁰ We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

12. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.³¹ This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.³² According to the Commission’s *2008 Trends Report*, 300 companies reported that they were engaged in the provision of interexchange services.³³ Of these 300 IXCs, an estimated 268 have 1,500 or few employees and 32 have more than 1,500 employees.³⁴ Consequently, the Commission estimates that most providers of interexchange services are small businesses.

13. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.³⁵ This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.³⁶ According to the *2008 Trends Report*, 1,005 CAPs and competitive local exchange carriers

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

²⁷ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.5, Page 5-5 (August 2008) (*2008 Trends Report*) (using data that is current as of Nov. 1, 2006).

²⁸ *Id.*

²⁹ 5 U.S.C. § 601(3).

³⁰ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC, dated May 27, 1999. The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

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

³² *Id.*

³³ *2008 Trends Report*, Table 5.3, page 5-5.

³⁴ *Id.*

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

³⁶ *Id.*

(competitive LECs) reported that they were engaged in the provision of competitive local exchange services.³⁷ Of these 1,005 CAPs and competitive LECs, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees.³⁸ Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

14. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.³⁹ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”⁴⁰ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁴¹ Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.⁴² Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁴³ For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.⁴⁴ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁴⁵ Thus, we estimate that the majority of wireless firms are small.

15. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).⁴⁶ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁴⁷ According to the *2008 Trends Report*, 434 carriers reported that they were engaged in wireless telephony.⁴⁸ Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.⁴⁹ We have

³⁷ *2008 Trends Report*, Table 5.3, page 5-5.

³⁸ *Id.*

³⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁴⁰ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁴¹ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁴² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

⁴³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

⁴⁵ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴⁶ 13 C.F.R. § 121.201, NAICS code 517210.

⁴⁷ *Id.*

⁴⁸ “Trends in Telephone Service” at Table 5.3.

⁴⁹ “Trends in Telephone Service” at Table 5.3.

estimated that 222 of these are small under the SBA small business size standard.

16. *Common Carrier Paging.* As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).⁵⁰ Prior to that time, such firms were within the now-superseded category of "Paging."⁵¹ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁵² Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior category and associated data. The data for 2002 show that there were 807 firms that operated for the entire year.⁵³ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁵⁴ Thus, we estimate that the majority of paging firms are small.

17. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁵⁵ A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁵⁶ The SBA has approved this definition.⁵⁷ An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.⁵⁸ Fifty-seven companies claiming small business status won 440 licenses.⁵⁹ A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁶⁰ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or

⁵⁰ U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁵¹ U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁵² 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁵³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

⁵⁴ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁵⁵ *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order*, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 ("*Paging Second Report and Order*"); see also *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

⁵⁶ *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

⁵⁷ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau ("WTB"), FCC (Dec. 2, 1998) ("*Alvarez Letter 1998*").

⁵⁸ See "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁵⁹ See *id.*

⁶⁰ See "Lower and Upper Paging Band Auction Closes," Public Notice, 16 FCC Rcd 21821 (WTB 2002).

very small business status won 2,093 licenses.⁶¹

18. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 281 carriers reported that they were engaged in the provision of “paging and messaging” services.⁶² Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.⁶³ We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

c. Internet Service Providers

19. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider’s own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,⁶⁴ which has an SBA small business size standard of 1,500 or fewer employees.⁶⁵ The latter are within the category of All Other Telecommunications,⁶⁶ which has a size standard of annual receipts of \$25 million or less.⁶⁷ The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.⁶⁸ That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.⁶⁹ Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24, 999,999.⁷⁰ Consequently, we estimate that the majority of ISP firms are small entities.

d. Vendors of Internal Connections

20. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching

⁶¹ See “Lower and Upper Paging Bands Auction Closes,” Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

⁶² “Trends in Telephone Service” at Table 5.3.

⁶³ “Trends in Telephone Service” at Table 5.3.

⁶⁴ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

⁶⁵ 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

⁶⁶ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

⁶⁷ 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

⁶⁸ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

⁶⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

⁷⁰ An additional 45 firms had receipts of \$25 million or more.

equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.”⁷¹ The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees.⁷² According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year.⁷³ Of this total, 511 had employment of under 1,000, and an additional seven had employment of 1,000 to 2,499.⁷⁴ Thus, under this size standard, the majority of firms can be considered small.

21. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”⁷⁵ The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.⁷⁶ According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.⁷⁷ Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.⁷⁸ Thus, under this size standard, the majority of firms can be considered small.

22. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing

⁷¹ U.S. Census Bureau, 2002 NAICS Definitions, “334210 Telephone Apparatus Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

⁷² 13 C.F.R. § 121.201, NAICS code 334210.

⁷³ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334210 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 450.

⁷⁴ *Id.* An additional 4 establishments had employment of 2,500 or more.

⁷⁵ U.S. Census Bureau, 2007 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”; <http://www.census.gov/naics/2007/def/ND334220.HTM#N334220>.

⁷⁶ 13 C.F.R. § 121.201, NAICS code 334220.

⁷⁷ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

⁷⁸ *Id.* An additional 18 establishments had employment of 1,000 or more.

communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).⁷⁹ The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.⁸⁰ According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.⁸¹ Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999.⁸² Thus, under this size standard, the majority of firms can be considered small.

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

23. In the Report and Order, the Commission establishes a trial program – E-rate Deployed Ubiquitously (EDU) 2011 Pilot Program – to investigate the merits and challenges of wireless off-premises connectivity services, and to help the Commission determine whether they should ultimately be eligible for E-rate support.⁸³ To be considered for first phase EDU2011 Program funding, E-rate eligible applicants must have implemented or already be in the process of implementing a program to provide off-premise connectivity to students or library patrons through the use of portable wireless devices. Applicants also must submit certain information to the Wireline Competition Bureau for review and consideration as part of the application process as part of this trial program. Specifically, the application must contain the following information:

- (1) a description of the current or planned program, how long it has been in operation, and a description of any improvements or other changes that would be made if E-rate funding were received for funding year 2011 (July 1, 2011 – June 30, 2012);
- (2) identification of the costs associated with implementing the program including, for example, costs for equipment such as e-readers or laptops, access and connection charges, teacher training, librarian training, or student/parent training;
- (3) relevant technology plans;
- (4) a description of how the program complies with the Children’s Internet Protection Act (CIPA)⁸⁴ and adequately protects against waste, fraud, and abuse;

⁷⁹ U.S. Census Bureau, 2002 NAICS Definitions, “334290 Other Communications Equipment Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

⁸⁰ 13 C.F.R. § 121.201, NAICS code 334290.

⁸¹ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 471.

⁸² *Id.* An additional 3 establishments had employment of 1,000 or more.

⁸³ See *E-rate Broadband Report and Order*, paras. 40-49.

⁸⁴ See Congress included 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) (requiring schools and libraries that have computers with Internet access to certify that they have in place certain Internet safety policies and technology protection measures); 47 C.F.R. § 54.520(c)(i).

- (5) a copy of internal policies and enforcement procedures governing acceptable use of the wireless device off the school's or library's premises;
- (6) for schools, a description of the program's curriculum objectives, the grade levels included, and the number of students and teachers involved in the program; and
- (7) for schools, any data collected on program outcomes.

As indicated above, we have assessed the effects of this trial program and find that any information submitted by the applicants to the Commission as part of this program will not significantly impact the burden on small businesses.⁸⁵ The trial program is limited to schools and libraries that are already implementing or experimenting with wireless off-campus learning, therefore, any information collected from participants in this program is limited to information about their current projects.

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

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.⁸⁶

25. In this Report and Order, as detailed above,⁸⁷ the Commission adopts a number of the proposals put forward in the *E-rate Broadband NPRM* to help realize the NBP's vision of improving connectivity to schools and libraries by upgrading and modernizing the successful E-rate program.⁸⁸ We believe the reforms adopted in this Report and Order will not have a significant economic impact on small entities under the E-rate program. Rather, the reforms will benefit small entities by simplifying the application process, providing more flexibility to select and make available the most cost-effective broadband and other communications services, and improving safeguards against waste, fraud, and abuse, while ensuring that the amount of funding available keeps pace with the rate of inflation. Because this Report and Order does not adopt additional regulation for service providers and equipment vendors, these small entities will experience no significant additional burden.

Report to Congress

26. The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁸⁹ In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the *Federal Register*.⁹⁰

⁸⁵ See *E-rate Broadband Report and Order*, para. 114.

⁸⁶ See 5 U.S.C. § 603(c).

⁸⁷ See FRFA, para. 4.

⁸⁸ See *E-rate Broadband NPRM*.

⁸⁹ See 5 U.S.C. § 801(a)(1)(A).

⁹⁰ See 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, A National Broadband Plan for Our Future, GN Docket No. 09-51

When our schools and students win, our country wins – because education is at the core of the American dream and central to a thriving American economy.

And so today we implement yet another key recommendation of the National Broadband Plan, this one involving broadband for schools and libraries.

Today's Order delivers a substantial modernization and upgrade of the E-rate program. Bringing higher-speed broadband and digital tools to our schools, libraries, and communities will provide economic opportunity now and in the future.

At connected schools, students can access the best libraries in the country, the best learning tools, and the best teachers, wherever they are. A high-school student in a rural town without a calculus teacher can learn calculus remotely, or physics, or Mandarin. Distance learning isn't a substitute for education reform, but it can enhance reform; it can help schools and students in struggling communities have real opportunity, real access, to the best education can offer.

Today's Order recognizes that digital literacy is essential in a digital economy, and that connected schools and libraries are a requirement for digital literacy. Study after study shows the risk we face in a global economy if we fall behind on education, particularly the STEM subjects – science, technology, engineering and math.

We fail our students if we don't teach them basic digital skills. Job postings are increasingly online only, and increasingly require not only online applications but online skills. Broadband in schools is necessary to prepare our students for a 21st century economy.

And what's true of our economy is also true of our democracy. Digital skills underpin full participation in all aspects of our society.

The National Broadband Plan laid out a vision of broadband-enabled, cutting-edge learning inside and outside the classroom.

But the Plan also found that basic broadband connectivity in schools is too slow to keep up with the innovative high-tech tools that are now essential for a world-class education. Almost 80 percent of E-rate recipients say they need faster connections to meet the current speed and capacity demands of schools and libraries. Some schools and libraries still rely on dial-up connections, and many have so-called "broadband" connections that are slower than the average American household's DSL or cable modem service. These connections are far too slow to meet the bandwidth demands of many of today's applications, much less tomorrow's.

Today's Order is fundamentally about empowering schools and libraries. It gives schools and libraries more choices for broadband, enabling them to pick among the full range of options in the marketplace, including leasing low-cost capacity from fiber optic networks that have already been deployed but are not yet being used, and lighting this dark fiber.

The goal is – and I believe the result will be – more bang for the E-rate buck; faster speeds at lower costs. This is a major step toward the Broadband Plan's goal of affordable access to super-high-speed broadband at anchor institutions in every community across the country.

We're not just empowering schools to help students, but also to help their communities. Today's Order gives schools the flexibility to allow their communities to use E-rate-funded broadband after school hours. Think of these as "School Spots" that can provide online access for job searching or government services for people who don't otherwise have access.

Here's an example of what that can mean. Earlier this year, West Virginia took advantage of the provisional waiver we had granted and allowed community access to E-rate facilities for after-hours digital training and computer labs. During the April 2010 Upper Big Branch coal mining disaster, a West Virginia school, whose students were on spring break, provided access to its facilities for use as a government and media command center during the search and rescue efforts.

Today's Order also embraces the real potential of *mobile* broadband for schools and students, and the promise of digital textbooks. Through a new pilot program, it opens the door for students who now carry 50 pounds of outdated textbooks in their backpacks to instead use digital textbooks or laptops with up-to-date materials and cutting-edge interactive learning tools.

Early experimentation demonstrates the potential of on-the-go learning. In Onslow County, North Carolina, in an experimental program supported by Qualcomm, high school students were given smartphones with 24/7 Internet access. The students who were taught math on these learning devices were more likely to achieve proficiency in Algebra than classmates who had the same teacher but weren't given phones.

Consistent with the recommendations of Senators Rockefeller and Snowe, and Congressman Markey – long-time leaders of connecting classrooms and champions of E-rate – today's Order indexes to inflation the cap on the E-rate program. This is an idea with bipartisan support, implemented with fiscal responsibility. Earlier this month, the Commission recovered and reserved surplus universal service funds for this purpose, meaning that today's decision will not impose any new burden on American consumers.

The cap – put in place when E-rate was still an experiment – has not moved for almost 15 years. Today we know that E-rate works, and that the needs of schools and students significantly exceed what's available. In 1997, a school that needed basic connectivity to the Internet could get a phone line and dial-up Internet service for approximately \$25 per month. Today, a school that needs basic connectivity to the Internet at 10 Mbps – the median speed used by E-rate schools and libraries in a survey conducted earlier this year – likely pays at least \$500 per month for that service, plus the costs of necessary internal connections.

We could have turned our back on the real needs of students and schools, and the real benefits of E-rate to our economy. Instead, we've taken a fiscally responsible approach that provides much-needed support for our schools and students without growing the Universal Service Fund.

I thank the staff for their work on this item. E-rate has been a success, an example of what can happen when Congress and the FCC have a strategic plan around Internet access, and when it's well implemented by public servants at the federal, state, and local level. This strong Order substantially upgrades and modernizes the E-rate program, creating the conditions for E-rate's continued success in the broadband age.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, A National Broadband Plan for Our Future, GN Docket No. 09-51

This is great. Today we take another important step forward to implement the National Broadband Plan, and we do it by expanding the horizons of my favorite program of all—E-Rate. In four months, the Chairman has shepherded through this Commission a Notice of Proposed Rulemaking and, with today's action, an Order that truly move us forward in getting broadband out to those who need it. And who can benefit more from it than our kids? E-Rate has already done so much for so many of them, helping students, and the communities in which they live, to access the digital tools they need to learn, to compete, to find opportunity and to prosper. The good news is E-rate can now do even more. This is a program rife with potential, constrained not by its promise but only by the resources committed to it. Today we begin breathing new life into this awesome program.

I particularly welcome the basic reforms and upgrades in today's Order that will improve and modernize E-Rate, including streamlining the application process and expanding the reach of broadband to the classroom. Lots of E-Rate applicants are going to rejoice in these rule changes. I hope that E-rate recipients will also take advantage of the now permanent opportunity to make E-Rate supported services available to the general public outside of regular school hours. The Commission approved this on an interim basis in February 2010, and I am glad that we are moving quickly forward to make this permanent. There is no reason why such services should go underutilized, provided schools can support the additional use and the E-Rate funding is used for statutorily-intended purposes.

I am also pleased that this item takes on other issues which, while perhaps controversial for some, directly address the National Broadband Plan's goal of promoting further connectivity of broadband to schools and libraries via increased flexibility in the program. Today we finally straighten out the Commission's policy on dark fiber. In 2003, over my opposition, the Commission removed dark fiber from the Eligible Services List. That was a mistake. We repair the mistake in today's item so applicants can lease dark fiber where available and cost-effective. Dark fiber is back on the list and E-Rate applicants will be able to select from a broader range of options as they seek out the best, lowest-cost broadband and telecommunications services to get the job done.

I cautiously support the Order's proposal for a limited pilot program for off-campus wireless connectivity for portable learning devices. I am well aware that existing educational programs incorporating portable devices have seen real and measurable success. And I do believe that E-Rate deserves to be empowered so it can keep up with the latest technologies and with all the new educational tools that are coming online. But while those constraints that I talked about earlier continue to exist, we have to remember that the basic task of this program is to get high speed, high capacity broadband out to schools and libraries—and, until met, that challenge needs to take precedence over other meritorious ideas which could, and will, bring added luster to E-Rate. So I think the pilot program is the way to go, allowing us to design the controls we will need to make sure any expanded general program operates with proper controls and as free as possible from any abuses.

Finally, I have been in favor of indexing the E-Rate cap to inflation for some time. Despite its great success, E-Rate is a capped fund for which demand has consistently surpassed supply. While the Commission annually commits funds to the extent currently permitted by our rules, the demand always exceeds supply, and the program must keep pace with these needs. In addition, since inception of the program, inflation has driven costs up 30 percent, but E-Rate funding has remained constant at the capped amount. That's equivalent to a loss of \$675 million in purchasing power. I would be in favor of reconsidering that cap, but I recognize that now—prior to full-scale reform of the entire Universal Service

Fund—is not the time to make a change that could affect all programs. However, indexing the cap to inflation right now is a modest adjustment that was recommended in the National Broadband Plan. I also want to note that the *Corr Wireless Order*, approved unanimously by this Commission earlier this month, explicitly directed USAC to reserve surrendered CETC support for indexing the E-Rate cap to inflation. I issued a statement with the *Corr Wireless Order* expressing my interest in making sure the surrendered funds were put to good use as quickly as possible, and using that funding to index the cap on E-Rate to inflation certainly accomplishes that. I recognize that the surrendered support in the *Corr Wireless Order* will go only so far, and at some point funding from contributions may be required. I have no problem with this—E-Rate is the only oversubscribed capped program, and yet it is the most successful of the Universal Service Fund. I can't think of a better purpose for Universal Service than to give our kids—and grandkids—the technology they need for a good education, give library patrons the access they need to find and apply for jobs, and give communities the high-speed broadband service necessary to promote the civic dialogue of the 21st century.

I thank the Chairman for his focus and follow-through concerning both the National Broadband Plan and the E-Rate program. What we do today makes a good program even better, and I hope that my colleagues will continue to work to strengthen the program. And, of course, I want to express my gratitude to the Bureau for its hard and creative work on this item.

**STATEMENT OF
COMMISSIONER ROBERT McDOWELL
APPROVING IN PART, DISSENTING IN PART**

Re: *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *A National Broadband Plan For Our Future*, GN Docket No. 09-51, Report and Order.

When I think of the schools and libraries fund, I often think of my late father. He grew up on a ranch in northern Mexico near the Texas border during the “dustbowl” era of the Great Depression. My grandparents’ ranch house did not have electricity or phone service. Furthermore, my father did not have access to a school while living so remotely among the mesquite trees and the jack rabbits. On many evenings, my grandfather would take the battery out of the family’s Model A and hook it up to the radio in the house. Often this served as their only connection to the outside world. Despite these obstacles, however, through good fortune and hard work, my father went on to become a senior editor of *National Geographic* magazine.

Through his experience, I am reminded that many Americans have not been fortunate enough to overcome similar challenges. I also recognize that programs such as E-rate have been instrumental in keeping many of America’s schools and libraries connected to the outside world. The program’s success was highlighted in the National Broadband Plan, which indicated that 97 percent of American schools are connected to the Internet and that many of those schools have received support from E-rate funds.⁴²⁶

In the spirit of carrying out Congress’ original mandate to us, I support the bulk of this Report and Order. For example, amending the Commission’s rules to permit schools to allow community use of E-rate funded services outside of school hours is a positive development. This change will allow E-rate funds to be leveraged in a manner that will encourage wider broadband use without increasing universal service distributions. During these challenging economic times, it is imperative that our government find ways to be as efficient as possible with our limited resources. Allowing for community use after school hours will help in that effort. In short, our action on this issue today will create efficiencies in a government program.

I am also encouraged that the Report and Order includes a section on streamlining and simplifying the administrative requirements of the application process. Hopefully, these changes will reduce confusion and increase efficiency as well. Additionally, I support the steps to improve safeguards against waste, fraud and abuse. We must always remember that the funds that support the E-rate program come from the contributions of hard-working American consumers. It is their money that we spend. As such, we must take every precaution necessary to earn their trust in the administration of this program.

There are, however, certain parts of this Report and Order that concern me. For example, I do not agree with the decision to raise the \$2.25 billion E-rate cap by indexing it to overall inflation. Some consider this increase “offset” by recent “savings” captured in a previous Commission proceeding. Others argue that the cap increase for the upcoming funding year is minimal. Nonetheless, I have long advocated for overall comprehensive reform of the universal service system *in lieu* of piecemeal alterations, and therefore it makes more sense that any ideas for increasing caps should be debated more thoroughly in that forum.

Additionally, as recently as July 1 of this year, the Commission announced that the fund has

⁴²⁶ Federal Communications Commission, *Connecting America: The National Broadband Plan* at 20 (rel. Mar. 16, 2010).

retained \$900 million in unused money in excess of the existing cap.⁴²⁷ In light of this, I question why the Commission is raising the cap when the fund has almost \$1 billion in left over cash. Again, we should always remember that we should be the prudent stewards of other people's money.

Finally, even if the E-rate program had not been running a surplus, it is not clear to me why it is necessary to index it to inflation of the overall economy rather than inflation in the telecom sector specifically. When comparing the consumer price index for the economy as a whole against the prices for telecom services for the past decade, inflation in the telecom sector has remained essentially flat while the index for all other products and services has risen. This is the first time the E-rate cap has ever been raised, and tying it to a general inflation index may make future support of this program more difficult to achieve. The majority's decision today is not supported by the evidence in the record and is not fiscally prudent. As such, I respectfully dissent from this portion of the Report and Order.

I was originally concerned about the section of the Report and Order that adds dark fiber to the Eligible Services List. For instance, some parties questioned how the competitive bidding process could ensure that arms-length transactions occur when government entities are competing against private businesses. Similarly, some commenters expressed concern that this change could create a competitive bidding process that might not treat all bidders fairly. Additionally, while some argue that this change would actually save money for the program over time, I questioned whether the change could have encouraged large upfront construction costs which, in some instances, could have caused other applications to go unfunded – particularly applications in rural parts of the country – a type of “crowding out” effect. I am thankful that in the past couple days the Chairman and his staff have made great strides to address these concerns in this order. As such, I am comfortable approving this section, especially because having access to competitive dark fiber may reduce costs to the fund. I recognize, however, that the implementation of the competitive bidding process may be complex, and I urge the Commission to keep a close eye on the process as it moves forward.

I do however dissent from the part of the Report and Order that establishes a trial program to support wireless Internet access offsite. I recognize that putting wireless technologies into the hands of students and teachers can be a powerful and exciting way to supplement our education system. Nonetheless, I am concerned that opening up this new spending line item may be far beyond what Congress originally intended when it mandated subsidies for the wiring of schools and libraries to the Internet. Myriad questions abound that should be addressed in a further notice before launching such a trial.

In the absence of a Congressional directive to subsidize each student's wireless connectivity, the Commission should be more faithful to the mission we have been given. As noble an aspiration as it may be to wish for each student in America to enjoy the fruits of having access to the Internet at all times, we risk depleting E-rate funds when we stray from Congress' original intent. It would be unfortunate if the demands of new expenditure streams were to drain the reservoir of funds needed to accomplish the primary objective of the fund: connecting schools and libraries to the Internet. Furthermore, the pilot program is limited primarily if not exclusively to schools that already have existing wireless programs. Why? By definition, if such programs already exist in those areas, and are funded without our help, they do not need E-rate support.

Also, an offsite program could set up a system that could be virtually impossible to monitor and may lead to waste, fraud and abuse. For example, there may not be adequate ways to ensure compliance with the Children's Internet Protection Act. I also wonder how schools could ensure that the use of such

⁴²⁷ *Public Notice, Wireline Competition Bureau Announces Carryover of Unused Schools and Libraries Universal Service Funds for Funding Year 2010*, CC Docket No. 02-6 (2010).

devices would be for educational purposes, as Congress intended. It would be more prudent for the Commission to ask these questions, among many others, in a further notice, before launching a trial which may ultimately lead to an appetite for something that the Commission may not have the capacity to support on a larger scale.

In sum, I recognize the significant role programs such as E-rate play. But, the Commission should tread cautiously to ensure that any changes to the program do not cause it to eventually collapse under its own weight. The Commission should avoid veering away from its core mission as set forth by Congress.

I thank the Chairman, my colleagues, and their respective teams for their receptiveness in improving this item.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, A National Broadband Plan for Our Future, GN Docket No. 09-51

Without a doubt, the E-rate program has made a significant impact on the provision of broadband to millions throughout this nation. Our primary anchor institutions—schools and libraries—have encouraged broadband deployment and adoption in many geographic areas that might not otherwise have been offered broadband, but for the program.

By providing broadband access, the E-rate program offers consumers who are unserved at home, some opportunity to get online through their local libraries. In addition, this program has encouraged digital literacy and broadband adoption as both teachers and librarians have taught many students and constituents how to navigate and use the Internet. For teachers and students, E-rate has allowed them to be integrated into the digital world and has expanded their educational opportunities at school. For example, the interactive nature of some educational websites can enhance the learning experience of elementary school students. They can improve their math skills using innovative games offered online. They can explore the wonders of science and be introduced to other countries and cultures currently out of reach, right from their desktops. As educators increasingly integrate the Internet into their lesson plans, faster speeds and additional bandwidth are needed to accommodate all of the interactive, educational uses the Internet offers.

The adjustments we make today to the E-rate program have countless benefits for schools, libraries and their surrounding communities. By indexing the E-rate funding cap to inflation, we are protecting the purchasing power of recipients so they can continue to acquire the critical broadband elements they need to serve and educate our fellow citizens. We also are encouraging faster speeds and more bandwidth to be delivered by permitting schools and libraries to take advantage of fiber networks that have already been built, and through additional competition we advance in this Order, E-rate dollars can be maximized to provide much needed services to more schools and libraries. Finally, by permanently changing our rules to permit E-rate funded services to be used after school hours without reducing benefits, we are encouraging schools to make their facilities available so that more citizens can be served. It is my hope that this will spur further digital literacy and broadband adoption in local communities throughout the nation.

I am a strong proponent of us making the most of what our Universal Service Fund has to offer, and I want to thank the Chairman for his leadership on these issues, and the staff of the Wireline Competition Bureau for their significant and meaningful work on this item.

**STATEMENT OF
COMMISSIONER MEREDITH A. BAKER
APPROVING IN PART, CONCURRING IN PART**

Re: *Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6; A National Broadband Plan for Our Future, GN Docket No. 09-51*

I have long supported E-rate and I am pleased to support the initiatives the Commission adopts here today. In the twelve years E-rate has been in place, the program has been instrumental in expanding access to the Internet in our communities across the country through their schools and libraries. The National Broadband Plan found that 97 percent of public schools, and 94 percent of instructional rooms within those schools, now have Internet access. By any measure, that is success and the E-rate program has been critical to that achievement. But more must be done to build on that success in a world in which kids learn through their computers; teachers and parents engage in the learning process through Internet communications; and all generations increasingly depend on their mobile devices. I think this Order takes a number of important steps to modernize E-rate with a responsible approach for the broadband era.

I concur in one aspect of this Order: indexing the annual funding cap. As I have said many times, I continue to have concerns that our efforts to modernize the various components of the Universal Service Fund (USF) should not result in further growth in the overall size of the Fund. While I recognize that any increase in E-rate support is offset with funds reclaimed through our action in another proceeding, I believe it may have been more prudent to delay consideration of increasing the funding cap for E-rate until we are farther down the road of comprehensive reform for all components of the Universal Service Fund, including the high-cost support mechanism. Only then will we be sure that reforms for all USF programs together—some of which continue to grow—can be accomplished without increasing the overall size of the Fund, while achieving Congress's goal of ensuring broadband access by all people of the United States. Finally, I feel strongly that the Commission must remain vigilant with regard to any signs of waste, fraud or abuse of this program. It is our obligation to ensure that money is spent responsibly to achieve the goals set out by Congress.

E-rate is a success story of which this Commission can be proud. By moving forward with common-sense reforms, the program will only get stronger and be the foundation for even more impressive results for our communities in the future. I appreciate the willingness of the Chairman and my fellow commissioners to work together to make this a strong order that addresses all concerns and I would like to thank the staff for their hard work on this item.