

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

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

**SIXTH REPORT AND ORDER**

**Adopted: September 23, 2010**

**Released: September 28, 2010**

By the Commission: Chairman Genachowski and Commissioners Copps and Clyburn issuing separate statements; Commissioner McDowell approving in part, dissenting in part and issuing a statement; Commissioner Baker approving in part, concurring in part and issuing a statement.

**TABLE OF CONTENTS**

Heading	Paragraph #
I. INTRODUCTION.....	1
II. UPGRADING E-RATE FOR THE 21 <sup>ST</sup> CENTURY.....	8
A. Improving Broadband Access for Students, Teachers, Librarians, and the Communities They Serve.....	8
1. Expanded Access to Low-Cost Fiber.....	8
2. Community Use of Schools’ E-rate Funded Facilities and Services.....	20
3. Expanding Access for Residential Schools that Serve Unique Populations.....	28
4. Indexing the Annual Funding Cap to Inflation.....	34
5. Limited Trial to Investigate Offsite Access.....	41
B. Streamlining and Simplifying Administrative Requirements.....	51
1. Background.....	52
2. Technology Plans.....	58
3. Competitive Bidding Process.....	70
4. Clarifying Process for Disposal of Obsolete Equipment.....	73
C. Improving Safeguards Against Waste, Fraud and Abuse.....	85
III. ELIGIBLE SERVICES LIST.....	93
A. Background.....	93
B. Discussion.....	97
1. Eligible Services.....	100
2. Ineligible Services.....	102
3. Administrative Changes Pertaining to the ESL.....	110
IV. PROCEDURAL MATTERS.....	113
A. Final Regulatory Flexibility Analysis.....	113
B. Paperwork Reduction Act Analysis.....	114
C. Congressional Review Act.....	116
V. ORDERING CLAUSES.....	117

APPENDIX A – Final Rules  
APPENDIX B – Eligible Services List for Funding Year 2011  
APPENDIX C – List of Commenters  
APPENDIX D – Final Regulatory Flexibility Analysis

## I. INTRODUCTION

1. In this order, we take another step toward realizing the National Broadband Plan's (NBP) vision of improving connectivity to schools and libraries by upgrading and modernizing the successful E-rate program (more formally known as the schools and libraries universal service support mechanism).<sup>1</sup> Schools and libraries can serve as anchor institutions for their communities, and certain areas may depend on these anchor institutions to achieve the NBP's goal of affordable access to broadband of at least 1 gigabit per second in every community in the country. Broadband is an essential tool to help educators, parents, and students meet challenges in education and life-long learning. Through broadband, librarians can assist library patrons to improve skills for jobs, apply for employment, or access government resources. Access to broadband – at home or at anchor institutions – is a critical component of enabling everyone in America to develop the digital skills they need to prosper in the 21<sup>st</sup> century.

2. Since the inception of the E-rate program 13 years ago, the program has helped ensure that almost every school and library across America has Internet access. However, there is more to be done to ensure that the E-rate program helps our children and communities fully participate in the broadband era. We continue to build on our past experience and the experiences of stakeholders to improve the E-rate program. While we recognize the success of the E-rate program, the Commission also appreciates how educators, students, librarians, and the general community use and depend on communications technology that is continuously evolving and becoming more sophisticated. Many of the ways we communicate today – for example, blogging – did not exist in 1997, when the Commission released its first E-rate order. Today, a range of new modes of communication have become routine in the lives of the American people.

3. The Commission is committed to keeping the E-rate program in sync with modern needs and technological capabilities. For example, the Commission recognizes that technology has the potential to facilitate learning outside the classroom walls and beyond regular school hours. Through this order, and future upgrades, the Commission is taking a measured approach to modernizing the E-rate program, while maintaining protections to ensure that E-rate support is being used only for its intended purposes.

4. The NBP, delivered to Congress on March 16, 2010, recommended that the Commission take a fresh look at the E-rate program and identify potential improvements to reflect changes in technology and evolving teaching methods used by schools. In May 2010, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking public comment on proposals to ensure that the E-rate program continues to help our children and communities prepare for the high-skilled jobs of the future and reap the full benefits of the Internet.<sup>2</sup> The Commission received extensive comments in response to the *E-rate Broadband NPRM*, which inform the policy choices made in this order.<sup>3</sup>

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<sup>1</sup> 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](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf) (last visited Sept. 14, 2010).

<sup>2</sup> *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking, 25 FCC Rcd 6872 (2010) (*E-rate Broadband NPRM*).

<sup>3</sup> See Appendix C. All comments cited in this report and order are specifically in response to the *E-rate Broadband NPRM* unless otherwise noted.

5. We adopt a number of the proposals put forward in the *E-rate Broadband NPRM*. The revisions we adopt today fall into three conceptual categories: (1) enabling schools and libraries to better serve students, teachers, librarians, and their communities by providing more flexibility to select and make available the most cost-effective broadband and other communications services; (2) simplifying and streamlining the E-rate application process; and (3) improving safeguards against waste, fraud, and abuse.<sup>4</sup> As a result of these changes, schools and libraries throughout the country can make their limited dollars go further. The changes we adopt will increase the ability of students and the public to utilize broadband services for educational needs. In addition, the changes to simplify the E-rate program will help reduce the cost of participating in the program, thereby making the program more accessible, particularly to smaller school districts and libraries that are often located in more rural areas and may not have staff dedicated to managing E-rate applications and related activities.

6. In particular, in this report and order, we:

- take action on upgrades that can be implemented in funding year 2011 (July 1, 2011 – June 30, 2012);
- enable schools and libraries to better serve students, teachers, librarians, and their communities by providing more flexibility to select and make available the most cost-effective broadband and other communications services by
  - allowing applicants to lease dark or lit fiber from the most cost-effective provider, including non-profit and for-profit entities, so that applicants can choose the services that best meet their needs from a broad set of competitive options and in the most cost-effective manner available in the marketplace;
  - changing our rules to permit schools to allow community use of E-rate funded services outside of school hours;
  - supporting eligible services to the residential portion of schools that serve students with special circumstances;
  - indexing E-rate's funding cap to inflation to preserve the purchasing power of a successful program;
  - seeking proposals for a limited pilot program to establish best practices to support off-campus wireless connectivity for portable learning devices outside of regular school or library operating hours;
- simplify and streamline the program by
  - streamlining the application process to reduce the administrative burden on applicants;
  - removing the technology plan requirement for priority one (telecommunications services and Internet access) services;
  - facilitating the disposal and recycling of obsolete equipment that received E-rate support by authorizing schools and libraries to receive consideration for such equipment; and
- improve safeguards against waste, fraud and abuse by
  - codifying the requirement that competitive bidding processes be fair and open.

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<sup>4</sup> We note that, at this time, we do not address all the proposals raised in the *E-rate Broadband NPRM*.

In addition, the report and order adopts the eligible services list (ESL) for funding year 2011.<sup>5</sup> We also continue to take other steps outside of the rulemaking process that do not require rule changes, such as revisions to the application forms, to make the E-rate program more user-friendly.

7. This report and order represents a first stage in a multi-stage upgrade of the E-rate program. This order announces changes that will be in place for the upcoming funding year, during which we will continue to consider changes to further improve and modernize the program. We recognize that market offerings, and the way that those offerings are used, are continually evolving. We welcome ongoing feedback on additional ways to upgrade and modernize the E-rate program to give students, educators, libraries, and community members greater flexibility to take advantage of technology to enhance education and sharing of information.

## II. UPGRADING E-RATE FOR THE 21<sup>ST</sup> CENTURY

### A. Improving Broadband Access for Students, Teachers, Librarians, and the Communities They Serve

#### 1. Expanded Access to Low-Cost Fiber

8. *Background.* Dark fiber was conditionally eligible for E-rate discounts for several years, through funding year 2003.<sup>6</sup> In the *Schools and Libraries Third Report and Order*, released in 2003, however, the Commission found that, pending resolution of the regulatory status of dark fiber, it would not be eligible for E-rate discounts.<sup>7</sup> Most recently, the NBP recommended that the Commission give

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<sup>5</sup> See *Wireline Competition Bureau Announces Comment Deadlines on E-rate Broadband Notice of Proposed Rulemaking, Eligible Services List Further Notice of Proposed Rulemaking, and on E-rate Draft Eligible Services List For Funding Year 2011*, CC Docket No. 02-6, GN Docket No. 09-51, Public Notice, 25 FCC Rcd 7317 (Wireline Comp. Bur. 2010) (*2010 ESL Public Notice*).

<sup>6</sup> Dark fiber first became conditionally eligible, effective January 24, 2001. See USAC website, Schools and Libraries, Eligible Services List, available at [http://www.usac.org/res/documents/sl/pdf/ESL\\_archive/EligibleServicesList\\_101701.pdf](http://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_101701.pdf), at 33 (last visited Sept. 14, 2010). 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 Support Mechanism for Funding Year 2003, available at [http://www.universalservice.org/res/documents/sl/pdf/ESL\\_archive/EligibleServicesList\\_101802.pdf](http://www.universalservice.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_101802.pdf), at 33 (last visited Sept. 14, 2010) (Funding Year 2003 ESL); *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, 26944, n. 156 (*Schools and Libraries Third Report and Order*).

<sup>7</sup> *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 for Funding Year 2004, available at [http://www.universalservice.org/res/documents/sl/pdf/ESL\\_archive/EligibleServicesList\\_101003.pdf](http://www.universalservice.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_101003.pdf), at 30 (last visited Sept. 14, 2010); *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 in the context of a request to detariff the service and suspending the Commission order pending proceedings on remand). That decision addressed the regulatory status of dark fiber in another context, prior to the development of the E-rate program. 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. Additionally, in 2008, the Commission released a notice of proposed rulemaking that, among other things, asked commenters to refresh the record on whether dark fiber should be an eligible service for purposes of the E-rate program. See (continued...)

schools and libraries more flexibility to purchase the most cost-effective broadband solutions, including the option of leasing or purchasing dark fiber.<sup>8</sup> 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 their connectivity needs.”<sup>9</sup>

9. *Discussion.* Pursuant to sections 254(c)(3), (h)(1)(B), and (h)(2) of the Act, we include dark fiber on the ESL and allow eligible schools and libraries to receive support for the lease of fiber, whether lit or dark, as a priority one service,<sup>10</sup> from *any* entity, including but not limited to telecommunications carriers and non-telecommunications carriers, such as research and education networks; regional, state, and local government entities or networks; non-profits and for-profit providers; and utility companies.<sup>11</sup> Accordingly, we amend section 54.502 of our rules to allow any entity to

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*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). Most recently, in the *E-rate Broadband NPRM*, we sought 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. *E-rate Broadband NPRM*, 25 FCC Rcd at 6893-94, paras. 52-54. Specifically, we proposed to add leased dark fiber to the ESL with the same conditions as when it was previously on the ESL. *Id.* at 6894, para. 54.

<sup>8</sup> NBP at 237 (NBP Recommendation 11.17).

<sup>9</sup> *Id.* at 153 (NBP Recommendation 8.20).

<sup>10</sup> As explained herein, the E-rate program has been capped at \$2.25 billion a year. 47 C.F.R. § 54.507(a). Requests for discounted amounts for E-rate services, however, have almost always exceeded that cap. Thus, the Commission has established a priority system for allocating E-rate funds to eligible services. 47 C.F.R. § 54.507(g)(1). All eligible requests for priority one services are funded first; any E-rate funds remaining are then used for priority two services, mainly internal connections, on a discount level basis. 47 C.F.R. § 54.507(g)(1)(i), (ii).

<sup>11</sup> 47 U.S.C. §§ 254(c)(3), (h)(1)(B), and (h)(2); *see, e.g.*, Sentinel Technologies Comments at 5; Education & Libraries Networks Coalition (EdLiNC) Comments at 13-14; Wisconsin Department of Public Instruction (WDPI) Comments at 6-8; State of Alaska Comments at 7; Utah Education Network (UEN) Comments at 8-9; Sunesys Comments at 7-8; State Consortium Group (SCG) Comments at 6; Research and Education (R&E) Network Community Comments at 5-6; NY State Education Department (NYSED) Comments at 7; Dell Comments at 2-3; Council of the Great City Schools (CGCS) Comments at 4-5; Conterra Ultra Broadband Comments at 6-7; E-rate Management Professionals Association (EMPA) Comments at 14; CA Department of Education (CDE) Comments at 12-13; NC Department of Public Instruction Comments at 3; State E-rate Coordinators’ Alliance (SECA) Comments at 35-36; Internet2 K20 Initiative (Internet2) Comments at 2; E-rate Provider Services (EPS) Comments at 10; NY State Office of Children and Family Services Comments at 3; NW-LINKS Comments at 7; Schools, Health and Libraries Broadband (SHLB) Coalition Comments at 7-9; Letter from Harold Feld, Public Knowledge, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 27, 2010). A number of commenters suggested that we extend our proposal to allow non-telecommunications carriers to offer all leased fiber, not just leased dark fiber, to schools and libraries. *See, e.g.*, NC Department of Public Instruction Comments at 3; Internet2 Reply Comments at 3; SHLB Coalition Comments at 9; SCG Reply Comments; SECA Reply Comments at 14-15; CA K-12 High Speed Network (CA K-12 HSN) Reply Comments at 2; CDE Reply Comments 4-5; National Association of Telecommunications Officers and Advisors (NATOA) Comments at 7-8; NATOA Reply Comments at 4-5; City and County of San Francisco (San Francisco) Reply Comments at 7-8; Letter from Steve Traylor, NATOA, Jeffrey Arnold, National Association of Counties and Carolyn Coleman, National League of Cities, to Chairman Julius Genachowski, Federal Communications Commission, GN Docket No. 09-51, CC Docket No. 02-6 (dated Sept. 16, 2010). *But see* Verizon and Verizon Wireless (Verizon) Comments at 9-10; Qwest Comments at 5 (opposes the leasing of dark fiber); AT&T Comments at 11-14 (suggests deferring proposal until the Commission has gathered more information about the economies and other costs of dark fiber solutions and the potential impact on fund resources due to operational costs and operating broadband networks); National Cable and Telecommunications Association (NCTA) Comments at 2-4 (raises concerns about the potential cost to the E-rate program and asserts that it runs against principles of E-rate program).

provide supported telecommunications in whole or in part via fiber.<sup>12</sup> Specifically, we require applicants that choose to lease dark (*i.e.*, unlit) fiber to light it immediately and to use the lit fiber to meet their broadband needs in order to receive E-rate support.<sup>13</sup> Our decision today will not allow applicants to use E-rate discounts to acquire unneeded capacity or warehouse dark fiber for future use. Because dark fiber has not been classified as either a telecommunications service or Internet access, we hereby include it in the telecommunications section of the ESL. For purposes of funding year 2011, we direct applicants to select either the telecommunications service or Internet access box on the FCC Form 471 for type of service requested when applying for funding for leased dark or lit fiber, based on the type of provider they select to provide the leased dark fiber service.<sup>14</sup> We emphasize that selecting a telecommunications carrier as a service provider does not absolve schools and libraries of their obligation to adhere to the Children's Internet Protection Act (CIPA) requirements when they use that service to obtain Internet service or access to the Internet.<sup>15</sup> Furthermore, we amend section 54.518 of our rules to clarify that states acting as service providers are treated the same as telecommunications carriers or other non-telecommunications providers when applicants are leasing a wide area network (WAN).<sup>16</sup>

10. Section 254 of the Act gives the Commission authority to designate "telecommunications services" and additional services as eligible for support under the E-rate program.<sup>17</sup> In the *Universal Service First Report and Order*, the Commission designated all commercially available telecommunications services as services eligible for support (or discounts) under the E-rate program.<sup>18</sup> At the same time, the Commission determined that it could provide E-rate support for additional, non-telecommunications services, particularly Internet access, email, and internal connections, provided by both telecommunications carriers and non-telecommunications carriers pursuant to sections 4(i) and 254(c)(1), (c)(3), (h)(1)(B), and (h)(2).<sup>19</sup> The Commission reasoned that such services enhance access to

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<sup>12</sup> See Appendix A, 47 C.F.R. § 54.502(a)(2) as amended herein.

<sup>13</sup> That is, an applicant cannot receive E-rate funding for dark fiber until it is lit. If the dark fiber is leased beginning July 1, but the applicant does not light the fiber until August 1, E-rate support will only be available beginning August 1.

<sup>14</sup> See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471) (requiring applicants to select the type of service to be provided in Block 5 of the form). Thus, if the applicant has selected a telecommunications carrier to provide the leased dark fiber, the applicant should select the telecommunications services category. In all other instances, the applicant should select the Internet access box. Both dark fiber and telecommunications will be funded as priority one services.

<sup>15</sup> 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).

<sup>16</sup> See Appendix A, 47 C.F.R. § 54.518 as amended herein.

<sup>17</sup> 47 U.S.C. § 254(c)(1), (c)(3), (h)(1)(B), and (h)(2)(A). Congress charged the Commission with establishing competitively neutral rules to enhance access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms and libraries, and also provided the Commission with the authority to designate "special" or "additional" services eligible for universal service support for schools and libraries. 47 U.S.C. § 254(c)(3).

<sup>18</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9006-9008, paras. 431-434 (1997) (*Universal Service First Report and Order*), *aff'd in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (subsequent history omitted); *see also* 47 U.S.C. § 254(c)(1) and (c)(3).

<sup>19</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9008-15, paras. 436-449, and 9084-9090, paras. 589-600; *see also* 47 U.S.C. §§ 154(i) and 254(c)(1),(3), (h)(1)(B) and (h)(2). *But see* Letter from Mary Henze, AT&T, (continued...)

advanced telecommunications and information services for public and non-profit elementary and secondary school classrooms and libraries.<sup>20</sup> Thus, pursuant to this authority, we now include on the ESL leased dark and lit fiber provided by both telecommunications carriers and non-telecommunications carrier providers, as described below.

11. Although lit fiber is already eligible for funding as either a telecommunications service or an Internet access service (depending upon how it is used by an eligible school or library and who is providing the service),<sup>21</sup> under current implementation of section 254, an applicant cannot lease the lit fiber for voice telecommunications from a non-telecommunications carrier.<sup>22</sup> State networks and other providers, however, may be able to provide the voice telecommunications, even if they are not “offering it to the public for a fee,” as is required of a telecommunications carrier.<sup>23</sup> Section 254(h)(1)(B) requires telecommunications carriers to provide universal service to schools and libraries; it does not, however, stand as a bar to our authority to allow non-telecommunications providers to provide such services and participate in the E-rate program.<sup>24</sup> As explained below, drawing a distinction between telecommunications carriers and entities other than telecommunications carriers in this specific context would unduly limit the flexibility of schools and libraries to select the most cost-effective broadband solutions to meet their needs, which would be inconsistent with our schools and libraries policies. We find that broadening the scope of potential suppliers of broadband increases competitive options, which in turn enhances choice and reduces cost. Thus, pursuant to section 254(c)(3) and (h)(2) and section 4(i), we now include lit and dark fiber provided by non-telecommunications providers on the ESL. We conclude that eligible schools and libraries should be free to meet their communications needs by leasing fiber from entities other than telecommunications carriers that are able to provide schools and libraries the same services that a traditional telecommunications carrier can provide a school or library over a fiber network.

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to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 27, 2010) (AT&T August *Ex Parte*) (arguing that section 254(h) of the Act does not apply to dark fiber because dark fiber is a facility rather than a service); Letter from David Cohen, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 30, 2010) (USTelecom *Ex Parte*).

<sup>20</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9008-15, paras. 436-449, and 9084-9090, paras. 589-600.

<sup>21</sup> See USAC website, Schools and Libraries, Eligible Services List of the Schools and Libraries Universal Support Mechanism for Funding Year 2010, available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-09-105A2.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-105A2.pdf), at 2-3 (last visited Sept. 14, 2010) (Funding Year 2010 ESL).

<sup>22</sup> *Id.*

<sup>23</sup> See 47 U.S.C. § 153(46). Congress defined “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” *Id.*

<sup>24</sup> See 47 U.S.C. § 254(h)(1)(B).

12. Commission precedent refutes the contention that leasing dark fiber is not a “service.”<sup>25</sup> Because dark fiber is a service, we do not have to decide whether we could otherwise fund it under section 254(h). Moreover, like internal connections, which the Commission has found to be services for purposes of the E-rate program,<sup>26</sup> dark fiber is part of the transmission path that enables the requisite functionality (delivery of voice, video and/or data) to be delivered to the classroom. Further, contrary to opponents’ arguments,<sup>27</sup> we find that dark fiber does enhance access to advanced telecommunications and information services consistent with section 254(h)(2)(A). As discussed below, allowing schools and libraries to lease fiber from any provider will give the institutions more flexibility to select the most cost-effective broadband solutions.<sup>28</sup> It should also increase competition among providers of fiber and ensures that schools and libraries can pay less for the same or greater bandwidth, which should increase access to advanced telecommunications and information services, including Internet access. Additionally, if schools and libraries are able to receive additional capacity for less money, this should free up E-rate funding to help other schools and libraries meet their connectivity goals.

13. As instructional technology requires greater bandwidth, applicants will benefit from having the freedom to select from more options for broadband access. If more providers bid to provide services to schools and libraries, the resulting competition should better ensure that applicants – and the E-rate program – receive the best price for the most bandwidth. If schools and libraries are able to receive the same – or better – capacity for less money, the program should save money that can be spent on other services to help schools and libraries meet their connectivity goals. We thus find that allowing schools and libraries to lease fiber from any provider will best serve the purposes of the E-rate program.<sup>29</sup>

14. The designation of dark and lit fiber provided by telecommunications carriers and non-telecommunications carrier providers as services eligible for E-rate support should help schools and

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<sup>25</sup> See *In the Matter of Applications for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, 8 FCC Rcd 2589, 2593, paras. 17-18 (1993) (finding that even “the provision and maintenance of fiber optic transmission capacity between customer premises where the electronics and other equipment necessary to power or ‘light’ the fiber are provided by the customer” -- referred to as “dark fiber” -- is a “wire communication,” *i.e.*, a communication service, because, among other things, the provider of dark fiber still owns, maintains, and repairs the fiber and merely leases it to the customer for a term of months or years), *remanded on other grounds, Southwestern Bell Telephone Co. v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994); see also *Nonaccounting Safeguards of Sections 271 and 272, Second Order on Reconsideration*, 12 FCC Rcd 8653, 8683 n.110 (1997) (citing to the *Dark Fiber Decision* for the proposition that the leasing of network facilities is a communications service); *Global NAPS, Inc. v. New England Tel.*, 156 F.Supp.2d 72, 78 (D. Mass. 2001) (finding that the FCC treats the leasing of dark fiber as the provision of a telecommunications service); *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475, 1478 (D.C. Cir. 1994) (“The provision of the fiber optic lines without the necessary electronic equipment to power the fiber is commonly known as ‘dark’ fiber service . . .”). *But see, e.g., AT&T Ex Parte; USTelecom Ex Parte.*

<sup>26</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9015-17, paras. 450-453.

<sup>27</sup> See *AT&T Ex Parte* at 2.

<sup>28</sup> See *infra* paras. 13-18.

<sup>29</sup> See, e.g., EdLiNC Comments at 14; R&E Network Community Comments at 5-6; NC DPI Comments at 3; NY State Office of Children and Family Services (NY OCFS) Comments at 3; SHLB Coalition Comments at 8. *But see* Sprint Comments at 7-8 (supports proposal if recipient leases only from a municipality or other community or anchor institution but not when it leases from commercial entities that are not telecommunications carriers); Sunesys Comments at 7-8; ESPA Comments at 4-5 (telecommunications carriers should only provide fiber service since they have the ability and resources to best support a recipient’s needs); San Francisco Reply Comments at 3-8; Clark County School District Reply Comments at 2-4; E-rate Consultants, Inc. Reply Comments at 2; City of Hartford and Hartford Public Schools (Hartford) Reply Comments at 3; NATOA Reply Comments at 2-5; SCG Reply Comments at 2-6; SECA Reply Comments at 13-15; NBP at 9 (Goal No. 4).



libraries save money or receive additional capacity for the same or fewer dollars. Commenters provided many examples of schools and libraries that are using fiber today because it is the most cost-effective solution for them, even without E-rate support.<sup>30</sup> For example, the Tri-County Educational Service Center in Wooster, Ohio, which serves more than 30,000 students in 19 school districts across three Central Ohio counties, has been able to save 50 percent over traditional carrier services through the use of dark fiber, along with a 750 percent increase in network performance.<sup>31</sup> Such cost savings will help E-rate funds go further.

15. Furthermore, the increased capacity available through fiber will enable schools and libraries to develop and deliver a wide variety of educational programs and services to students and library patrons. For example, the bandwidth used by San Francisco's public libraries has increased over the past five years, from 1.44 megabits per second (Mbps) to 50 Mbps, but even 50 Mbps is currently insufficient for San Francisco to deliver the bandwidth-intensive content available on the Internet through its libraries' online resources and databases.<sup>32</sup> San Francisco's public library branches serve as community anchors, both as centers for digital literacy and as hubs for access to public computers.<sup>33</sup> While their bandwidth needs are increasing, their local government and school district budgets are shrinking.<sup>34</sup> Currently, San Francisco's public libraries must rely on commercial telecommunications services in order to take advantage of E-rate discounts.<sup>35</sup> As bandwidth needs continue to increase, the ability to receive E-rate discounts on leased fiber will provide another option for schools and libraries, such as those in San Francisco, to access the bandwidth they need to deliver the most cost-effective services to their students and patrons, thus enhancing access to advanced telecommunications and information services. Our action today encourages collaboration with local, state, and federal agencies to more effectively utilize existing facilities and resources to meet the broadband needs of schools and libraries across the nation.<sup>36</sup>

16. We are not persuaded by commercial service providers' arguments that entities other than commercial service providers cannot be trusted to serve applicants adequately, or that schools and libraries are unequipped to lease dark fiber.<sup>37</sup> There are a variety of entities — from telecommunications carriers to non-traditional providers, including research and education networks; regional, state, and local government entities and networks; other non-profit and for-profit providers; and utility companies — that are successfully provisioning fiber solutions. For example, the City of San Francisco has provisioned

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<sup>30</sup> See, e.g., San Francisco Reply Comments; EdLiNC Comments at 14; CA K-12 HSN Reply Comments; Internet2 Reply Comments; Letter from John Windhausen, Jr., Coordinator, Schools, Health and Libraries Broadband Coalition, to Sharon Gillett, Chief, Wireline Competition Bureau, CC Docket No. 02-6 (dated Aug. 27, 2010) (SHLB *Ex Parte*); Letter from Doug Mah, Administrator, K20 Educational Network, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 12, 2010) (K20 *Ex Parte*).

<sup>31</sup> See EdLiNC Comments at 14; see also SHLB *Ex Parte* at 5-6, Attachments 1-3 (providing examples of the cost savings of providing dark fiber to schools and libraries).

<sup>32</sup> See San Francisco Comments at 3; San Francisco Reply Comments at 7.

<sup>33</sup> San Francisco Comments at 3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See NBP at 153-155 (NBP Recommendations 8:20, 8:22).

<sup>37</sup> See, e.g., AT & T Comments at 10-14; Charter Communications, Inc. Comments at 4-5; National Telecommunications Cooperative Association (NTCA) Comments at 24; Qwest Comments at 5-6; Sunesys Comments at 7-9; Verizon Comments at 9-10; AT & T Reply Comments at 5-6; CenturyLink Reply Comments at 8-14; Communications Workers of America (CWA) Reply Comments at 3-5; Norlight Telecommunications, Inc. Reply Comments at 3-5.

dark fiber to 10 campus sites of City College of San Francisco, one of the largest college systems in the country.<sup>38</sup> The City College network has enabled the implementation of new classes, allowed expansion of computer labs, and facilitated deployment of new educational applications that would not have been possible with City College's previous networking environment.<sup>39</sup> Additionally, in the last 13 years, non-profit national and state research and education networks have deployed almost 25,000 miles of a national fiber infrastructure to more than 66,000 community anchor institutions.<sup>40</sup>

17. Some commercial service providers argue that school and library information technology (IT) professionals are unlikely to understand how to use leased dark fiber.<sup>41</sup> We find no evidence in the record supporting that assertion, and note that many schools and libraries have expert, professional IT staff.<sup>42</sup> We believe applicants are generally in the best position to know their needs, resources, and capabilities, and to procure from the full range of competitive options in the marketplace the most cost-effective broadband solutions for those needs. Nor are we persuaded by suggestions that we should not provide flexibility to allow schools to lease dark fiber or other spare capacity from a municipal network because the schools would be unprotected if the municipality cannot continue to operate.<sup>43</sup> It is unclear why a municipality would be more likely to discontinue service than a private company, and, in any event, our rules permit schools and libraries to change service providers under certain circumstances when the service provider ceases operations or is unable to perform.<sup>44</sup> Further, we are not convinced that schools and libraries purchasing services from other governmental or non-profit entities will raise conflict of interest issues or financial conflicts related to their employees.<sup>45</sup> We believe our competitive bidding

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<sup>38</sup> See San Francisco Reply Comments at 5.

<sup>39</sup> *Id.* at 5-6.

<sup>40</sup> See Internet2 Reply Comments at 1 (providing examples of the abilities of a non-telecommunications carrier to deploy broadband).

<sup>41</sup> See generally AT & T Comments at 10-14; Charter Communications, Inc. Comments at 4-5; National Telecommunications Cooperative Association (NTCA) Comments at 24; Qwest Comments at 5-6; Sunesys Comments at 7-9; Verizon Comments at 9-10; AT & T Reply Comments at 5-6; CenturyLink Reply Comments at 8-14; Communications Workers of America (CWA) Reply Comments at 3-5; Norlight Telecommunications, Inc. Reply Comments at 3-5.

<sup>42</sup> See, e.g., San Francisco Reply Comments at 4 (stating that San Francisco regularly consults with departments and agencies connected through its existing fiber network to develop hardware configurations and network engineering required to extend service).

<sup>43</sup> See, e.g., AT & T Comments at 13; NCTA Comments at 3, n.9.

<sup>44</sup> See, e.g., *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45, 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order*) (allowing service provider identification number (SPIN) changes whenever an applicant certifies that (1) the SPIN change is allowed under its state and local procurement rules and under the terms of the contract between the applicant and its original service provider, and (2) the applicant has notified its original service provider of its intent to change service providers). The Commission also stated that SPIN changes are no longer restricted to those categories enumerated in the USAC guidelines (*i.e.*, service provider refuses to participate, has gone out of business, or has breached its contract). *Id.* at 5501, para. 6. See also USAC website, Schools and Libraries, SPIN Change Guidance, available at <http://www.usac.org/sl/about/changes-corrections/spin-change-guidance.aspx> (last visited Sept. 14, 2010).

<sup>45</sup> See Letter from L. Charles Keller, Wilkinson, Barker, Knauer, LLP, counsel for Cox Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6, GN Docket No. 09-51, at 2 (dated Sept. 16, 2010) (*Cox Ex Parte*).

rules protect against any such waste, fraud, and abuse of the E-rate program.<sup>46</sup> To the extent the Commission finds violations of its rules, such as sharing of inside information during the competitive bidding process, the Commission will require USAC to adjust its funding commitment or recover any disbursed E-rate funds through its normal processes.

18. Commenters that opposed including leased dark fiber on the ESL also argue that schools and libraries will be unaware of or unable to bear the additional cost of installation.<sup>47</sup> They also argue that leased fiber may include more capacity than needed by a school or library system for educational purposes.<sup>48</sup> We are not persuaded by such arguments. The Commission's competitive bidding rules serve as a central tenet of the E-rate program. They ensure more efficient pricing for telecommunications and information services purchased by schools and libraries and help deter waste, fraud and abuse. Thus, while not all schools and libraries may choose to use leased fiber to meet their broadband needs, our rules require all applicants to select the service or equipment offering that will be the most cost-effective means of meeting their educational needs and technology goals.<sup>49</sup> Our rules also require schools and libraries to have the necessary resources to support any non-discounted portion of the eligible services, in order to make the most effective use of E-rate funding.<sup>50</sup> We believe these two rules will ensure that all applicants that choose to use a leased fiber solution are considering the full range of costs associated with implementing leased fiber and are not requesting funding for more capacity than necessary for their educational needs. We also emphasize, in this context, the importance of applicants making "apples-to-apples comparisons when evaluating competing bids to meet their needs. Providing services using dark fiber may involve a number of additional costs beyond lease payments for fiber connectivity, and those costs should be factored in to a total-cost comparison across bids.

19. In order for schools and libraries to utilize and make the most efficient use of dark fiber, we include as eligible certain costs associated with leased dark fiber.<sup>51</sup> Specifically, we include as

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<sup>46</sup> See Appendix A, 47 C.F.R. § 54.503 as amended herein. Our E-rate rules and requirements, including the competitive bidding rules, apply to all applicants and service providers, irrespective of the entity providing the fiber network. See Letter from Mary L. Henze, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6, at 3 (dated Sept. 16, 2010) (AT&T September *Ex Parte*) (urging the Commission to ensure that all providers and purchasers of dark fiber are subject to all the same E-rate rules and requirements in order to ensure that the E-rate program continues to be fair and open).

<sup>47</sup> See AT & T Comments at 10-14; Charter Communications, Inc. Comments at 4-5; NTCA Comments at 24; Qwest Comments at 5-6; Sunesys Comments at 7-9; Verizon Comments at 9-10; AT&T Reply Comments at 5-6; CenturyLink Reply Comments at 8-14.; CWA Reply Comments at 3-5; Norlight Telecommunications, Inc. Reply Comments at 3-5; Cox *Ex Parte* at 2.

<sup>48</sup> See generally AT & T Comments at 10-14; Charter Communications, Inc. Comments at 4-5; NTCA Comments at 24; Qwest Comments at 5-6; Sunesys Comments at 7-9; Verizon Comments at 9-10; AT&T Reply Comments at 5-6; CenturyLink Reply Comments at 8-14.; CWA Reply Comments at 3-5; Norlight Telecommunications, Inc. Reply Comments at 3-5; Cox *Ex Parte* at 4.

<sup>49</sup> See Appendix A, 47 C.F.R. § 54.503(c)(2)(vii) as amended herein; see also Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471) (requiring applicants to certify in Block 6 that they have secured access to all of the resources necessary to use the services purchased effectively).

<sup>50</sup> See Appendix, A, 47 C.F.R. § 54.503(c)(2)(vii), (c)(2)(vi) as amended herein; see also 47 C.F.R. § 54.508(a).

<sup>51</sup> For purposes of the E-rate program, we will consider Indefeasible Rights of Use (IRU) purchase arrangements as a lease of dark fiber. To the extent an IRU contract contains significant upfront charges, and consistent with our existing requirements regarding upfront costs associated with the purchase of telecommunications services, applicants must amortize upfront, non-recurring charges where the upfront charges "vastly exceed" the monthly recurring charges. See *Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD- (continued...)

eligible maintenance costs and installation charges.<sup>52</sup> Providing support for maintenance costs and installation charges will enhance access to advanced telecommunications and information services by helping schools and libraries make use of an existing or new local fiber network.<sup>53</sup> At this time, however, we decline to extend support to cover special construction charges that may be incurred to build out connections from applicants' facilities to an off-premises fiber network, preferring to seek further comment in a subsequent proceeding on the potential effect of such changes on the fund.<sup>54</sup> We also do not include as eligible the cost of modulating electronics needed to light dark fiber. The applicant is therefore responsible for covering these costs in order to receive E-rate funding for the lease of dark fiber.<sup>55</sup> While we conclude that including leased dark fiber on the ESL should provide greater flexibility to E-rate participants to meet their bandwidth needs and reduce their overall cost of broadband, we nevertheless limit funding in this manner pending further inquiry into the potential impact on the E-rate fund of allowing related costs.

## 2. Community Use of Schools' E-rate Funded Facilities and Services

20. *Background.* The Act provides that E-rate discounts be given to eligible schools and libraries for educational purposes.<sup>56</sup> To implement this provision, in the *Universal Service First Report and Order*, the Commission required schools and libraries to certify, among other things, that services would be used solely for "educational purposes."<sup>57</sup> The Commission noted that all of the certification requirements were intended to encourage accountability on the part of schools and libraries.<sup>58</sup> Subsequently, as noted above, the Commission clarified the meaning of "educational purposes" as "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."<sup>59</sup> As a result, use of services and facilities funded by E-rate for non-educational purposes would not be an eligible use, and schools are required to reduce their funding request by the proportion of the total use of the services and facilities that is ineligible.<sup>60</sup>

21. In 2001, the Commission granted the State of Alaska a limited waiver of section 54.504(b)(2)(v) to allow members of certain remote communities to use excess service obtained with E-

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149423, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 18598 (2000) (*Brooklyn*). As we noted in *Brooklyn*, we do not intend to disfavor or discourage multiyear or pre-paid contract agreements between service providers and eligible schools and libraries, when the appropriate circumstances are present for such contracts. *Id.*

<sup>52</sup> This includes charges for installation within the property line.

<sup>53</sup> See 47 U.S.C. § 254(h)(2).

<sup>54</sup> Special construction charges include costs for design and engineering, project management, digging trenches, and laying fiber.

<sup>55</sup> See SHLB *Ex Parte* at 5 (indicating that the costs of "lighting" a dark fiber connection are relatively small compared to the costs of deploying and installing the fiber).

<sup>56</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>57</sup> 47 C.F.R. § 54.504(b)(2)(v) (2009) (requiring applicants to certify on their FCC Form 470 that E-rate services would be used solely for educational purposes); *Universal Service First Report and Order*, 12 FCC Rcd at 9079, para. 577.

<sup>58</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9076, para. 570.

<sup>59</sup> *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, paras. 17-18 (*Schools and Libraries Second Report and Order*); 47 C.F.R. § 54.500(b).

<sup>60</sup> 47 C.F.R. § 54.504(g) (2009).

rate support when the services were not in use by schools or libraries.<sup>61</sup> In November 2009, as part of the Commission's development of the NBP, the Commission sought comment on whether the E-rate program should be modified to allow the general community to use E-rate supported broadband services and facilities located at schools.<sup>62</sup> In February 2010, in the *E-rate Community Use Order and NPRM*, on our own motion, we waived sections 54.504(b)(2)(v) and 54.504(c)(1)(vii) of our existing rules, which require applicants to certify on their FCC Forms 470 and 471 that the services requested will be used solely for educational purposes.<sup>63</sup> We extended this waiver through the close of funding year 2010 (June 30, 2011).<sup>64</sup> The waiver allows schools to open their facilities, when classes are not in session, to the general public to utilize services and facilities supported by E-rate. We also sought comment on whether we should make this change permanent.

22. *Discussion.* We conclude that we should revise our rules to permanently allow schools to open their facilities, when classes are not in session, to the general public to utilize services and facilities supported by E-rate. Specifically, we revise sections 54.503 and 54.504 of our rules to require applicants to certify that "[t]he services the applicant purchases at discounts will be used *primarily* for educational purposes."<sup>65</sup> This is consistent with the standard we adopted in the *Community Use Order*.<sup>66</sup> Thus, schools must primarily use services funded under the E-rate program, in the first instance, for educational purposes. To primarily use services supported by E-rate, E-rate recipients must ensure that students always get first priority in use of the schools' resources.<sup>67</sup>

23. Our experience convinces us that our decision will expand the benefits of using E-rate funds. For example, after we waived the rule in February 2010, the State of West Virginia allowed community use of school Internet access and networks by offering evening community technology training lab classes and school technology nights.<sup>68</sup> Most notably, during the April 2010 Upper Big Branch coal mining disaster, a school in West Virginia whose students were on spring break provided community access to its facilities to be used as a government and media command center during the rescue and eventual search and recovery efforts.<sup>69</sup> We thus find that permitting community use of E-rate services and equipment during times when classes are not in session (non-operating hours) will promote broadband access. Moreover, this decision is consistent with Congress's directive to consider how anchor institutions, such as schools, can ensure access to broadband service.<sup>70</sup> We remain focused on Congress's

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<sup>61</sup> *Federal-State Joint Board on Universal Service, Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling*, CC Docket No. 96-45, Order, 16 FCC Rcd 21511 (2001) (*Alaska Order*).

<sup>62</sup> See *NBP Public Notice #15*, GN Docket Nos. 09-47, 09-51, 09-137, CC Docket No. 02-6, WC Docket No. 05-195, Public Notice, 24 FCC Rcd 13560 (2009).

<sup>63</sup> *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*); 47 C.F.R. §§ 54.504(b)(2)(v), 54.504(c)(1)(vii) (2009).

<sup>64</sup> See *E-rate Community Use Order and NPRM*, 25 FCC Rcd at 1740.

<sup>65</sup> See Appendix A, 47 C.F.R. §§ 54.503(c)(2)(v) and 54.504(a)(1)(vii) as amended herein.

<sup>66</sup> See *E-rate Community Use Order and NPRM*, 25 FCC Rcd at 1745-46, paras. 11-12.

<sup>67</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>68</sup> See Letter from Julia Benincosa, West Virginia Department of Education, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 2, 2010).

<sup>69</sup> *Id.*

<sup>70</sup> See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

primary purpose in establishing the schools component of the E-rate program: to ensure that educators, students, and school personnel have access to advanced telecommunications and information services for educational purposes.<sup>71</sup> At the same time, there are many times when schools are out of session – evenings, weekends, school holidays, and summer breaks, for example – and we conclude that it is in the public interest to allow greater use of government-supported services and facilities during those times, particularly because that enhanced access comes at no additional cost to the E-rate program. Moreover, we find that the revised rules are consistent with the overarching goals of universal service to promote access to telecommunications and information services,<sup>72</sup> and that no provision of the Communications Act prohibits this use of E-rate supported services.

24. To reduce the likelihood of waste, fraud, and abuse, and to guard against expanding the cost of the E-rate program, we set forth certain conditions for schools that choose to allow the community to use their E-rate funded services.<sup>73</sup> First, schools participating in the E-rate program may not request funding for more services than are necessary for educational purposes to serve their current student population. This condition is necessary to ensure that E-rate funds that schools receive remain targeted to the educational needs of the institution and its students. This is essential to preserve limited funds and to carry out Congress's intent in establishing the E-rate program.<sup>74</sup> To the extent that a school desires to augment services beyond that which is necessary for educational purposes, it must use other, non-E-rate funded resources. Any community use of the services purchased under the E-rate program must be incidental and not increase overall costs to the E-rate program.

25. Second, any community use of E-rate funded services at a school facility shall be limited to non-operating hours of the school and to community members who access the Internet while on a school's campus.<sup>75</sup> Thus, the public can utilize a school's facilities and services during times when the school is not in session, such as after school hours, weekends, school holidays, and summer breaks. Services supported by E-rate funds must, in the first instance, be used for educational purposes, and students, educators, and other school personnel shall always get priority in the use of these resources. Further, the decision about whether to allow community access rests with the school, and we thus leave it to schools to establish their own policies regarding specific use of their services and facilities, including, for example, the hours of use.<sup>76</sup> We decline at this time to provide guidance on after-hours community

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<sup>71</sup> 47 U.S.C. § 254(h)(2).

<sup>72</sup> See 47 U.S.C. § 254(b).

<sup>73</sup> See, e.g., *E-rate Community Use Order and NPRM*, 25 FCC Rcd at 1745-47, paras. 11-13.

<sup>74</sup> See *Verizon E-rate Community Use NPRM Comments* at 2.

<sup>75</sup> But see *Communities Connect Network (CCN) E-rate Community Use NPRM Reply Comments* at 1-2 and *Stephan Ronan E-rate Community Use NPRM Reply Comments* at 1 (seeking elimination of limiting public use to on-campus activity and encouraging the Commission to allow other entities to access a school's unused bandwidth during non-operating hours).

<sup>76</sup> As required by CIPA, under current program rules, schools receiving E-rate discounts must certify that they are using "technology protection measures" to block access to inappropriate content by minors. See 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); see 47 C.F.R. § 54.520(c)(1)(i) ("The Internet safety policy adopted and enforced pursuant 47 U.S.C. § 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of computers by minors, harmful to minors."). As long as schools are in compliance with CIPA requirements, we leave specific policymaking decisions up to individual schools to address.

use policies.<sup>77</sup> We find that schools are in the best position to establish their own individualized policies, including ways in which to inform the public of the hours of operation to the general public.<sup>78</sup> While we are sensitive to placing additional administrative burdens on applicants, we plan to include a box on the FCC Form 471 when we next revise this form for applicants to check if they are taking advantage of this rule change. We believe checking a box indicating community use, without requiring additional, specific information, will enable the Commission to develop a better understanding of where such community use is occurring while at the same time minimizing applicants' reporting burden. In addition, we urge schools to make their community use policies and hours publicly available on their websites. Additionally, schools can submit their success stories directly to the Commission regarding the community's use of their E-rate funded facilities and services at the Commission's website, [http://www.fcc.gov/wcb/tapd/universal\\_service/schoolsandlibs.html](http://www.fcc.gov/wcb/tapd/universal_service/schoolsandlibs.html), in the section titled "E-rate Community Use Success Stories."

26. Third, as set forth in the Act and our rules, schools' discounted service or network capacity may not be "sold, resold, or transferred by such user in consideration for money or any other thing of value."<sup>79</sup> Specifically, schools may not charge for the use of services and facilities purchased using E-rate funds. The Commission concluded, however, in the *Universal Service First Report and Order*, that section 254(h)(3) of the Act does not prohibit an eligible entity from charging fees for any services that schools or libraries purchase that are not subject to a universal service discount.<sup>80</sup> Thus, the Commission found that an eligible school or library may assess computer fees to help defray the cost of computers or training fees to help cover the cost of training because these purchases are not subsidized by the universal service support mechanisms.<sup>81</sup> Similarly, we agree with the Massachusetts Department of Telecommunications and Cable (MDTC) and Sprint that schools should not be prohibited from recovering costs reasonably associated with permitting community access, such as additional electricity, security, and heating costs used to facilitate community access.<sup>82</sup>

27. We emphasize that the revision of our rules creates an opportunity for schools, but not an obligation. Schools may have any number of reasons to decide not to open their facilities to the general public to utilize services and facilities supported by E-rate during non-operating hours.<sup>83</sup> For example,

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<sup>77</sup> See Massachusetts Department of Telecommunications and Cable (MDTC) *E-rate Community Use NPRM* Comments at 5 (urging the Commission to provide guidance to schools to help establish individualized policies to best facilitate public access to broadband services while not interfering with the primary purpose of the E-rate program to enhance education).

<sup>78</sup> See SECA *E-rate Community Use NPRM* Reply Comments at 1-2 (suggesting schools use less formal and more effective ways to inform the public, such as school Web sites, local papers, school newsletters and school community associations).

<sup>79</sup> 47 U.S.C. § 254(h)(3) (except as allowed by section 54.513 of the Commission's rules); see also 47 C.F.R. §§ 54.504(b)(2)(v); 54.504(c)(1)(vii) (2009).

<sup>80</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9074, para. 567; 47 C.F.R. § 54.513(b).

<sup>81</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9074, para. 567; 47 C.F.R. § 54.513(b).

<sup>82</sup> See MDTC *E-rate Community Use NPRM* Comments at 6 (stating that if schools were forced to pay such costs out of their own pockets it would undermine the financial benefit to schools); Sprint *E-rate Community Use NPRM* Comments at 2 (cautioning that some E-rate contracts provide services on a tiered rate schedule, potentially causing use by the general public during non-school hours to result in overage charges).

<sup>83</sup> See, e.g., EdLiNC *E-rate Community Use NPRM* Comments at 2 (stating that the Commission must make clear that it is each school's decision whether to grant community access to their facilities and Internet connectivity during non-school hours); MDTC *E-rate Community Use NPRM* Comments at 5 (stating that the Commission should include language in its order permitting public access at the schools' discretion); National Association of State (continued...)

some schools may find that school activities utilize all or almost all of the E-rate supported services, or that there is not a public need for use during non-operating hours in a particular school. We therefore stress the optional nature of these rule revisions, leaving this decision up to individual recipients of E-rate funding.

### 3. Expanding Access for Residential Schools that Serve Unique Populations

28. *Background.* In the *Universal Service First Report and Order*, the Commission provided support for internal connections “only if it is necessary to transport information all the way to individual classrooms.”<sup>84</sup> 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.”<sup>85</sup> Consistent with these orders, 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.<sup>86</sup>

29. In the *Schools and Libraries Second Report and Order*, the Commission clarified the scope of what constitutes educational purposes, recognizing that the technology needs of participants in the E-rate program are complex and unique to each participant.<sup>87</sup> Specifically, the Commission defined educational purposes as follows: “[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.’”<sup>88</sup> The Commission found 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.<sup>89</sup> The Commission noted that, in certain limited instances, the use of telecommunications services offsite would be

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Utility Consumer Advocates (NASUCA) *E-rate Community Use NPRM* Comments at 2 (commenting that opening schools for public use should be voluntary, i.e., up to the management of each school); California Public Utilities Commission (CPUC) *E-rate Community Use NPRM* Reply Comments at 2 (supporting general public use of a schools’ Internet access during non-operating hours, at the school’s discretion).

<sup>84</sup> 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*).

<sup>85</sup> *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5440, para. 210; see also 47 C.F.R. § 54.506(a).

<sup>86</sup> 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’ training center, despite its occasional use for student classroom instruction); *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, 12718, para. 7 (Wireline Comp. Bur. 2009) (denying funding to dormitory and residential facilities).

<sup>87</sup> See *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

<sup>88</sup> *Id.*; 47 C.F.R. § 54.500(b).

<sup>89</sup> See *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.



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.<sup>90</sup>

30. In the *E-rate Broadband NPRM*, we recognized that precluding funding for services in non-instructional buildings does not take into account the special circumstances of institutions that provide residential living arrangements to meet the unique challenges of certain residential student populations. In these circumstances, services to the residential areas of these schools might be considered to be used for educational purposes because these schools serve students with special needs or who may have no option but to live at school.<sup>91</sup> We sought comment on whether and how to address this situation.<sup>92</sup> Specifically, we proposed to revise our rules to allow residential schools that serve populations facing unique challenges, such as Tribal schools or schools for children with physical, cognitive, or behavioral disabilities to receive E-rate funding for priority one and priority two services in those residential areas.<sup>93</sup>

31. *Discussion.* We adopt our proposal to allow residential schools that serve unique populations – schools on Tribal lands; schools designed to serve students with medical needs; schools designed to serve students with physical, cognitive or behavioral disabilities; schools where 35 percent or more of their students are eligible for the national school lunch program,<sup>94</sup> or juvenile justice facilities – to receive E-rate funding for all supported services provided in the residential areas of those schools.<sup>95</sup> We find that, because these schools also serve as residences to the students, the supported E-rate services will be used primarily, if not exclusively, for educational purposes, and thus support is consistent with our rules and with the purposes of section 254.<sup>96</sup> As the Commission stated in the *Schools and Libraries*

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<sup>90</sup> *Id.* at 9208-09, para. 19. The following are examples off-site activities that the Commission determined are 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: 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 n.28.

<sup>91</sup> See *E-rate Broadband NPRM*, 25 FCC Rcd at 6895-96, para. 57.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> See 47 C.F.R. § 54.505 (2009) (establishing different discounts levels for schools and libraries based on poverty and rural factors)

<sup>95</sup> 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 (dated Apr. 29, 2010) (WVDE Request for Waiver and Clarification); Sentinel Technologies Comments at 5; WDPI Comments at 8; State of Alaska Comments at 8; UEN Comments at 9; Public Broadcasting Service (PBS) Comments at 4-5; NY State Education Department (NYSED) Comments at 9-10; NYC Department of Education (NY DOE) Comments at 5; Cisco Comments at 7-8; EMPA Comments at 15; SECA Comments at 36-37; NY OCFs Comments at 3; NC Department of Public Instruction (NC DPI) Comments at 3. We note that no comments in the record opposed this proposal

<sup>96</sup> See 47 C.F.R. § 54.500(b) (stating that activities that occur on school property "are presumed to be integral, immediate, and proximate to the education of students"). See also NY State Education Department Comments at 9-10. ("The education of students in these schools is truly a 24/7 undertaking with instruction taking place in both regular classrooms and in the residences."); Request of the WVDE Request for Waiver and Clarification at 1 ("The students that attend this school are either deaf or blind and reside away from their parents to receive special education schooling from this state-run school. They are unable to go home or to a public library to access the Internet. There are several adult resident advisors on each floor of the dormitories. Organized study hours are (continued...)

*Second Report and Order*, the technology needs of participants in the E-rate program are often complex and unique to each participant.<sup>97</sup> Based on the record before us, we find that these schools serve students whose educational needs may not be otherwise met without attending such a residential school. We therefore find it to be reasonable and consistent with the public interest to provide support for E-rate services provided to the residential areas of those schools, including Internet access, telecommunications, telecommunications services, and internal connections. Additionally, E-rate support will facilitate ongoing access to educational and learning materials beyond the normal school day and increase the ability of those students to complete homework assignments, such as those that require broadband access for research projects, after school hours.<sup>98</sup> Accordingly, we find that such use meets the definition of educational purposes. Additionally, we amend section 54.502 to permit discounts for internal connections in non-instructional buildings of a school or school district where the Commission has found that the use of those services meets the definition of educational purpose.<sup>99</sup>

32. We decline, at this time, to adopt SECA's suggestion to expand this proposal to *any* school that has a dormitory or residential facility on its grounds.<sup>100</sup> While we recognize that there are other residential schools that do not fall within the categories outlined above, we want to proceed in a conservative fashion to focus on schools serving students with the most unique needs as provided above,<sup>101</sup> rather than providing funding more broadly to all residential schools. Thus, we believe it is preferable to limit the potential impact of this revision on the E-rate program as we consider additional upgrades to the program.<sup>102</sup> We agree with SECA, however, that we should not limit support to residential campuses that are state- or federal-sponsored institutions.<sup>103</sup> For instance, there may be private schools that serve students with physical, cognitive, or behavioral disabilities, and their students face the same need to have ongoing access to technology-based learning outside of the classroom.<sup>104</sup> Therefore, we decline to limit support for services to residential areas only to schools partly or fully sponsored by state or federal funds.

33. *West Virginia Request for Waiver and Clarification.* The West Virginia Department of Education (WVDE) filed a request for waiver and clarification of the Commission's rules to allow the West Virginia Schools for the Deaf and the Blind to receive funding for services for their students who reside on the school campus.<sup>105</sup> Because we address the issues raised by WVDE in this order, we dismiss WVDE's request as moot.

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scheduled each evening and a computer lab/study center will be added as part of the addition of Internet access within the dormitories.”).

<sup>97</sup> See *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

<sup>98</sup> We note that, as in the classroom, in residential areas E-rate supported facilities and services must be primarily used for educational purposes.

<sup>99</sup> See Appendix A, 47 C.F.R. § 54.502(a)(4)(i) as amended herein.

<sup>100</sup> See SECA Comments at 37; see also Cisco Comments 7-8.

<sup>101</sup> See *supra* para. 31.

<sup>102</sup> Thus, while we may expand some support for services beyond school and library grounds on a trial basis, as elaborated below, we continue to be mindful of the potential impact of our reforms on the E-rate funding cap. Therefore, at this time, we limit funding to only those residential schools that serve unique populations.

<sup>103</sup> See SECA Comments at 37.

<sup>104</sup> *Id.*

<sup>105</sup> See WVDE Request for Waiver and Clarification.

#### 4. Indexing the Annual Funding Cap to Inflation

34. *Background.* The E-rate program was implemented in 1997 with a \$2.25 billion funding cap on program disbursements.<sup>106</sup> Since that time, the demand for E-rate funding has exceeded the amount available in every year but one.<sup>107</sup> As a result, many requests for priority two services are denied, and over the years, the majority of requests for internal connections have gone unfunded.<sup>108</sup> Moreover, the demand for priority one services is growing.<sup>109</sup>

35. *Discussion.* Many commenters encouraged the Commission to increase the E-rate program funding cap significantly from its current \$2.25 billion level before indexing the cap to inflation on a going-forward basis.<sup>110</sup> Commenters contend that the Commission should increase the cap to reflect all inflationary adjustments since the program was initiated in 1997,<sup>111</sup> which would immediately add

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<sup>106</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9054-55, paras. 529-31 (1997) (estimating need from data provided by the McKinsey Report, Rothstein Thesis and NCLIS Report). While the program is capped at \$2.25 billion, the Commission's rules state that all funds that are unused from prior years shall be carried forward for use in the next E-rate funding year. 47 § 54.507(a)(2). *Carryover of Unused Funds for Funding Year 2004*, CC Docket No. 02-6, Public Notice, 19 FCC Rcd 20420 (Wireline Comp. Bur. 2004); *Wireline Competition Bureau Announces Carryover of Unused Funds for Funding Year 2007*, CC Docket No. 02-6, Public Notice, 22 FCC Rcd 10795 (Wireline Comp. Bur. 2007); *Carryover of Unused Federal Universal Service Funds for Funding Year 2008*, CC Docket No. 02-6, Public Notice, 23 FCC Rcd 9960 (Wireline Comp. Bur. 2008); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd 10164 (Wireline Comp. Bur. 2009); *Wireline Competition Bureau Announces Carryover of Unused Funds for Funding Year 2010*, CC Docket No. 02-6, Public Notice, 25 FCC Rcd 8483 (Wireline Comp. Bur. Jul. 1, 2010). There are a variety of reasons why funds that are committed are ultimately not distributed. For example, they are able to find cost savings through efficient resource use, and thus ask for less in reimbursement than the amount originally anticipated and committed.

<sup>107</sup> See USAC website, Automated Search of Commitments, available at <http://www.usac.org/sl/tools/commitments-search/Default.aspx> (last visited Sept. 14, 2010).

<sup>108</sup> In 2008 and 2009, for instance, schools and libraries sought more than \$4 billion in E-rate program services even though only \$2.25 billion was available. See USAC Automated Search of Commitments, available at <http://www.usac.org/sl/tools/commitments-search/Default.aspx> (last visited Sept. 14, 2010) (demonstrating the lack of available internal connections funding for applicants in the 79 percent funding tier and below in every funding year since 2004).

<sup>109</sup> In funding year 2005, applicants requested \$1.2 billion in funding for priority one funding. By 2009, applicants requested more than \$1.6 billion. See USAC Automated Search of Commitments. See also United States Government Accountability Office Report to Congressional Requestors, "Long-Term Strategic Vision Would Help Ensure Targeting of E-rate Funds to Highest-Priority Uses," GAO 09-253 at 13 (March 2009) ("Although requests for priority one services – that is, telecommunications and Internet access – have remained roughly level since 2002, commitments have increased, at least in part, because applicants received a greater proportion of the funds they requested. The increasing amounts committed for priority one services has the effect of decreasing the amounts available for priority two services, which are funded only after all eligible priority one services requests are satisfied.").

<sup>110</sup> NY OCFS Comments at 3; Blackboard Comments at 18-19; EdLiNC Comments at 4-6; Hartford Comments at 1; CWA Reply Comments at 2; eChalk Comments at 4; WDPI Comments at 10; UEN Comments at 13; American Association of School Administrators & Association of Educational Service Agencies (AASA & AESA) Comments at 2; NATOA Comments at 7; Miami-Dade County Public Schools Comments at 8-9; CloudED Comments at 8; American Library Association (ALA) Comments at 17; CSM, Inc. (CSM) Comments at 23; EMPA Comments at 20-21.

<sup>111</sup> NY OCFS Comments at 3; Hartford Comments at 1; eChalk Comments at 4; Miami-Dade County Public Schools Comments at 8-9; NATOA Comments at 7; CloudED Comments at 8; UEN Comments.

about \$650 million to the E-rate program.<sup>112</sup> Others said that indexing the E-rate cap to inflation on a going-forward basis would not be sufficient to meaningfully fund the program.<sup>113</sup> We note that when the E-rate program began in 1997, basic Internet connectivity required a phone line and dial-up Internet service, which might have cost a total of less than \$50 per month. Today, for basic Internet connectivity capable of supporting common applications and learning tools such as educational video content, a school or library needs broadband at speeds of at least several megabits per second, which might cost upwards of \$500 per month (e.g., for a T-1 line), plus the costs of necessary internal connections.

36. We find that indexing the current \$2.25 billion E-rate cap to inflation is a sensible approach to gradually aligning the support provided by E-rate with the needs of schools and libraries, which the E-rate program is designed to serve.<sup>114</sup> Using the analysis described below, the cap for funding year 2010 will be increased to \$2,270,250,000. The Commission must balance its desire to ensure that schools and libraries have access to valuable communications opportunities with the need to ensure that consumer rates for communications services remain affordable. End users ultimately bear the cost of supporting universal service, through carrier charges.<sup>115</sup> Thus, we amend section 54.507 of our rules to index the E-rate program funding cap to the rate of inflation on a going-forward basis, beginning in the current funding year.<sup>116</sup> Indexing the cap to inflation will ensure that the program maintains its current purchasing power in today's dollars without significantly increasing the fund and raising the contribution factor.<sup>117</sup>

37. It could be argued that the existence of substantial rollover funds demonstrates that an increase in the cap is unwarranted.<sup>118</sup> The rollover funding is not surplus funding left over after demand has been met, however. To the contrary, even with an additional \$600 million in rollover funding for funding year 2008, added to the \$2.25 billion cap, the program still did not come close to meeting demand for priority two services and was forced to deny millions of dollars in applications because existing funding had been exhausted.<sup>119</sup> The Commission uses the full extent of funds available, including rollover funds, to meet demand each year. Nevertheless, demand still exceeds available funding.

38. We also note that additional universal service funds required to index the E-rate cap to inflation will be offset by the Commission's recent decision to use reclaimed funds surrendered from competitive eligible telecommunications carriers as a "fiscally responsible down payment on proposed

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<sup>112</sup> See, e.g., NBP Public Notice #15 at 238.

<sup>113</sup> CWA Reply Comments at 2 (seeking immediate increase in cap to \$4 billion); EdLiNC Comments at 4-6 (noting that Commission's solution would be a "drop in the bucket"); WDPI Comments at 10; AASA & AESA Comments at 2; ALA Comments at 17; CSM Comments at 23; EMPA Comments at 20-21.

<sup>114</sup> *E-rate Broadband NPRM*, 25 FCC Rcd at 6907, para. 84.

<sup>115</sup> See AT&T Reply Comments at 9.

<sup>116</sup> See Appendix A, 47 C.F.R. § 54.507 as amended herein.

<sup>117</sup> *E-rate Broadband NPRM*, 25 FCC Rcd at 6907, para. 84.

<sup>118</sup> *Wireline Competition Bureau Announces Carryover of Unused Funds for Funding Year 2010*, CC Docket No. 02-6, Public Notice, 25 FCC Rcd 8483 (Wireline Comp. Bur. Jul. 1, 2010).

<sup>119</sup> In funding year 2008, there were insufficient funds to grant discounts to any priority two funding requests seeking 86 percent discounts or less. See USAC website, Schools and Libraries, Schools and Libraries News Brief (Feb. 27, 2009), available at <http://www.universalservice.org/sl/tools/news-briefs/preview.aspx?id=213> (last visited Sept. 23, 2010).

broadband universal service reforms,” including indexing the E-rate funding cap to inflation.<sup>120</sup> Thus reclaimed universal service funds will be used to cover any increase that results from increases to the fund from inflation adjustments. Finally, no party flatly objected to an increase in the cap and many supported the proposal.<sup>121</sup> They noted that this step will ensure that the program continues to serve a key role in bringing essential communications and information services to thousands of schools and libraries.<sup>122</sup> One commenter noted that an increase in the E-rate funding cap should occur only after the completion of comprehensive reform of the contribution methodology.<sup>123</sup> We find, however, that the adoption of a fiscally responsible increase in the funding cap will not interfere with our broader efforts to reform the contribution methodology and acts only to give some relief to a capped support mechanism that is consistently oversubscribed.

39. As proposed, the Commission will use the gross domestic product chain-type price index (GDP-CPI) to inflation-adjust the amount of funds available annually to E-rate program participants.<sup>124</sup> This is the same index the Commission uses to inflation-adjust revenue thresholds used for classifying carrier categories for various accounting and reporting purposes and to calculate adjustments to the annual funding cap for the high-cost loop support mechanism.<sup>125</sup> There is no index that specifically examines the cost of the services funded under the E-rate program, and no record support for a more targeted measure of inflation than the GDP-CPI. Moreover, the Commission has used the GDP-CPI index in other contexts to estimate inflation of carrier costs, and we find it reasonable to use the GDP-CPI to approximate the impact of inflation on E-rate supported services.<sup>126</sup> During periods of deflation, we will maintain the prior-year cap to maintain predictability.<sup>127</sup> When the calculation of the yearly average GDP-CPI is determined, the Wireline Competition Bureau Commission will publish a Public Notice in the Federal Register within 60 days announcing any increase of the annual funding cap based on the rate of inflation.

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<sup>120</sup> *Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155, para. 20 (rel. Sept. 3, 2010)

<sup>121</sup> Anchorage School District Comments at 4; Blackboard Reply Comments at 11; Charter Comments at 4; Conterra Comments at 7; Cisco Comments at 14-15; CDE Comments at 17; ESPA Comments at 1; Dell at 4; Montgomery County Public Schools Comments at 2; Motorola Comments at 8; North Carolina Department of Public Instruction (NC DPI) Comments at 3; NW-Links Comments at 8; Sentinel Technologies Comments at 9; Qualcomm Comments at 21; PBS at 6; WVDE Comments at 6-7; SECA Comments at 51-52.

<sup>122</sup> Blackboard Reply Comments at 11; Charter Comments at 4; Montgomery County Public Schools Comments at 2; NW-Links Comments at 8; SECA Comments at 51.

<sup>123</sup> AT&T Reply Comments at 9.

<sup>124</sup> *E-rate Broadband NPRM*, 25 FCC Rcd at 6907-08, para. 85; *see also* National Income and Product Accounts Table, Bureau of Economic Analysis, April 2010, Table 1.1.4, available at <http://www.bea.gov/National/nipaweb/TableView.asp?SelectedTable=4&Freq=Qtr&FirstYear=2007&LastYear=2009> (last visited Sept. 14, 2010).

<sup>125</sup> *See, e.g.*, 47 C.F.R. § 32.9000 (defining mid-sized incumbent local exchange carrier with annual revenue indexed for inflation as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index (GDP-CPI)); 47 C.F.R. § 36.603(c).

<sup>126</sup> *See Reform of Filing Requirements and Carrier Classifications*, CC Docket No. 96-193, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 11716, 11721-22, para. 10 (1996).

<sup>127</sup> *E-rate Broadband NPRM*, 25 FCC Rcd at 6907, para. 84.

40. Specifically, to compute the annual increase, the percentage increase in the GDP-CPI from the previous year will be used.<sup>128</sup> The increase shall be rounded to the nearest 0.1 percent. The increase in the inflation index will then be used to calculate the amount of funding for the next E-rate funding year (which runs from July 1 to June 30). Using this computation, we find that the GDP-CPI from 2008 to 2009 increased .9 percent.<sup>129</sup> Using the analysis described below, the cap for funding year 2010 will be increased to \$2,270,250,000.

### 5. Limited Trial to Investigate Offsite Access

41. Currently, our rules presume that services used on school or library premises are serving an educational purpose,<sup>130</sup> and the E-rate program supports wireless Internet access on school and library grounds.<sup>131</sup> If a device that provides wireless Internet access service, such as a laptop or other mobile computing device, is taken off school or library premises, however, applicants are required to cost-allocate the dollar amount of support for wireless Internet access use for the time that the device is not at the school or library and remove that portion from its E-rate funding request.<sup>132</sup> If that same device, however, is left on school or library grounds all of the time, the E-rate program would pay 100 percent of the applicant's non-discount share for wireless Internet access use. As such, our current rules may prevent full utilization of the learning opportunities that portable wireless devices, such as digital textbooks, can provide off campus and outside of regular school hours.<sup>133</sup>

42. Advances in technology have enabled students to continue to learn well after the school bell rings, including from their homes or other locations, for example, youth centers.<sup>134</sup> As noted in the NBP, “[o]nline 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.”<sup>135</sup> In the *E-rate Broadband NPRM*, we sought comment on the NBP recommendation to provide full E-rate support for wireless Internet access service for portable learning devices that are used beyond school or library premises.<sup>136</sup> In response, commenters generally agreed that students need to learn “anytime/anywhere,”

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<sup>128</sup> While the Commission refers to the Chain-type Price Index, it is referred to on the Bureau of Economic Analysis (BEA) web site as the Price Indexes for Gross Domestic Product. See GDP-CPI Table.

<sup>129</sup> See GDP-CPI Table (calculating the percentage difference of the gross domestic product of 108.598 in 2008 and 109.618 in 2009 and producing an increase of .94%).

<sup>130</sup> 47 C.F.R. § 54.500(b). *But see supra* n. 90 (identifying specific exceptions for offsite cost allocation).

<sup>131</sup> See Funding Year 2010 ESL at 8.

<sup>132</sup> See USAC website, Schools and Libraries, Cost Allocation Guidelines for Products and Services, available at <http://www.usac.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx> (last visited Sept. 14, 2010); see also Funding Year 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).

<sup>133</sup> See Letter from U.S. Department of Education to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 02-6 at 2-3 (dated Sept. 21, 2010).

<sup>134</sup> See *E-rate Broadband NPRM*, 25 FCC Rcd at 6891-92, para. 47 (identifying some current data and initiatives); see also Rebecca Catalanello, *Florida high school ditches textbooks for e-readers*, Bismarck Tribune, Jun. 7, 2010, available at [http://www.bismarcktribune.com/lifestyles/fashion-and-style/article\\_6d9ec60c-6ebd-11df-93a0-001cc4c002e0.html](http://www.bismarcktribune.com/lifestyles/fashion-and-style/article_6d9ec60c-6ebd-11df-93a0-001cc4c002e0.html) (last visited Sept. 14, 2010).

<sup>135</sup> NBP at 254.

<sup>136</sup> See *E-rate Broadband NPRM*, 25 FCC Rcd at 6891-93, paras. 45-51; see also NBP at 239 (NBP Recommendation 11.23).

which would require Internet access outside schools and libraries.<sup>137</sup> Some schools identified that they are already implementing innovative programs utilizing portable devices that can use data applications wirelessly, such as e-readers, tablet PCs, smartphones, and netbooks.<sup>138</sup> Some of these programs enable students to download all of their textbooks onto one portable device and access them both during school and at home.<sup>139</sup> Others use software applications to help students write essays or create presentations for their classmates.<sup>140</sup> Initial studies indicate that – with the correct support and training for teachers, students, and parents – targeted programs like these can demonstrably improve student achievement.<sup>141</sup> Commenters noted that, in addition to the educational benefits, improvements and cost reductions in portable learning devices like e-readers, smartphones, and tablet computers make funding off-premises wireless connectivity for these devices a cost-efficient supported service.<sup>142</sup>

43. We recognize the benefits of enabling innovation in learning outside the boundaries of the school building and the traditional school day, as well as of enabling libraries to innovate with new models of delivering service to library patrons. We note the potential for meaningful gains in student achievement that new devices and applications may deliver. We also see significant utility in devices that allow remote access to the Internet for library patrons. At the same time, however, we acknowledge the concerns of commenters who urged us to proceed cautiously in this area and emphasized the challenges that may accompany support for connectivity for portable learning devices used outside the physical grounds of schools and libraries. For example, some commenters identified possible challenges in administration and oversight, and in ensuring compliance with existing program rules, including requirements under CIPA and the program's definition of educational purposes.<sup>143</sup> Others raised concerns about the potential for waste, fraud, and abuse, as well as increased costs to the E-rate fund, noting that if support is expanded for wireless Internet access outside of school or library grounds, the availability of funding for other equally or more important services may be reduced.<sup>144</sup> Some

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<sup>137</sup> See San Diego Unified School District (SDUSD) Reply Comments at 5; see also AT&T Comments at 9; Cisco Systems Comments, Inc. at 5-6; Clearwire Corp. Comments at 3-4; CTIA Comments at 14-19; eChalk Comments, Inc. at 3-4; Miami-Dade County Public Schools Comments at 6; Motorola Inc. Comments at 2; NY OCFS Comments at 2; Ohio E-Rate Consortium Comments at 15-16; PBS Comments at 2-4; Sprint Comments at 2-5; Sunesys, LLC Comments at 7; Blackboard, Inc. Comments at 9-14.

<sup>138</sup> See, e.g., SDUSD Reply Comments at 3-5; see also Computers for Youth (CFY) Reply Comments at 2-3; Pittsburgh Public Schools Comments at 4; Sprint Comments at 2-5; Cisco Reply Comments at 4-7 (outlining the impact of the 21S Initiative); Ohio E-rate Consortium Comments at 15-16.

<sup>139</sup> See Kathy A. Goolsby, *Schools Toss Aside Texts for e-Books*, Dallas Morning News, Nov. 4, 2006, available at <http://www.dallasnews.com/sharedcontent/dws/dn/education/stories/110406dnmetetebooks.3255a88.html> (last visited Sept. 14, 2010).

<sup>140</sup> *Id.*

<sup>141</sup> See, e.g., Letter from Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 02-6 (dated July 27, 2010) (outlining the impact of the K-nect program).

<sup>142</sup> See, e.g., Qualcomm Reply Comments at 2-9; CTIA Reply Comments at 3, 7, 10 (arguing that support will spur competition and ultimately lower prices and costs to the fund over time).

<sup>143</sup> See, e.g., SECA Reply Comments at 8.

<sup>144</sup> See, e.g., NY DOE Reply Comments at 4; see also SECA Comments at 32-34 (suggesting that the low-income program may be a better vehicle for funding this proposal); SECA Reply Comments at 9-10; Intel Comments at 10-17 (opposing the use of E-rate funds and instead proposing the use of Lifeline funds to implement a three-year pilot program to provide home broadband Internet access to low-income students who qualify for Lifeline services); CGCS Comments at 6-7 (expressing concern about costs); EdLiNC Comments at 6-7, 10-13 (expressing concern about costs and legal issues); Conterra Ultra Broadband Comments at 6 (expressing concern about costs and (continued...))

commenters also were concerned about schools or students who may not be able to afford the equipment or devices necessary to connect to E-rate funded wireless Internet services.<sup>145</sup> Finally, some commenters argued that E-rate funding for wireless access off premises is not technology-neutral and improperly favors wireless services over wired services.<sup>146</sup> We believe these concerns warrant further inquiry and consideration before such services should be eligible for support on a program-wide basis.<sup>147</sup>

44. *The E-rate Deployed Ubiquitously (EDU) 2011 Pilot Program.* To assist us in our inquiry and program development, we establish a trial program to investigate the merits and challenges of wireless off-premises connectivity services, and to help us determine whether they should ultimately be eligible for E-rate support. We plan to use this trial program to gather more information about the implementation challenges described above and to identify and disseminate best practices in existing projects. We ask schools and libraries that already are implementing or experimenting with wireless off-campus learning to provide us with information about their projects, as described below.

45. A number of commenters have indicated that they have already found solutions to the challenges to successfully implementing off-premises wireless Internet connectivity, including ensuring CIPA compliance and other protections against waste, fraud and abuse.<sup>148</sup> Additionally, some commenters suggested that corporate partnerships may help with equipment and application costs.<sup>149</sup> Through the EDU2011 Program, we expect to obtain more information about how wireless learning programs are operating today. For example, we hope to gain a better understanding of operational and administrative issues associated with off-premises use and connectivity, as well as the financial impact on the E-rate program overall. We also hope to learn what conditions, if any, should accompany off-premises access to prevent waste, fraud, and abuse; to ensure compliance with the statute and Commission rules, such as CIPA; and to enable such programs to maximize student achievement and utilization of library services. Additionally, we recognize that schools and libraries face different issues when considering off-premises use, and we would like to gain a greater understanding about how libraries are using remote access to serve their communities.<sup>150</sup> Finally, we hope to gain insight on evolving uses of mobile wireless devices that will assist us in crafting effective permanent rules in this area should we decide to support offsite wireless access.

46. As part of this first phase, we may decide to fund off-campus wireless telecommunications and Internet access for some small number of select programs for funding year 2011, (Continued from previous page) \_\_\_\_\_  
unauthorized use); SETDA Comments at 2 (expressing concern about costs and suggesting a pilot program or use of low-income program); Hartford Comments at 2-3.

<sup>145</sup> See South Dakota Department of Education (SD DOE) Reply Comments at 2; Cisco Reply Comments at 7-8.

<sup>146</sup> See NCTA Comments at 5-7; see also Cisco Comments at 5-6; CenturyLink Reply Comments at 14.

<sup>147</sup> See Benton Reply Comments at 2; SECA Reply Comments at 8, 11-13; Verizon Comments at 6-8; AT&T Comments at 9-10, CPUC Comments at 4-7; CSM Comments at 13-14 (suggesting implementing this proposal on a short-term trial or pilot basis).

<sup>148</sup> See, e.g., AT&T Reply Comment at 7; see also Letter from Ohio E-rate Consortium, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 02-6 (dated Aug. 24, 2010); Sprint Comments at 4; SECA Comments at 34.

<sup>149</sup> See Blackboard Reply Comments at 1-5; see also CFY Reply Comments at 6; HITN Reply Comments at 2-3; CTIA Reply Comments at 9.

<sup>150</sup> See Nevesem Reply Comments at 12; see also, e.g., Russell Nichols, *Amazon Kindles Connect Rural Libraries to Digital World*, Government Technology, Aug. 31, 2010, available at <http://www.govtech.com/e-government/102484334.html> (last visited Sept. 14, 2010); Joann Merrigan, *Increase In Free Audio Downloads at Public Libraries*, WSAV-TV, Sept. 1, 2010, available at <http://www2.wsav.com/news/2010/sep/01/increase-free-audio-downloads-public-libraries-ar-777866/> (last visited Sept. 14, 2010).



if we find proposals that we believe adequately meet the factors we discuss below. We expect that most of these proposals will not provide broad access to the Internet, but instead will provide connectivity for limited purposes, for example downloading digital textbooks. We authorize up to \$10 million for funding year 2011 to support innovative and interactive off-premise wireless device connectivity for schools and libraries. Given the Commission's planning and competitive bidding requirements, we recognize there is limited time for applicants to develop a proposal from scratch for this round of funding. Therefore, considering those practical barriers, we anticipate that any first phase EDU2011 Program funding will primarily, if not exclusively, be provided to already-existing portable wireless device programs.

47. *How To Apply.* We delegate implementation of this pilot program to the Wireline Competition Bureau (Bureau). To be considered for first phase EDU2011 Program funding, applicants must complete a two-step application process. After publication of this Order in the Federal Register, the Bureau will release a public notice with the due date for applications. First, applicants must submit the information detailed in the following paragraph to the Bureau.<sup>151</sup> Second, applicants must apply for E-rate funding by following the regular E-rate program rules. Because potential applicants will most likely already be using portable wireless devices in their school or library, we understand that the applicants may have an established relationship with a service provider. Therefore, to the extent necessary, we waive the applicable sections of our E-rate competitive bidding rules for those first phase EDU2011 Program applicants that have already entered into legally binding agreements with a service provider for portable wireless device connectivity off-premises.<sup>152</sup> We also delegate to the Bureau the authority to waive any other E-rate rules, to the extent necessary, to effectuate this program. Applicants for first phase EDU2011 Program funding must submit FCC Form 471 to USAC during the regular application window. We encourage applicants to submit FCC Form 471 specifically for the wireless Internet access services to be used off premises, and file a separate FCC Form 471 for any services to be used on premises. We note that support under this program will not be provided for the portable devices or equipment, but for the connectivity services.

48. 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. 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;
- (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 CIPA and adequately protects against waste, fraud, and abuse;
- (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

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<sup>151</sup> Further application details, such as how to submit the applications, will be announced in the public notice to be released by the Bureau.

<sup>152</sup> 47 C.F.R. § 54.504.

(7) for schools, any data collected on program outcomes.

49. *Selection.* After applications are received, for schools, the Bureau should consider the extent to which applicants are providing innovative and interactive learning programs using portable wireless devices for students. For libraries, the Bureau should consider how the library's portable wireless device program facilitates access in the community to needed services, such as job applications, governmental services, job training, and online learning opportunities. Factors the Bureau should consider in selecting programs that may be eligible for additional funding include: the magnitude of the impact E-rate support for off-premise connectivity is likely to have; the number of students or library patrons served; the cost of the program; the poverty level and current discount rate of the school or library; the financial need of the school or library; the location and topography of the school or library, so that we can analyze the availability of wireless access; the committed school or library resources available to implement the entire proposal, including funding for necessary equipment, as well as teacher, librarian, and student training and data collection; and the extent of CIPA protections and other protections to guard against waste, fraud, and abuse.

50. The Bureau will notify USAC of selected applicants. We expect that, if the Bureau decides to award funding for these programs, there will be only a handful of selected applicants. Selected applicants will receive the identified connectivity support and will not be required to cost-allocate the dollar amount of support for the time that portable devices are not at the school or library.<sup>153</sup> Applicants will receive funds sufficient to cover the connectivity amount eligible for E-rate funding based on their discount; they will still be required to pay their non-discount share. After the trial period, applicants will be required to submit a report to the Bureau detailing any data collected as a result of the program and a narrative describing lessons learned from the program that would assist other schools and libraries desiring to adopt similar programs in the future.

## **B. Streamlining and Simplifying Administrative Requirements**

51. We next adopt proposals to streamline and simplify the E-rate programs. First, we amend section 54.508 of our rules to eliminate the E-rate technology plan requirements for all priority one applications. We retain the technology plan requirements for applicants requesting priority two funding. Second, we find that applicants are not required to have a technology plan in place before a third-party master contract's FCC Form 470 is posted. Third, we also amend section 54.508 to eliminate the requirement that applicants demonstrate they have a budget sufficient to acquire and support the non-discounted elements of the plan. Fourth, we permit the disposal of E-rate equipment for payment or other consideration, but no sooner than five years after the equipment is installed.

### **1. Background**

52. Under the E-rate program, eligible schools and libraries may receive discounts for eligible services used for educational purposes.<sup>154</sup> To request funding, schools and libraries must follow an application process that includes developing a technology plan, seeking competitive bids, and filing application forms.

53. An applicant applying for services other than basic telecommunications services must first develop a technology plan.<sup>155</sup> The technology plan must include five elements, including a strategy

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<sup>153</sup> This funding only relates to support for Internet access monthly service, and not the purchase of devices or equipment, such as mobile broadband cards, smartphones, or digital textbooks.

<sup>154</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>155</sup> See 47 C.F.R. § 54.504; *Universal Service First Report and Order*, 12 FCC Rcd at 9077-78, para. 573. 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 (continued...)

for using telecommunications and information technology to improve education or library services.<sup>156</sup> 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.<sup>157</sup> 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.<sup>158</sup>

54. 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.<sup>159</sup> 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. 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.<sup>160</sup> The FCC Form 470 is then posted to USAC's website for all potential competing service providers to review.<sup>161</sup>

55. After submitting an FCC Form 470, the applicant must wait at least 28 days before making a commitment with its selected service providers.<sup>162</sup> 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.<sup>163</sup> 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.<sup>164</sup> Pursuant to section 54.504(c) of the Commission's rules, an applicant requesting support

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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 Funding Year 2010 ESL.

<sup>156</sup> 47 C.F.R. § 54.508(a).

<sup>157</sup> 47 C.F.R. § 54.508(d); *Universal Service First Report and Order*, 12 FCC at 9077-78, para. 574; see also USAC website, Schools and Libraries, Technology Plans, available at <http://www.universalservice.org/sl/applicants/step02/> (last visited Sept. 14, 2010).

<sup>158</sup> 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 and Order, 19 FCC Rcd 15808, 15830, 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 21<sup>st</sup> 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 21<sup>st</sup> Century Act*, Pub. L. No. 110-385, Title II, 122 Stat. 4096 (2008).

<sup>159</sup> 47 C.F.R. §§ 54.504, 54.511(c).

<sup>160</sup> See *Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (May 2003) (FCC Form 470), available at <http://www.usac.org/res/documents/sl/pdf/470.pdf> (last visited Sept. 14, 2010). The RFP must be available to all potential bidders for the duration of the bidding process. *Id.*

<sup>161</sup> 47 C.F.R. § 54.504(b)(3).

<sup>162</sup> 47 C.F.R. § 54.504(b)(4).

<sup>163</sup> 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*).

<sup>164</sup> 47 C.F.R. § 54.504(a).

for eligible products and services must sign a contract for eligible services prior to filing its FCC Form 471.<sup>165</sup> 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.<sup>166</sup> Tariffed services and certain month-to-month services do not require a signed contract.<sup>167</sup>

56. 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 the applicant has selected to provide services, the eligible discount rate, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>168</sup> 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.<sup>169</sup> An applicant must file a new FCC Form 471 each year.<sup>170</sup> 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.<sup>171</sup> USAC assigns a funding request number (FRN) to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.

57. 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.

## 2. Technology Plans

58. We amend sections 54.504 and 54.508 of our rules to eliminate the E-rate technology plan requirements for all priority one applications.<sup>172</sup> We retain, however, the technology plan requirements for applicants requesting priority two funding.

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<sup>165</sup> 47 C.F.R. § 54.504(c).

<sup>166</sup> 47 C.F.R. § 54.504(c)(1)(vi).

<sup>167</sup> See Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certifications Form (FCC Form 471) at 23, available at [http://www.usac.org/\\_res/documents/sl/pdf/471i\\_fy05.pdf](http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf) (last visited Sept. 14, 2010) (FCC Form 471 Instructions).

<sup>168</sup> See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471), available at [http://www.usac.org/\\_res/documents/sl/pdf/471\\_FY05.pdf](http://www.usac.org/_res/documents/sl/pdf/471_FY05.pdf) (last visited Sept. 14, 2010); see also 47 C.F.R. § 54.504(c).

<sup>169</sup> 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 Sept. 14, 2010) (USAC Schools and Libraries Deadlines website). For example, for the funding year that began July 1, 2010, the filing window ran from Dec. 3, 2009 to Feb. 19, 2010.

<sup>170</sup> 47 C.F.R. § 54.507(d).

<sup>171</sup> See USAC website, Schools and Libraries, Contract Guidance, available at <http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx> (last visited Sept. 14, 2010) (USAC Contract Guidance website); see also Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470), OMB 3060-0806 (October 2004) (FCC Form 470 Instructions) at 3-4, available at [http://www.usac.org/\\_res/documents/sl/pdf/470i.pdf](http://www.usac.org/_res/documents/sl/pdf/470i.pdf) (last visited Sept. 14, 2010).

<sup>172</sup> See Appendix A, 47 C.F.R. §§ 54.503(c)(2)(iii), 54.504(a)(1)(iv)-(v), and 54.508 as amended herein. We note that the revised rules amend the current rule sections 54.504 and 54.508. As explained below, in this order we consolidate the competitive bidding rules into amended section 54.503 and the rules pertaining to eligible services into amended section 54.502. See *infra* nn.242 and 325.

59. To avoid duplication of technology plan requirements and to simplify the application process in general, we proposed in the NPRM to eliminate E-rate technology plan requirements for applicants seeking priority one services that are otherwise subject to state and local technology planning requirements.<sup>173</sup> Commenters indicated, however, that determining which applicants seeking priority one services are subject to technology plan requirements outside of the E-rate program could be difficult, might lead to unnecessary violations of program rules, and could be administratively difficult to administer.<sup>174</sup> Because the record demonstrates that applicants are required to or will likely perform technology planning even without the E-rate program requirements, we find that eliminating the technology planning requirement entirely for priority one funding will better serve the intent of the NPRM proposal to simplify the application process, while still adequately addressing concerns regarding waste, fraud, and abuse.<sup>175</sup>

60. *Priority One.* The Commission must strive to balance the need to ensure that E-rate funds are being used for their intended purposes with avoiding the imposition of unnecessarily burdensome requirements on applicants. Moreover, the Commission must routinely reevaluate its program rules to ensure that it has struck the proper balance. After careful consideration of our experience and comments in the record, we conclude that the proper balance warrants eliminating the Commission's technology plan requirements for applicants requesting priority one services.<sup>176</sup>

61. We find that it is reasonable to eliminate the technology plan requirement for all priority one service requests, even when the applicant is not subject to a state or local technology planning requirement, and regardless of the amount of the request.<sup>177</sup> Even without a Commission requirement, most entities will continue to evaluate their needs by conducting technology planning.<sup>178</sup> Applicants applying for Enhancing Education Through Technology (EETT) funding from the Department of Education must comply with a technology plan requirement nearly identical to the Commission's.<sup>179</sup> The Elementary and Secondary Education Act, reauthorized in 2002 as the No Child Left Behind Act, also has

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<sup>173</sup> *E-rate Broadband NPRM*, 25 FCC Rcd at 6879, para. 18.

<sup>174</sup> See ALA Comments at 6; EMPA Comments at 2.

<sup>175</sup> AASA & AESA Comments at 2; ALA Comments at 5; Conterra Comments at 2; CGCS Comments at 3; CGCS Reply Comments at 4; NC DPI Comments at 2; National Hispanic Media Coalition (NHMC) Comments at 9; R&E Network Community Comments at 8; Richmond Public Library Comments at 1-2; SECA Comments at 5-9; SD DOE Reply Comments at 1-2; UEN Comments at 2; WDPI Comments at 2.

<sup>176</sup> AASA & AESA Comments at 2; ALA Comments at 5; Blackboard Comments at 19-20; Conterra Comments at 2; CGCS Comments at 3; CGCS Reply Comments at 4; NC DPI Comments at 2; NHMC Comments at 9; R&E Network Community Comments at 8; Richmond Public Library Comments at 1-2; SECA Comments at 5-9; SD DOE Reply Comments at 1-2; UEN Comments at 2; WDPI Comments at 2.

<sup>177</sup> We also decline, at this time, to adopt other recommendations modifying the technology plan requirement for priority one services. See CDE Comments at 4 (recommending a shorter technology plan process); CSM Comments at 4-5 (proposing a simplified technology planning process); EPS Comments at 13 (proposing changes to more accurately reflect current educational technology planning); ESPA Comments at 2 (creating a priority one technology plan exemption for basic telephone connectivity and Internet access up to a certain speed); NHMC Comments at 9 (proposing a simplified technology planning process).

<sup>178</sup> See ALA Comments at 6; CGCS Reply Comments at 4; NYSED Comments at 2; SECA Comments at 6-7; R&E Network Community Comments at 7-8; UEN Comments at 2.

<sup>179</sup> See *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15828-29, paras. 59-60; 47 C.F.R. § 54.508(b); CDE Comments at 3; NYSED Comments at 2; SECA Comments at 6, 8. We note that one commenter states that the future of the EETT program is unclear. See CDE Comments at 4.

requirements that overlap with E-Rate's technology planning rules.<sup>180</sup> In addition, technology planning is often incorporated into the budget and procurement processes of schools and libraries.<sup>181</sup> Thus, we find that applicants generally will continue to perform technology analyses notwithstanding elimination of the technology plan requirement for E-rate.<sup>182</sup>

62. Furthermore, we find that this change will simplify the current application process and will reduce the costs for applicants of complying with and administering the E-rate program.<sup>183</sup> Reducing the burden on applicants will result in greater E-rate participation, particularly for the schools with the fewest resources and greatest need to participate in the program. Eliminating the technology plan requirement for priority one applications also will reduce costs associated with administering the E-rate program.<sup>184</sup>

63. Moreover, the Commission has other safeguards to ensure that priority one funding requests are based “on the reasonable needs and resources of the applicant and are consistent with the goals of the program.”<sup>185</sup> For instance, to ensure that applicants are able to use the discounted services effectively, and thereby minimize waste, our rules require applicants to certify that they have “secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services.”<sup>186</sup> The Commission has additional protections in place to guard against waste, fraud, and abuse in the E-rate program.<sup>187</sup> Although we find that we no longer need the technology plan requirement for priority one services in light of the other protections in place, we will remain vigilant to ensure that eliminating this requirement does not increase opportunities for waste, fraud, and abuse.

64. *Priority Two.* We conclude that we should retain the requirement to have a technology plan for priority two services.<sup>188</sup> We find that maintaining a specific technology plan requirement for E-rate applicants for priority two services – internal connections and basic maintenance of internal connections – continues to serve a valuable purpose and therefore outweighs any potential administrative burden.<sup>189</sup> Many commenters support this conclusion.<sup>190</sup> First, our experience reflects that waste, fraud,

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<sup>180</sup> SD DOE Comments at 2. See 20 U.S.C. § 6764 (noting that schools eligible to receive a state or local subgrant must submit to the state educational agency “an application containing a new or updated local long-range strategic educational technology plan”).

<sup>181</sup> WVDE Comments at 1.

<sup>182</sup> See, e.g., SECA Comments at 8-9.

<sup>183</sup> Many commenters support this conclusion. See, e.g., AASA & AESA Comments at 2; ALA Comments at 5; CGCS Reply Comments at 4; NC DPI Comments at 2; NHMC Comments at 9; R&E Network Community Comments at 7-8; Richmond Public Library Comments at 1-2; SECA Comments at 5-9; SD DOE Reply Comments at 1-2; UEN Comments at 2; WDPI Comments at 2.

<sup>184</sup> For example, our rules except “basic telephone services” from the technology plan requirement. Our decision here will eliminate the need to determine whether a requested service falls within the exception for basic telephone services.

<sup>185</sup> ALA Comments at 6; SECA Comments at 6; *Universal Service First Report and Order*, 12 FCC Rcd at 9078, para. 574.

<sup>186</sup> 47 C.F.R. § 54.504 (b)(2)(vi), (c)(1)(iii).

<sup>187</sup> For instance, in the *Schools and Libraries Fifth Report and Order*, the Commission adopted several measures, including audit guidelines, document retention policies, and beneficiary certification requirements to guard against waste, fraud, abuse. See *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15809, para. 1.

<sup>188</sup> See ESPA Comments at 3; NY DOE Comments at 2; Sunesys Comments at 5.

<sup>189</sup> *E-rate Broadband NPRM*, 25 FCC Rcd at 6880, para. 20.

and abuse tends to be concentrated in use of priority two services. Past experience convinces us that we should not at this time eliminate the technology plan requirement for priority two services. Second, installing internal connections in schools and libraries is a complex and expensive process, with installation techniques that vary depending on the nature of the project.<sup>191</sup> Unlike priority one services, which are generally recurring services, internal connections are one-time upgrades that are designed to produce long-term benefits to schools and libraries. Maintaining the requirement for priority two services will require applicants to plan and justify these requests and strategically define their vision for use of these technologies.<sup>192</sup>

65. For the reasons stated above, we decline to adopt proposals suggested by commenters either (1) to completely eliminate the technology plan requirement for priority two applicants,<sup>193</sup> or (2) to establish a bifurcated approach in which only priority two applicants not subject to other state or local requirements are required to develop technology plans.<sup>194</sup> It would be administratively burdensome for USAC to determine which schools and libraries are subject to official state and local technology plan requirements and which are not.<sup>195</sup>

66. While we decline to eliminate the technology plan for priority two applicants, we adopt measures to simplify the technology planning process. First, we amend section 54.504 of our rules to eliminate the requirement that technology plans covering the entire, upcoming funding year be in place when the FCC Form 470 is submitted.<sup>196</sup> Under the current rule, an applicant may not rely on an approved, existing technology plan if it expires prior to the last date of service of the upcoming funding year.<sup>197</sup> We believe that the three-year technology plan cycle that has evolved for the E-rate program does not accurately reflect how schools and libraries plan for their technology needs.<sup>198</sup> For example, if a school has developed and is implementing a three-year technology plan, it does not make sense to require the school to develop a new plan in October (before filing its Form 470) just because the existing plan expires before the upcoming funding year ends. The school should be able to obtain services under that existing technology plan if it covers part of the upcoming funding year and then revise the plan over the next several months before it expires. Forcing the applicant to prepare another three-year plan so far in advance of the end of the current one is administratively burdensome. Technology plans are evolving documents, and we want to encourage applicants to have technology plans that reflect their current needs.

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<sup>190</sup> See, e.g., CDE Comments at 4; EMPA Comments at 5; Sentinel Comments at 3; ESPA Comments at 3; NY DOE; NYSED Comments at 2; Sunesys Comments at 5.

<sup>191</sup> See Sentinel Comments at 3.

<sup>192</sup> NY DOE Comments at 2.

<sup>193</sup> ALA Comments at 5-6; Conterra Comments at 2-3; CGCS Reply Comments at 4 (agreeing with commenters wanting complete elimination); EMPA Comments at 2-3 (arguing for complete elimination for all applicants or no change at all); NC DPI Comments at 2; R&E Network Community Comments at 7-8; Richmond Public Library Comments at 1-2; SECA Comments at 5-9; State of Alaska Comments at 2-3 (add certification to 471 instead); WDPI Comments at 2.

<sup>194</sup> CGCS Comments at 3; NY DOE Comments at 2.

<sup>195</sup> See ALA Comments at 6; EMPA Comments at 2.

<sup>196</sup> See Appendix A, 47 C.F.R. § 54.504, as amended herein; Chicago Public Schools (CPS) Comments at 2; EMPA Comments at 4; NYSED Comments at 3; SETDA Comments at 3; see also *Petition for Clarification and/or Waiver of E-rate Rules Concerning Technology Plan Creation and Approval under the Schools and Libraries Universal Service support Mechanism*, CC Docket No. 02-6, WC Docket No. 05-195 (filed May 10, 2007) (SECA Petition).

<sup>197</sup> See, e.g., FCC Form 470, Block 5, Item 20. Thus, for example, if a technology plan expires in May 2011, it could not serve as the technology plan for the funding year that runs from July 1, 2010 to June 30, 2011.

<sup>198</sup> See EMPA Comments at 4; NYSED Comments at 3; SECA Petition at 4.

We thus find that applicants with approved technology plans that cover at least part of the upcoming funding year in effect as of the date of their FCC Form 470 filings will be deemed to be in compliance with our rules.

67. We also find that applicants are not required to have a technology plan in place before a third-party master contract's FCC Form 470 is posted. FCC Forms 470 for master contracts typically are filed far in advance of the filing window because of the more detailed solicitation process they require. Schools and libraries typically have no control or advance knowledge of the solicitation of bids for third-party master contracts, and, as such, would have no way of knowing when their technology plans would need to be completed.<sup>199</sup> Therefore, we find that, if an applicant has filed its own FCC Form 470, but later chooses to purchase a service from a state master contract, the applicant only needs to have a technology plan in existence prior to filing its own FCC Form 470. To do otherwise could unintentionally discourage applicants from taking service from a master contract.

68. We also amend section 54.508 of our rules to eliminate the requirement that applicants demonstrate they have a budget sufficient to acquire and support the non-discounted elements of the plan.<sup>200</sup> The E-rate program already has rules in place to ensure that applicants have sufficient resources, and thus this requirement is redundant.<sup>201</sup>

69. *E-Rate Central Petition.* E-rate Central filed a petition seeking clarification of the language defining "basic telephone services" for priority one services in the funding year 2008 ESL.<sup>202</sup> The actions in this order address E-Rate Central's concerns. Therefore, we find that no further Commission action on E-Rate Central's petition is necessary.

### 3. Competitive Bidding Process

70. *FCC Form 470.* We retain the competitive bidding and waiting period obligations for all service requests, even where applicants are subject to state or local procurement obligations, rather than subjecting priority one and priority two applications to different standards, as proposed in the *NPRM*. We find, however, that we should simplify the FCC Form 470 process for all program participants.<sup>203</sup> Many applicants requested that we simplify the FCC Form 470 if we do not eliminate it.<sup>204</sup> After consideration of the record and our programmatic experience, we conclude that the competitive bidding and waiting period requirements have provided consistency and transparency for program participants in their search for the most cost-effective provider of E-rate eligible services. In seeking to achieve the proper balance between ensuring program integrity and eliminating excessive administrative burdens, we conclude that

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<sup>199</sup> Applicants may purchase eligible services from "master contracts" negotiated by a third party such as a governmental entity. See 47 C.F.R. § 54.500(g) (defining "master contract" as a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider).

<sup>200</sup> See Appendix A, 47 C.F.R. § 54.508 as amended herein.

<sup>201</sup> See 47 C.F.R. § 54.504 (b)(2)(vi), (c)(1)(iii); *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15831, para. 66. We also amend §§ 54.503(b)(2)(iii) and 54.504(a)(1)(iv) by condensing subsections (A) and (B) and removing the "higher-level" technology plans language to be consistent with the proposed changes simplifying FCC Forms 470 and 471. See *infra* para. 72; Appendix A, 47 C.F.R. §§ 54.503, 54.504 as amended herein.

<sup>202</sup> Petition for Clarification of E-Rate Central, CC Docket No. 02-6 (filed Oct. 31, 2007).

<sup>203</sup> See *E-rate Broadband NPRM*, 25 FCC Rcd at 6880-83, paras. 21-23; see also *Wireline Competition Bureau Seeks Comment on Revisions to FCC Forms 470 and 471 under the Paperwork Reduction Act*, Public Notice, DA 10-1248 (July 1, 2010).

<sup>204</sup> See, e.g., AT&T Comments at 3; AT&T Reply Comments at 2-3; CDE Comments at 5-6; CDE Reply Comments at 2; Sprint Comments at 8-9; SECA Comments at 9-19; Montgomery County Public Schools Reply Comments at 2; SETDA Reply Comments at 2.



the preferable course is to simplify and redesign the FCC Form 470. We find that the changes we adopt will decrease the number of denials that stem purely from technical deficiencies rather than the applicant's failure to conduct a fair and open competitive bidding process.<sup>205</sup> Streamlining the form to include only the information necessary to the competitive bidding process will also reduce appeals and increase program participation. Accordingly, we amend section 54.504(b) of the Commission's rules to reflect accurately the specific information being requested on the FCC Form 470 in order to facilitate a fair and open competitive bidding process.<sup>206</sup>

71. We find that requiring the FCC Form 470 produces a better competitive bidding process.<sup>207</sup> Currently, schools and libraries are required to post an FCC Form 470 to USAC's website so that service providers easily can view the services that are requested in one centralized location.<sup>208</sup> While many schools and libraries must also follow their own state or local procurement processes, those bid requests are often limited to publication, for example, in local newspapers. The nationwide posting on USAC's website ensures that more service providers can obtain notice about the requests for bids. If more service providers are viewing and responding to proposals, the resulting additional competition should help keep prices lower for applicants and, in turn, require fewer dollars from the universal service fund.<sup>209</sup> Many service providers noted that they annually review the posted FCC Forms 470 and submit bids to provide the requested services.<sup>210</sup>

72. We anticipate that the new, simplified FCC Form 470 will take effect prior to the opening of the filing window for funding year 2011. However, if an applicant has already submitted an FCC Form 470 (in the current format) for funding year 2011, the applicant will not be required to submit a new form.<sup>211</sup> Once the revised form has received Office of Management and Budget (OMB) approval, all

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<sup>205</sup> As the Commission and commenters have observed, the portions of the FCC Form 470 related to category selections and multiyear contracts, among others, have been the basis for a multitude of funding request denials by USAC because of technical errors rather than defects that negatively affected the competitive bidding process. *See E-rate Broadband NPRM*, 25 FCC Rcd at 6881-82, para. 22; *see also* Sprint Comments at 9; CDE Reply Comments at 2; Qualcomm Reply Comments at 9.

<sup>206</sup> *See* Appendix A, 47 C.F.R. § 54.503(c) as amended herein. In this order, we consolidate all of the rules pertaining to competitive bidding in section 54.503. Most of the competitive bidding provisions were previously codified in section 54.504. In section 54.504(b)(i)-(vi), schools, libraries, or consortia including those entities, were directed to supply on their FCC Forms 470 information related to computer equipment. As these subsections are no longer necessary, we delete them from the rules and replace them with new language directing schools, libraries, and consortia including those entities, to provide on their FCC Forms 470 a list of specified services for which they are likely to seek discounts and sufficient information to enable bidders to reasonably determine the needs of the applicant. *See* Appendix A, 47 C.F.R. § 54.503(c)(1)(i) and (ii) as amended herein.

<sup>207</sup> *See, e.g.*, NYSED Comments at 3-4; CDE Comments at 5-6; Verizon Comments at 14; Sunesys Comments at 5-6; Qwest Comments at 3-4; UEN Comments at 4; Kellogg & Sovereign Comments at 7-9; Nevesem Reply Comments at 8; Montgomery County Public School Reply Comments at 2; Norlight Telecom Reply Comments at 2.

<sup>208</sup> *See* USAC website, Schools and Libraries, Description of Services Requested and Certification Form (Form 470) Search Posted, <http://www.usac.org/sl/tools/search-tools/form470-search-posted.aspx> (last visited Sept. 14, 2010).

<sup>209</sup> *See, e.g.*, Sunesys Comments at 6; Ohio E-Rate Consortium Comments at 4-5.

<sup>210</sup> *See, e.g.*, Qwest Comments at 2; Sprint Comments at 8; Sunesys Comments at 5; Verizon Comments at 14; AT&T Reply Comments at 2; *see also* Letter from Tiffany West Smink, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated July 27, 2010) (Qwest *Ex Parte*); Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated July 30, 2010) (Verizon *Ex Parte*).

<sup>211</sup> Similarly, if an applicant has already posted an FCC Form 470 for a multiyear contract and has signed a multiyear contract as a result of that posting, it does not have to post another FCC Form 470 until the contract expires.

applicants will be required to prepare and submit the newly revised form going forward. The Wireline Competition Bureau will announce the effective date of the new FCC Form 470 once approval has been received from OMB. If an applicant has not submitted an FCC Form 470 by the effective date, the applicant will need to submit the new FCC Form 470.

#### 4. Clarifying Process for Disposal of Obsolete Equipment

73. *E-rate Program Rules and Requirements.* Section 254(h)(3) of the Act prohibits an eligible school or library that has purchased telecommunications services and network capacity at a discount under the E-rate program from reselling or otherwise transferring those services, or any equipment components of such service, in consideration for money or any other thing of value.<sup>212</sup> In the *Schools and Libraries Third Report and Order*, the Commission also prohibited schools and libraries from transferring the equipment components of eligible services to other schools within three years of their purchase, even without receiving money or other consideration, unless the donating school or library permanently or temporarily closes.<sup>213</sup> The Commission also stated that “[r]ecipients of support are expected to use all equipment purchased with universal service discounts at the particular location, for the specified purpose for a reasonable amount of time.”<sup>214</sup> The Act and the Commission’s rules, however, do not currently specify what schools and libraries are permitted do with equipment components of eligible services acquired with E-rate support once the equipment is obsolete.

74. *Process for Disposal of Obsolete Equipment.* We amend section 54.513(a) of our rules to permit the disposal of equipment components of E-rate services (E-rate equipment) for payment or other consideration, but no sooner than five years after the equipment is installed.<sup>215</sup> We decline to adopt the reporting and recordkeeping requirements proposed in the *E-rate Broadband NPRM*.<sup>216</sup>

75. First, we revise our rules to permit the disposal of E-rate equipment for payment or other consideration, but no sooner than five years after the equipment is installed. We find that section 254(h)(3) of the Act was intended to address the concern that schools and libraries might resell current telecommunications services and network capacity, and does not address obsolete equipment.<sup>217</sup> As it is in the public interest and consistent with the Commission’s environmental initiatives and the goal of making technology affordable for all, we encourage schools and libraries to donate and recycle their obsolete equipment whenever possible. To further assist this goal, we direct USAC to make available on its website and update on an ongoing basis a list of donation and recycling locations for communications equipment.

76. We adopt the five-year threshold for a number of reasons. We conclude that five years from the date of installation is a reasonable period of time based on the rate of change in communications

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<sup>212</sup> See 47 U.S.C. § 254(h)(3); see also 47 C.F.R. § 54.513(a); *E-rate Broadband NPRM*, 25 FCC Rcd at 6908, para. 86.

<sup>213</sup> *Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 26912, 26923–24, paras. 26–28 (2003)(*Schools and Libraries Third Report and Order*); 47 C.F.R. § 54.513(c). The rules adopted in this report and order do not eliminate the existing requirements for transfer of eligible services or equipment components under section 54.513(c).

<sup>214</sup> *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26923, para. 26.

<sup>215</sup> See Appendix A, 47 C.F.R. § 54.513(a)(1) as amended herein.

<sup>216</sup> *E-rate Broadband NPRM*, 25 FCC Rcd at 6910, paras. 89-90.

<sup>217</sup> See 47 U.S.C. § 254(h)(3); 47 C.F.R. § 54.513(c); see also *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26923-24, para. 9-10; H.R. Rep. No. 104-458, at 110-112 (1996)(Conf. Rep.).

technology and equipment, industry standards for the useful life of E-rate eligible equipment,<sup>218</sup> and the need for schools and libraries to maintain viable networks that reflect those changes.<sup>219</sup> Moreover, we find that adopting a straightforward and easy-to-understand rule will help reduce the confusion that has led to applicants either throwing away equipment or to storing the equipment indefinitely because applicants are unsure if disposing of it will violate E-rate rules.<sup>220</sup>

77. We conclude that adopting five years as a minimum threshold standard is superior to attempting to discern a specific useful life for each piece of equipment under E-rate. As the E-rate program supports thousands of different pieces of eligible equipment, and as that equipment and the eligible services list is constantly evolving, the burden of verifying the useful life for each piece of equipment would be unduly onerous. In the *Schools and Libraries Third Report and Order*, we discussed the adoption of useful life criteria in the context of transferring services and equipment.<sup>221</sup> In that context, we decided not to adopt useful life criteria, finding that “developing and enforcing useful life criteria would add a significant degree of complexity to the program, which would result in increased administrative costs and burden for both recipients and USAC.”<sup>222</sup> We agree that detailing a specific period of useful life for each of the thousands of types of equipment supported under E-rate would be unduly costly and burdensome.<sup>223</sup>

78. We emphasize that this rule does not require schools and libraries to continue using equipment for five years, nor does it require disposal five years after installation, but it does prohibit resale or disposal before five years has passed. We strongly encourage schools and libraries to be the best stewards of E-rate funding possible and to continue to fully use equipment purchased with universal service funds for as long as the equipment remains viable as an effective and efficient technology solution.<sup>224</sup> Additionally, the New York State Education Department inquired whether the disposal of obsolete equipment by a service provider, free of charge, violates section 54.523 of our rules.<sup>225</sup> We conclude that this service does not provide the incentive or inducement for selection that section 54.523 is

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<sup>218</sup> See U.S. Department of the Treasury, Report to The Congress on Depreciation Recovery Periods and Methods at 13-14, 111-112 (July 28, 2000), available at <http://www.ustreas.gov/offices/tax-policy/library/depreci8.pdf> (last visited Sept. 16, 2010); see also, e.g., Federal Accounting Standards Advisory Board, Generally Accepted Accounting Principles, available at <http://www.fasab.gov/accepted.html> (last visited Sept. 14, 2010); CPAClass.com, U.S. GAAP Codification of Accounting Standards, available at <http://cpaclass.com/gaap-accounting-standards/gaap-codification-index.htm> (last visited Sept. 14, 2010).

<sup>219</sup> See NW-Links Comments at 9; see also Qualcomm Reply Comments at 11; SDUSD Reply Comments at 5-6.

<sup>220</sup> *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26923, para. 26. Commenters have indicated that without further guidance on how to dispose of the equipment, schools and libraries have been spending money to store obsolete equipment indefinitely. See, e.g., NYSED Comments at 10; see also NY DOE Comments at 6; CDE Comments at 18; NC DPI Comments at 3; UEN Comments at 13; Alaska Department of Education and Early Development and State Library (AEED) Comments at 10.

<sup>221</sup> See *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26925, para. 30.

<sup>222</sup> *Id.*

<sup>223</sup> We note that leased equipment and wide area telecommunications services under an IRU purchase arrangement does not meet the definition of “purchased equipment” under the new rule. We find that the equipment purchased under these agreements can have a considerable resale value even after five years following installation, and, therefore, disposal or resale for consideration shall not be allowed.

<sup>224</sup> See NW-Links Comments at 9; AEED Comments at 10; NYSED Comments at 10; see also *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26919-21, 23, paras. 17-19, 26.

<sup>225</sup> See 47 C.F.R. § 54.523; NYSED Comments at 10.

designed to prevent, and therefore we find that free of charge disposal of obsolete equipment by a service provider does not violate section 54.523 of our rules.<sup>226</sup>

79. We decline to adopt a time period of three years, as suggested by some commenters.<sup>227</sup> Some schools and libraries transfer equipment from the location that originally sought funding for the equipment to other locations after three years, as permitted by our rules.<sup>228</sup> Those transfers suggest that that equipment may not typically exhaust its useful life within three years. Additionally, although in some instances we allow applicants to receive funding twice every five years to help, in part, allow for updated internal connections, that rule is primarily intended to allow funding to be distributed more equitably.<sup>229</sup> It is not a benchmark for measuring equipment obsolescence.<sup>230</sup>

80. Second, we decline to adopt the proposal that would require applicants to formally declare that equipment is obsolete.<sup>231</sup> Schools and libraries should make this determination in the normal course as they create technology plans and determine what equipment is required to keep the network running efficiently.<sup>232</sup> Each school and library board has its own established procedures for making this determination. We find that a formal declaration would serve little if any value, and would create an unnecessary administrative burden.<sup>233</sup> Therefore, we decline to adopt this proposed condition.

81. Third, we decline to adopt a rule that schools and libraries must notify USAC of the resale or disposal of equipment funded by the E-rate program within 90 days of its disposal, or that applicants be required to keep a record of the disposal for a period of five years following the disposal.<sup>234</sup> We also decline to require schools and libraries to track disposal of obsolete equipment on their asset and inventory lists beyond what the current rules already require.<sup>235</sup> As we decline to adopt the reporting requirement, we see little utility in revising the FCC Form 500 as proposed, and we decline to do so.<sup>236</sup> Because we are convinced that the remaining value of equipment purchased using E-rate funds is generally *de minimis* after five years, we find that such reporting requirements do not justify the substantial administrative burden they would impose on both applicants and USAC. Nevertheless, the purpose of permitting applicants to dispose of equipment for money or other consideration is to encourage recycling and optimization of resources. It is not intended to create a profit-making opportunity for E-rate participants or to create incentives to request services that exceed the applicant's immediate needs. Thus, if we have reason to believe that this revised rule results in waste or abuse, we may impose reporting obligations, recover funding, or take other steps to eliminate opportunities for abuse.

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<sup>226</sup> *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26929, para. 41.

<sup>227</sup> See NW-Links Comments at 8; see also Qualcomm Reply Comments at 11; SDUSD Reply Comments at 6.

<sup>228</sup> See 47 C.F.R. § 54.513.

<sup>229</sup> See *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26918-19, paras. 14-15.

<sup>230</sup> *Id.* at 26917-22, paras. 12-24.

<sup>231</sup> *E-rate Broadband NPRM*, 25 FCC Rcd at 6911, paras. 90, 92.

<sup>232</sup> See *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26920, para. 19.

<sup>233</sup> See Letter from Marijke Visser, American Library Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 13, 2010).

<sup>234</sup> *E-rate Broadband NPRM* at 6910-12, paras. 90, 93, 95-96.

<sup>235</sup> See 47 C.F.R. § 54.516; see also 47 C.F.R. § 54.513(c).

<sup>236</sup> See *E-rate Broadband NPRM* at 6912, paras. 95-96.

82. Fourth, we decline to adopt, as a condition of compliance with our E-rate rules, a specific rule that the disposal process must comply with state and local laws.<sup>237</sup> While we expect any schools and libraries disposing of obsolete equipment will comply with applicable federal, state, and local laws, we find that making such compliance a condition of our E-rate program requirements would impose significant administrative burdens on USAC to track such compliance, and that such burden outweighs any potential benefit of imposing such a requirement.<sup>238</sup>

83. Finally, we decline to require schools and libraries to return to USAC any funds received in exchange for the sale or disposal of obsolete E-rate equipment. We sought comment on E-rate Central's proposal that would require the return to USAC of any funds greater than \$1,000 related to the resale or disposal of E-rate equipment.<sup>239</sup> Because our intent is to permit disposal only of obsolete equipment, we expect that any consideration that schools or libraries receive should be nominal. Thus we find that the potential recovery does not warrant the administrative burdens that USAC and applicants would face as a result of requiring remission of such amounts.<sup>240</sup>

84. *E-Rate Central Petition for Clarification or Waiver.* As discussed in the *E-rate Broadband NPRM*, E-Rate Central filed a petition for clarification or waiver of the Commission's rules concerning the disposal of equipment purchased under the E-rate program.<sup>241</sup> The rules adopted in this order address E-Rate Central's Petition for Clarification or Waiver. Therefore, we dismiss E-Rate Central's petition as moot.

### C. Improving Safeguards Against Waste, Fraud and Abuse

85. *Fair and Open Competitive Bidding Rule.* We amend section 54.503 of the Commission's rules to codify the existing requirement that the E-rate competitive bidding process be fair and open.<sup>242</sup> The Commission has observed that competitive bidding is vital to ensuring that schools and libraries – and the E-rate program – receive the best value for their limited funds, and to clarify the prohibition against E-rate applicants receiving gifts.<sup>243</sup> Although numerous Commission orders already

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<sup>237</sup> See *id.* at 6910, para. 90.

<sup>238</sup> In addition, because any non-compliance likely would not be apparent until five years after E-rate funds had been expended for such equipment, it would be a harsh result to recover funding for services that otherwise had already been used for years in compliance with Commission rules.

<sup>239</sup> *E-rate Broadband NPRM* at 6911, para. 94.

<sup>240</sup> See SECA Comments at 2; see also NW-Links Comments at 9; CDE Comments at 18; AEED Comments at 10.

<sup>241</sup> See *E-rate Broadband NPRM* at 6908-09, paras. 87-88; see also *E-Rate Central Petition for the Clarification or Waiver of E-Rate Rules Concerning the Disposal of Equipment Purchased Under the Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6 (filed Sept. 13, 2006) (E-Rate Central Petition for Clarification or Waiver).

<sup>242</sup> See Appendix A, 47 C.F.R. § 54.503 as amended herein; see also *E-Rate Broadband NPRM*, 25 FCC Rcd at 6883-84, para. 27. Most commenters supported this proposal. See, e.g., AT&T Comments at 4-7; Sprint Comments at 6; Internet2 Comments at 1; EMPA Comments at 9; CDE Comments at 7; Miami-Dade Public Schools Comments at 5; EdLiNC Comments at 16-17; NYSED Comments at 4; Kellogg & Sovereign (K&S) Comments at 9; Qwest Comments at 3; Pittsburgh Public Schools Comments at 2; Ohio E-Rate Consortium Comments at 5-10; Texas Education Telecommunications Network (TETN) Comments at 2; SECA Comments at 19-20; E-rate Consultants Reply Comments at 2.

<sup>243</sup> *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, (continued...)

make clear that, to comply with the Commission's competitive bidding process requirements, applicants and service providers must conduct and participate in a fair and open competitive bidding process, we find that codification of this requirement is warranted.<sup>244</sup> We remind parties that all applicants and service providers have had, and will continue to have, an obligation to comply with any applicable state or local procurement laws, in addition to the Commission's requirements.<sup>245</sup>

86. As proposed in the *E-rate Broadband NPRM*, we find that the following types of conduct are necessary to satisfy a fair and open competitive bidding requirement.<sup>246</sup> As a general matter, all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.<sup>247</sup> Any additions or modifications to the FCC Form 470, RFP, or other requirements or specifications must be available to all potential providers at the same time and in a uniform manner.<sup>248</sup> Moreover, consistent with precedent, it is a violation of the Commission's competitive bidding rules if: (1) the applicant has a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information;<sup>249</sup> (2) someone other than the applicant or an authorized representative of the

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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); *see also* FCC Form 471.

<sup>244</sup> *See Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407 (2003) (*Ysleta Order*). *See also* AT&T Comments at 4-7; AT&T Reply Comments at 3-5; Sprint Comments at 6; Internet2 Comments at 1; EMPA Comments at 9; CDE Comments at 7; Miami-Dade Public Schools Comments at 5; EdLiNC Comments at 16-17; NYSED Comments at 4; K&S Comments at 9; Qwest Comments at 3; Pittsburgh Public Schools Comments at 2; Ohio E-Rate Consortium Comments at 5-10; TETN Comments at 2; SECA Comments at 19-20.

<sup>245</sup> *See, e.g., Universal Service First Report and Order*, 12 FCC Rcd at 9078, para. 575; *Ysleta Order*, 18 FCC Rcd at 26424-26, paras. 41-44; *see also* Appendix A, 47 C.F.R. § 54.503 as amended herein.

<sup>246</sup> The listed conduct does not constitute a complete list of conduct necessary to satisfy a fair and open competitive bidding process.

<sup>247</sup> *See Ysleta Order*, 18 FCC Rcd 26407; *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028 (2000) (*Mastermind Order*).

<sup>248</sup> 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* Appendix A, 47 C.F.R. § 54.503 as amended herein; FCC Form 470 at 3, available at <http://www.usac.org/res/documents/sl/pdf/470.pdf> (last visited Sept. 14, 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.

<sup>249</sup> *See Request for Review of the Decision of the Universal Service Administrator by Approach Learning and Assessment Center, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 5296 (2007) (*Approach Learning Order*) (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). We also clarify here that an existing relationship between an applicant and its existing service provider does not violate the rule that the competitive bidding process remain fair and open. *See, e.g.*, ESPA Comments at 3; AT&T Comments at 5; CDE Comments at 7.

applicant prepares, signs, and submits the FCC Form 470 and certification;<sup>250</sup> (3) a service provider representative is listed as the FCC Form 470 contact person and that service provider is allowed to participate in the competitive bidding process;<sup>251</sup> or (4) a service provider prepares the applicant's FCC Form 470 or participates in the bid evaluation or vendor selection process in any way.<sup>252</sup> In the *Mastermind Order*, the Commission found that an applicant violates the Commission's competitive bidding rules if the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process.<sup>253</sup> The Commission concluded in the *SEND Order* that a competitive bidding process is undermined when an applicant employee with a role in the service provider selection process also has an ownership interest in the vendor that is seeking to provide the products or services.<sup>254</sup> In the *Ysleta Order*, the Commission found that an applicant violates the Commission's competitive bidding rules if its FCC Form 470 does not describe the desired products and services with sufficient specificity to enable interested parties to submit responsive bids.<sup>255</sup> We emphasize that this is not an exhaustive summary of the types of conduct that we have found, and will continue to find, to violate the competitive bidding process. Because we cannot anticipate and address every possible action that parties may take in the E-rate application process, we expect that we will continue to use the appeal process as necessary to decide alleged competitive bidding violations.<sup>256</sup>

87. In addition to this precedent, we address the receipt of gifts by applicants from service providers and potential service providers under the E-rate program. As noted above, the Commission's rules and precedent require that applicants conduct a fair and open competitive bidding process. In

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<sup>250</sup> See *Approach Learning Order*, 22 FCC Rcd at 5303-04, para. 19 (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).

<sup>251</sup> See *Mastermind Order*, 16 FCC Rcd at 4032, para 9 (noting 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 the Commission's competitive bidding requirements. In the absence of valid Forms 470, the requests for support were properly denied).

<sup>252</sup> See *Approach Learning Order*, 22 FCC Rcd at 5303-04, para. 19. 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.

<sup>253</sup> See *Mastermind Order*, 16 FCC Rcd at 4032-34, paras. 10-11.

<sup>254</sup> See *Request for Review by SEND Technologies, L.L.C. of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 22 FCC Rcd 4950, 4952-53, para. 6 (2007) (*SEND Order*) (finding that applicant's 15 percent ownership interest in service provider resulted in a conflict of interest that impeded fair and open competition).

<sup>255</sup> See *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](http://www.usac.org/_res/documents/sl/pdf/470i.pdf) (last visited Sept. 14, 2010). If the RFP contains any additional information that is not on the FCC Form 470, it 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](http://www.usac.org/_res/documents/sl/pdf/470.pdf) (last visited Sept. 14, 2010).

<sup>256</sup> We note that we are still considering the comments received in response to the proposal in the *E-rate Broadband NPRM* barring applicant participation on a service provider board, and therefore we are not ruling on that issue in this order. See *E-rate Broadband NPRM*, 25 FCC Rcd at 6884-85, para. 29.

addition, applicants are required to certify on the FCC Form 471 that they have not received anything of value or a promise of anything of value other than the services and equipment requested on the form.<sup>257</sup> In the *NPRM*, we listed gift-giving as one example of prohibited conduct under a fair and open competitive bidding process.<sup>258</sup>

88. We find that the best approach is to make gift rules under the E-rate program consistent with the gift rules applicable to federal agencies, which permit only certain *de minimis* gifts.<sup>259</sup> Generally, the federal rules prohibit a federal employee from directly or indirectly soliciting or accepting a gift (*i.e.*, anything of value) from someone who does business with his or her agency or accepting a gift given as a result of the employee's official position.<sup>260</sup> The federal rules do, however, permit two categories of circumscribed *de minimis* gifts: (1) modest refreshments that are not offered as part of a meal (*e.g.*, coffee and donuts provided at a meeting) and items with little intrinsic value intended solely for presentation (*e.g.*, certificates and plaques); and (2) items that are worth \$20 or less (*e.g.*, pencils, pens, hats, t-shirts, and other items worth less than \$20, including meals), as long as those items do not exceed \$50 per employee from any one source per calendar year.<sup>261</sup> Similarly, the rule we adopt today also allows such *de minimis* gifts. In determining the amount of gifts from any one source, we will consider the aggregate value of all gifts from any employees, officers, representatives, agents, independent contractors, or directors of the service providers in a given funding year. We note that the restriction on gifts is always applicable, and is not in effect or triggered only during the time period when the competitive bidding process is taking place. Based on our experience, gift activities that undermine the competitive bidding process may occur outside the bidding period. Accordingly, we amend section 54.503 of our rules to prohibit E-rate applicants from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the E-rate program.<sup>262</sup> We further amend that rule to make it a violation for any service provider to offer or provide any gift or other thing of value to those personnel of eligible entities involved with the E-rate program. Like the federal rules, we include an exception for gifts to family and personal friends when those gifts are made using personal funds of the donor (without reimbursement from an employer) and are not related to a business transaction or business relationship.<sup>263</sup>

89. We find that the federal rules offer a fair balance between prohibiting gifts that might have undue or improper influence on a procurement decision and acknowledging the realities of professional interactions, which might occasionally involve giving people coffee or other modest

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<sup>257</sup> See Schools and Libraries Universal Service, Services Ordered and Certification Form at 5, OMB 3060-0806 (November 2004) (FCC Form 471).

<sup>258</sup> See *E-rate Broadband NPRM*, 25 FCC Rcd at 6884-85, para. 29; see also, *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.

<sup>259</sup> See Appendix A, 47 C.F.R. § 54.503(c)(5) as amended herein; 5 C.F.R. § 2635.201-205; see also Pittsburgh Public Schools Comments at 2; TETN Comments at 2.

<sup>260</sup> See 5 C.F.R. § 2635.201-205. In addition, we note that pursuant to section 3.101-2 of the Federal Acquisition Rules (FAR), "[n]o Government employee may solicit or accept, directly or indirectly, any gratuity, favor, entertainment, loan, or anything of value from anyone who a) has or is seeking to obtain Government business with the employee's agency; b) conducts activities that are regulated by the employee's agency; or c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties." 48 C.F.R. § 3.101-2.

<sup>261</sup> See 5 C.F.R. §§ 2635.203(b), 204(a).

<sup>262</sup> See Appendix A, 47 C.F.R. § 54.503(d) as amended herein.

<sup>263</sup> See Appendix A, 47 C.F.R. § 54.503(d)(3) as amended herein.



refreshments or a token gift. Moreover, the federal rules are well-established and have been interpreted frequently, and parties can look to these decisions if there are questions about the propriety of a particular offering. In addition, we find that this rule is appropriate for ease of administration and also to provide clarity for service providers and applicants. Finally, we emphasize again that schools, libraries, and service providers remain subject to applicable state and local restrictions regarding gifts. Thus, to the extent a state or local provision is more stringent than the federal requirements, violation of the state or local provision constitutes a violation of the Commission rule we adopt herein.<sup>264</sup>

90. AT&T was concerned that a prohibition against gifts might prevent companies from making charitable contributions to schools, or would deter other philanthropic activities, such as employee donations through United Way.<sup>265</sup> The rule we articulate today does not discourage companies from making charitable donations to E-rate eligible entities in the support of schools – including, for example, literacy programs, scholarships, and capital improvements – as long as such contributions are not directly or indirectly related to E-rate procurement activities or decisions.<sup>266</sup> If contributions have no relationship to the procurement of E-rate eligible services and are not given by service providers to circumvent our rules, including rules that require schools and libraries to pay their own non-discount share for the services they are purchasing, such contributions will not violate the prohibition against gift-giving.<sup>267</sup> If applicants or service providers are unclear about a particular anticipated gift, they should seek guidance from USAC or the FCC.<sup>268</sup>

91. We also offer greater clarity with regard to permissible service provider identification number (SPIN) changes following a competitive bidding process. In the *NPRM*, we proposed to prohibit a service provider from circumventing a competitive bidding process by offering a new, lower price for products and services that have already been competitively bid and are part of an existing contract.<sup>269</sup> The Commission currently permits applicants to change service providers for specified reasons (*e.g.*, the service provider went out of business or is unable to perform) after a funding commitment has been issued through the operational SPIN change process.<sup>270</sup> Applicants must wait until after the funding commitment has been issued to enable USAC to review and identify any issues related to the competitive

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<sup>264</sup> See Appendix A, 47 C.F.R. §54.503 as amended herein.

<sup>265</sup> See, *e.g.*, AT&T Comments at 6.

<sup>266</sup> See Appendix A, 47 C.F.R. § 54. 503(d)(4) as amended herein.

<sup>267</sup> *Id.*

<sup>268</sup> As noted above, parties must also comply with applicable state and local requirements, which might bar such contributions.

<sup>269</sup> Specifically, in the *E-rate Broadband NPRM*, we proposed to provide the following example: “[o]nce 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.” See *E-rate Broadband NRPM*, 25 FCC Rcd at 6884-85, para. 29.

<sup>270</sup> See, *e.g.*, *Copan Order*, 15 FCC Rcd 5498 (allowing SPIN changes whenever an applicant certifies that (1) the SPIN change is allowed under its state and local procurement rules and under the terms of the contract between the applicant and its original service provider, and (2) the applicant has notified its original service provider of its intent to change service providers). The Commission also stated that SPIN changes are no longer restricted to those categories enumerated in the USAC guidelines (*i.e.*, service provider refuses to participate, has gone out of business, or has breached its contract). *Id.* at 5501, para. 6. See also USAC website, Schools and Libraries, SPIN Change Guidance, available at <http://www.usac.org/sl/about/changes-corrections/spin-change-guidance.aspx> (last visited Sept. 14, 2010).

bidding process of the original service provider.<sup>271</sup> There may be some instances, however, where the reason for the SPIN change is not consistent with program purposes. For example, the applicant might identify a service provider as the winning bidder but intend to change providers through the SPIN change process as soon as USAC issues a funding commitment. We believe that this type of conduct is inappropriate and is not conducive to a fair and open competitive bidding process. Therefore, to alleviate uncertainty regarding the types of SPIN changes that are permissible following a competitive bidding process, we clarify that once a contract for products or services is signed by the applicant and service provider, the applicant may not change to a different service provider unless (1) there is a legitimate reason to change providers (*e.g.*, breach of contract or the service provider is unable to perform); and (2) the newly selected service provider received the next highest point value in the original bid evaluation, assuming there was more than one bidder.<sup>272</sup>

92. Some commenters challenged the statement in the *NPRM* that “[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.”<sup>273</sup> They argue that applicants need vendor information during the bid selection process in order to make the best decision about the services they are requesting.<sup>274</sup> We agree with these commenters and note that, currently, service providers are permitted to supply information about their products and services during the 28-day waiting period.<sup>275</sup> Our concern regarding vendor communication during the 28-day waiting period was not about the specific products or services being requested, but rather about ensuring that potential bidders are not influencing the bidding process by providing inappropriate assistance as explained above.<sup>276</sup> Thus, we clarify that we do not prohibit communications during the 28-day waiting period as long as all parties are privy to the same information from the applicant during that period and the communications are consistent with any applicable state or local competitive bidding requirements.

### III. ELIGIBLE SERVICES LIST

#### A. Background

93. Through the E-rate program, eligible schools and libraries may receive discounts for eligible services, including telecommunications services, Internet access, and internal connections.<sup>277</sup> Section 254 gives the Commission authority to designate “telecommunications services” and additional services eligible for support through the E-rate program.<sup>278</sup> The Commission also has determined that it

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<sup>271</sup> See USAC website, Schools and Libraries, SPIN Change Guidance, available at <http://www.usac.org/sl/about/changes-corrections/spin-change-guidance.aspx> (last visited Sept. 14, 2010).

<sup>272</sup> We note that applicants must still comply with the procedures described in the *Copan Order*. See *Copan Order*, 15 FCC Rcd 5498.

<sup>273</sup> *E-Rate Broadband NPRM*, 25 FCC Rcd at 6885, para. 30.

<sup>274</sup> See, *e.g.*, EdLiNC Comments at 17; NYSED Comments at 5; AASA & AESA Comments at 3; Qwest Comments at 3; Pittsburgh Public Schools Comments at 2-3.

<sup>275</sup> See, *e.g.*, USAC website, Schools and Libraries, Service Providers, available at <http://www.usac.org/sl/about/training-sessions/training-2003/2003-presentations.aspx> (last visited Sept. 14, 2010).

<sup>276</sup> See *supra* para. 86.

<sup>277</sup> 47 C.F.R. §§ 54.502, 54.503, 54.506, 54.517.

<sup>278</sup> 47 U.S.C. § 254(c)(1), (c)(3), (h)(2)(A). Congress charged the Commission with establishing competitively neutral rules to enhance access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms and libraries; and also provided the Commission with the authority to designate “special” or “additional” services eligible for universal service support for schools and libraries. 47 U.S.C. § 254 (c)(3), (h)(2).

has the authority to designate services eligible for E-rate support as part of its authority to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms and libraries.<sup>279</sup>

94. The ESL, which is posted on the Commission's and USAC's websites, identifies the services and products that are eligible for E-rate funding.<sup>280</sup> The Commission's rules direct USAC to submit annually to the Commission its proposed ESL for the upcoming funding year, and the Commission seeks public comment on that proposed ESL.<sup>281</sup> This process ensures that the Commission and USAC will regularly evaluate whether to modify the ESL to reflect changes in law as well as the marketplace.<sup>282</sup>

95. We have previously sought comment on a number of proposed changes to the ESL, including proposals regarding firewall services, anti-virus and anti-spam software, teleconferencing scheduling services, wireless Internet access applications, and web hosting.<sup>283</sup> We also proposed that: (1) eligible products and services should be listed in the ESL and should not be individually listed in the Commission's rules; (2) USAC should be required to submit any proposed changes to the ESL to the Commission by March 30 of each year, instead of June 30; and (3) the ESL would no longer have to be released only by public notice.<sup>284</sup>

96. For funding year 2011, USAC proposed that the Commission clarify that the following services are ineligible: web hosting, web servers, and domain name registration; software applications that are used in connection with wireless devices; separately priced firewalls; anti-virus and anti-spam software; online backup solutions; and unbundled warranties.<sup>285</sup> USAC also included leased dark fiber on the list of miscellaneous services on the ESL in light of the Commission's proposal to provide funding for leased dark fiber.<sup>286</sup> The Bureau sought comment on these various proposals.<sup>287</sup> We address those proposals below.

## B. Discussion

97. In this order, we release the ESL for funding year 2011 and adopt most of the proposals made in the *2009 ESL Further NPRM* and the *2010 ESL Public Notice*. We add dark fiber to the ESL as an eligible service.<sup>288</sup> We also retain web hosting as an eligible priority one service.<sup>289</sup> Finally, we

<sup>279</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9008-9015, paras. 436-449 (1997); *see also* 47 U.S.C. § 254(h)(2)(A).

<sup>280</sup> *See* Appendix A, 47 C.F.R. § 54.522 as amended herein at 54.502(b); *see, e.g.*, Funding Year 2010 ESL.

<sup>281</sup> *See* Appendix A, 47 C.F.R. § 54.522 as amended herein at 54.502(b).

<sup>282</sup> *See Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9213, para. 31; *see also* 47 U.S.C. § 254(c)(2); *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26926, para. 34.

<sup>283</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 6562, 6578-6581, paras. 34-39 (2009) (*2009 ESL Further NPRM*); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, 23 FCC Rcd 11703 (2008) (*2008 ESL NPRM*).

<sup>284</sup> *2009 ESL Further NPRM*, 25 FCC Rcd at 6581-6583, paras. 40-46.

<sup>285</sup> *See 2010 ESL Public Notice*.

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> *See supra* paras. 9-19.

decline to add the following services to the ESL: (1) software applications that are used in connection with wireless devices; (2) enhanced firewalls and intrusion detection/intrusion prevention devices;<sup>290</sup> (3) anti-virus and anti-spam software; (4) online backup solutions;<sup>291</sup> and (5) unbundled warranties.

98. We also make slight modifications to the rules pertaining to ESL administration. First, as explained below, we find that individual eligible and ineligible services should be listed in the ESL only rather than in our rules. Second, we require USAC to submit any proposed changes to the ESL to the Commission by March 30 of each year. Third, the rules will now provide the Commission with flexibility to release the ESL by public notice or order. Finally, because we are releasing the final ESL for funding year 2011 by this report and order, pursuant to our rules, we also authorize USAC to open the annual application filing window no earlier than November 29, 2010.<sup>292</sup>

99. The Commission uses several criteria to determine whether to include a service in the ESL. First, under the statute, a service must serve an educational purpose.<sup>293</sup> Second, the service should be primarily or significantly used to facilitate connectivity.<sup>294</sup> The E-rate program does not provide support for content or end-user devices such as computers or telephones. Third, due to the financial constraints on the fund,<sup>295</sup> we must balance the benefits of particular services with the costs of adding to our list of supported services – *i.e.*, if more services are eligible for E-rate funding, some schools may receive more funding, but some schools may not receive any funding for priority two services.<sup>296</sup> We recognize that E-rate may not be able to fund every service that potentially serves an educational purpose, and for that reason we need to evaluate potential impact of adding additional services to the eligible services list. Finally, the Commission must exercise discretion in order to balance the goals of the E-rate program with the overarching (and potentially competing) goals of universal service, such as ensuring affordable rates to all Americans across the country.<sup>297</sup> In deciding whether to extend E-rate support to a particular service, the Commission must keep in mind that the support ultimately is paid for by consumers. This balancing bears on each decision about whether to designate a service as eligible or ineligible for E-rate support.

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<sup>289</sup> The *2009 ESL Further NPRM* proposed to remove web hosting from the eligible services list and stated that web hosting is not essential to the educational purposes of schools and libraries. *2009 ESL Further NPRM*, 25 FCC Rcd at 6580, paras. 37-38.

<sup>290</sup> The ESL defines intrusion detection/intrusion prevention devices as devices that function in addition to firewalls to monitor, detect, and deter threats to a network from external and internal attacks. *See* 2011 ESL at 36.

<sup>291</sup> The ESL defines an online backup solution as a service that provides off-site data storage generally accessible from any Internet connection. *See* 2011 ESL at 38.

<sup>292</sup> *See* Appendix A, 47 C.F.R. § 54.522 as amended herein at 54.502(b).

<sup>293</sup> 47 U.S.C. § 254(h)(1)(B). “Educational purposes” has been defined as activities that are integral, immediate, and proximate to the education of students or library patrons. *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17. The Commission also determined there was a presumption that any service provided on a school or library campus serves an educational purpose. *Id.*

<sup>294</sup> *See* 47 U.S.C. § 254(h)(2)(A) (charging the Commission with enhancing *access* to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms and libraries).

<sup>295</sup> 47 C.F.R. § 54.507(a); *see supra* para. 34.

<sup>296</sup> *See supra* n.10.

<sup>297</sup> 47 U.S.C. § 254(b).

## 1. Eligible Services

100. *Web Hosting.* Based on the record before us, we find that web hosting should continue to receive priority one funding.<sup>298</sup> Comments provided compelling examples of how web hosting is essential for facilitating teaching and learning as well as communication among the entire school community.<sup>299</sup> For example, teachers use individual web pages to post homework assignments, collect completed homework from students, post messages to students and parents, and respond to student or parent questions.<sup>300</sup> Web pages also can increase learning time outside of school by providing students and parents with 24/7 access to classroom information and supplemental educational resources.<sup>301</sup> Moreover, parental and family engagement in a child's school has been linked to improved educational outcomes for students.<sup>302</sup> Web hosting, as the commenters have shown, is an example of a service that can provide a substantial educational impact for a relatively small cost.<sup>303</sup>

101. We are also persuaded that features that facilitate the ability to communicate, such as blogging, e-mailing over a school or library's hosted website, discussion boards, and services that may

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<sup>298</sup> The draft eligible services list for funding year 2011 proposed to eliminate web servers and domain name registration from the ESL because they are typically included with web hosting services, which we had proposed to remove from the ESL. Because we are retaining web hosting, we also retain web servers and domain name registration as eligible.

<sup>299</sup> See generally Schoolwires Comments and Edline and ePals, Inc (Edline) Comments; see also NYSED Comments at 9; eChalk Inc. Comments at 5-6. We also believe that library web pages are essential for the provision of library services to library patrons.

<sup>300</sup> Schoolwires Comments at 6-7.

<sup>301</sup> *Id.* The record is also replete with ways in which web hosting serves the public interest. For example, the ability to have a hosted web page may reduce some of the potential disadvantages that students in rural areas suffer from living long distances from school by providing instant access to school district and classroom information. Schoolwires Comments at 4. We also recognize the benefit that hosted web pages may provide by allowing schools to communicate quickly in times of crisis or to communicate safety and health information such as H1N1 flu virus vaccination scheduling information. See Schoolwires Comments at Appendix 5 (Safety Impact Stories).

<sup>302</sup> See, e.g., Nancy E. Hill and Lorraine C. Taylor, *Parent-School Involvement and Children's Academic Achievement - Pragmatics and Issues*; Current Directions in Psychological Science, Aug. 2004, at 13, 161-164, available at <http://www.jstor.org/stable/20182940?seq=3> (last visited Sept. 14, 2010); *What Research Says About Parent Involvement in Children's Education and Academic Achievement*, Michigan Department of Education, available at [http://www.education.com/reference/article/Ref\\_What\\_Research\\_Says/](http://www.education.com/reference/article/Ref_What_Research_Says/) (last visited Sept. 14, 2010); Holly Kreider, Margaret Caspe, Susan Kennedy, Heather Weiss, *Family Involvement Makes a Difference, Evidence that Family Involvement Promotes School Success for Every Child of Every Age, Family Involvement in Middle and High School Students' Education*, Harvard Family Research Project, Harvard Graduate School of Education, available at <http://www.hfrp.org/publications-resources/publications-series/family-involvement-makes-a-difference/family-involvement-in-middle-and-high-school-students-education>, Spring 2007 (last visited Sept. 14, 2010); Suzanne Bouffard, *Tapping Into Technology; The Role of the Internet in Family-School Communication*, July 2008, available at <http://www.hfrp.org/publications-resources/browse-our-publications/tapping-into-technology-the-role-of-the-internet-in-family-school-communication> (last visited Sept. 14, 2010) (finding that while families from some backgrounds were less likely to use the Internet to communicate with schools, all adolescents demonstrated more positive outcomes when their families utilized this technology).

<sup>303</sup> See eChalk Comments at 5 (noting that since the inception of the E-rate program, the total funding committed for the group of vendors that offer web hosting service has been \$89 million or 2.7% of total internet access funding over time); Edline Comments at 20 (stating that the major service providers offering K-12 schools web-based communications services (including both web hosting and e-mail) were estimated to receive roughly \$30 million in USAC funding commitments in funding year 2009, which represents roughly 1.3% of the \$2.25 billion annual fund); see also Schoolwires Reply Comments at 9; Edline Reply Comments at 6-7.

facilitate real-time interactive communication such as instant messaging or chat, should be eligible for E-rate funds as part of a web hosting package.<sup>304</sup> Therefore, we revise the ESL to include those features of web hosting. This decision alters prior decisions limiting web hosting support to hosting a school or library's static website and excluded the ability to engage in interactive activity such as blogging.<sup>305</sup> We recognize that the transfer of messages across a school's hosted website is functionally equivalent to other services that facilitate the ability to communicate such as e-mail, text messaging, voice mail, and paging. We remind applicants, however, that content – including content created by third-party vendors, and any features involving data input or retrieval – including searching of databases for grades, student attendance files, or other reports – remains ineligible.<sup>306</sup> In addition, support for web hosting will not include support for the applications necessary to run online classes or collaborative meetings.<sup>307</sup>

## 2. Ineligible Services

102. Wireless Internet Access Applications. We conclude that wireless Internet access applications should remain ineligible for E-rate support.<sup>308</sup> The E-rate program generally does not provide support for software or applications.<sup>309</sup> Our decision does not contradict the *Schools and Libraries Second Report and Order* determination that wireless telecommunications services on a school bus or a library's mobile unit are eligible for E-rate funding, because in that order the Commission decided to fund the telecommunications service used on school buses, but not any overlying functionalities or applications.<sup>310</sup> Although some commenters argue that wireless Internet applications

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<sup>304</sup> See, Edline Comments at 11; see also Letter from Jennifer Richter, Counsel to Edline and ePals, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Aug. 5, 2010 (*Edline and ePals Ex Parte Letter*) (stating that web hosting services that should be eligible because their primary purpose is for communication include web-based email, web pages, blogs, discussion Boards, chat, and instant messaging). We do not at this time, however, adopt Edline and ePals suggested definition of “web hosted communications.” Edline Reply Comments at 12 (suggesting that eligible web-hosted communications services enable one-to-one, one-to-many, or many-to-many communication over the Internet to a public or restricted audience, and facilitate communication as their primary purpose and use). We believe that it is adequate to continue with the current definition as long as we clarify the eligibility of certain web hosting features such as those that facilitate communication.

<sup>305</sup> 2009 *ESL Further NPRM*, 25 FCC Rcd at 6573-74, para. 22.

<sup>306</sup> See Edline and ePals *Ex Parte Letter* at 3 (recommending that non-communications web hosting tools should not be eligible including a student information system (SIS) that manages a school's grades, attendance, and other data; curriculum software that provides proprietary, third party educational content; financial software that manages accounting; human resources or payroll functions; assessment systems which deliver online tests to assess student achievement; analytics systems which analyze and correlate data across a school district; and any other software/system/service whose primary purpose/use is not communication ).

<sup>307</sup> We note that we have received several comments asking us to change the current language in the ESL which states that Internet-based distance learning services such as web meetings or on-line collaboration solutions are not eligible as Internet access services. See, e.g., Generic Conferencing, LLC Comments. They assert that such services could be eligible as priority one information services. While we are interested in the concerns raised by these commenters, we find that we should first seek public comment on these proposals before we address them. We intend to examine these proposals more closely in the future, and, if necessary, seek additional comment.

<sup>308</sup> See 2009 *Further ESL NPRM*, 25 FCC Rcd at 6580-81, para. 39. Such applications include, but are not limited to, applications that could be used on school buses to transmit emergency information, track students, and locate buses with global positioning service (GPS) technology.

<sup>309</sup> Currently, we provide E-rate funds for only a few categories of software are eligible for E-rate funding, - operating system software, e-mail software, and software for a server-based, shared voice mail system. See Funding Year 2010 ESL at 11-19 (explaining the products and services eligible as internal connections).

<sup>310</sup> *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9209, n.28.

should be funded if they are used for an “educational purpose,”<sup>311</sup> we find that even if certain of these applications do serve educational purposes, they should not be funded given the overall constraints on the universal service fund, and our desire to maintain the focus of E-rate on its core purpose of ensuring communications connectivity. Thus, we are not persuaded that expanding eligibility to fund wireless Internet access applications at this time is a prudent course of action.

103. We disagree with commenters that applications for wireless devices should be eligible if they are bundled with eligible voice and data services.<sup>312</sup> Such an approach would allow providers in effect to expand the ESL by bundling ineligible wireless applications with eligible services. Although we do not prohibit providers from choosing how to offer their services, individual ineligible services within the bundle will still need to be cost allocated. To the extent that carriers bundle eligible and ineligible services and do not present a reasonable cost allocation between the services, we direct USAC to continue to provide outreach to applicants during the program integrity assurance review process and make determinations based on any additional information provided in the discussions and information-sharing with applicants.

104. Funds for Learning asserts that the language in the draft 2011 ESL appears to say that applicants may not receive discounts on any data charges used for accessing wireless applications.<sup>313</sup> This language was intended to indicate that wireless Internet access service and data charges for a service that is solely dedicated to accessing an ineligible functionality is ineligible for E-rate funding. For example, wireless Internet access service that enables students to access the Internet on a laptop computer will still be eligible for E-rate funding even if that service happens to allow a student to access applications that would not be eligible for E-rate funds. If a wireless Internet access service is dedicated to a service or group of services that are ineligible, however, the entire service request will be deemed ineligible. For example, a wireless service solely dedicated to applications that track the location of a school’s bus drivers or student attendance would be fully ineligible.<sup>314</sup>

105. Enhanced Firewalls, Intrusion Detection/Intrusion Prevention Devices, Anti-Virus and Anti-Spam Software. Firewall services are intended to prevent unauthorized access to a school or library’s network. Anti-virus and anti-spam software and intrusion protection and intrusion prevention devices monitor, detect, and deter threats to a network from external and internal attacks. We decline to extend E-rate support to anti-virus and anti-spam software and intrusion protection and intrusion prevention devices.<sup>315</sup> We will continue to fund basic firewall protection, but we will not at this time extend E-rate support beyond basic firewall protection that is included as part of an Internet access service.<sup>316</sup> While some commenters support greater support for firewall services, contending that such

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<sup>311</sup> See, e.g., Sprint Comments at 10; Verizon Comments at 4, Clearwire Comments at 5, and Synovia Comments at 1-3. “Educational purposes” has been defined as activities that are integral, immediate, and proximate to the education of students or library patrons. *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17. The Commission found that examples of educational purposes included wireless telecommunications services on a school bus or on a library’s mobile unit van. *Id.* at 9209, n.28. Some assert only that the wireless Internet access service underlying such applications should be eligible. See Sprint Comments at 10-11; Funds for Learning (FLL) Comments at 4.

<sup>312</sup> See FFL Comments at 5; EMPA Comments at 22; K&S Comments at 29.

<sup>313</sup> See FFL Comments at 3.

<sup>314</sup> See Verizon Comments at 4-5; Sprint Comments at 10-11.

<sup>315</sup> Anti-virus is already listed in the ESL as an ineligible application. Funding Year 2010 ESL at 18.

<sup>316</sup> Funding Year 2010 ESL at 8 (stating that eligible Internet access may include features typically provided for adequate functionality and performance when provided as a standard component of a vendor’s Internet access (continued...))

services are necessary protection for Internet services and equipment,<sup>317</sup> we must balance the benefits of such protections with the costs of augmenting our list of supported services. We are concerned about the financial impact on the fund – *i.e.*, if more services are eligible for E-rate funding, fewer schools will get funding for priority two services. Although we agree that protection from unauthorized access is a legitimate concern, the funds available to support the E-rate program are constrained. Therefore, we find that, on balance, the limited E-rate funds should not be used to support these services.

106. *Unbundled Warranties.* We add unbundled warranties to our list of ineligible basic maintenance of internal connections (BMIC). This conforms to the decision we made last year that unbundled warranties are ineligible.<sup>318</sup> The Commission has found that basic maintenance services are eligible for universal service support as priority two internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services.<sup>319</sup> USAC has treated as an unbundled warranty a separately priced warranty allowing for broken equipment to be fixed or, in the event that the problem is beyond repair, replaced.<sup>320</sup> We find that an unbundled warranty is an ineligible BMIC service because it is purchased as a type of retainer and not as an actual maintenance service. That is, BMIC contracts that require an upfront payment and that payment is required regardless of whether any service is actually performed are not eligible. In light of the limited funds available for the program, we decline to include support for service that may not need to be performed. To avoid the potential waste of E-rate resources, therefore, we will continue to disallow E-rate discounts for unbundled warranties.

107. Requests for basic maintenance will continue to be funded as internal connections if, but for the maintenance at issue, the service would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services. Thus, requests for routine maintenance will continue to be funded. In addition, if applicants are able to estimate a certain number of hours per year for maintenance, based on the current life of their equipment and a history of needed repairs and upkeep, they may seek E-rate funds for upfront costs on service contracts designed to cover this estimate of repairs and upkeep. Reimbursements will be paid on the actual work performed and hours used only. For example, if a school determines it will need 30 service hours in a given year to maintain its internal connections but uses only 20 hours, the school will be reimbursed only for 20 hours even if they were approved for E-rate funds on 30 hours. We find that this procedure will ensure that E-rate funds will be used only for actual maintenance performed.

108. We understand from the comments that there may be confusion about the eligibility of manufacturer's warranties.<sup>321</sup> The language in the ESL under the entry for "Miscellaneous Fees and (Continued from previous page) \_\_\_\_\_ service). When seeking comment on enhanced firewalls, we had described them as "separately priced" firewalls. See 2009 Further ESL NPRM, 25 FCC Rcd at 6578-6579, para. 34.

<sup>317</sup> See NY OCFS Comments at 4; EMPA Comments; FFL Comments at 7; K&S Comments; AT&T 2008 ESL NPRM Comments at 8; ESPA 2008 ESL NPRM Comments at 13. Funds for Learning states that applicants could benefit by adding protective services and devices to their networks to make their firewalls "smarter." See FFL Comments at 7.

<sup>318</sup> See 2009 Further ESL NPRM, 25 FCC Rcd at 6576, para 28.

<sup>319</sup> *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26921-22, para. 23; see also 47 C.F.R. § 54.506(b).

<sup>320</sup> Funds for Learning is correct that a definition of unbundled warranty was left out of the ESL for funding year 2010. FFL Comments at 8. This, however, was an oversight. USAC's definition, however, was provided in the order releasing the Funding Year 2010 ESL. 2009 Further ESL NPRM, 25 FCC Rcd at 6576, para 28.

<sup>321</sup> See SECA Comments at 50; CDE Comments at 17.



Charges,” states that, “a manufacturer’s multi-year warranty provided as an integral part of an eligible component without separately identifiable cost can be included in the cost of the component.”<sup>322</sup> We agree with commenters that a manufacturer’s warranty of no more than three years that is included in the price of eligible equipment should continue to be eligible as priority two internal connections equipment, and add the clarification of the three year period to the ESL.<sup>323</sup> In the same entry for “Miscellaneous Fees and Charges,” however, it states that “[e]xtended warranties and service contracts are eligible only for that portion associated with the relevant funding year.” We will remove this language from the ESL for funding year 2011 to eliminate any implication in the ESL that an unbundled warranty may be eligible for E-rate funding.

109. *Other Ineligible Services.* We also decline to designate scheduling services and online backup solutions as eligible for E-rate funding. Given the overall constraints on the universal service fund, and our desire to maintain the focus of E-rate on its core purpose of ensuring communications connectivity, we are not persuaded that expanding eligibility to fund these services at this time is a prudent course of action.<sup>324</sup>

### 3. Administrative Changes Pertaining to the ESL

110. We adopt the proposal in the *2009 ESL Further NPRM* to restructure our rules such that the services eligible for support will be listed in the ESL and will not specified in the Commission’s rules. Any reference to specific services or products in the rules will be removed and the revised rule regarding the ESL will state that all products and services eligible for E-rate support will be listed in the ESL.<sup>325</sup> This change will help the Commission ensure that the ESL is updated in a timely manner. We find that listing general categories of eligible services in the rules and specific types of eligible services that fall within those categories of eligible services in the ESL is confusing. Moreover, it does not serve the public interest to change both the Commission’s rules and the ESL each time a new service or product is designated eligible (or ineligible) for E-rate support. Therefore, to alleviate this confusion, we will list the services and products eligible for E-rate support only in the ESL. This change will enable the Commission to modify the ESL only as necessary to keep up with rapidly changing technology. We note that the Commission will continue to seek comment on each funding year’s proposed ESL, pursuant to our rules.<sup>326</sup> Additionally, we will modify our rules pertaining to the ESL when necessary to designate new categories of services as eligible for E-rate support.

111. We also adopt the proposal that USAC should be required to submit any proposed changes to the ESL to the Commission by March 30 of each year, instead of June 30. Accordingly, we amend section 54.522 of our rules.<sup>327</sup> We agree with commenters that requiring USAC to submit the proposed ESL earlier will allow additional time for the Commission to review the proposal and to review and analyze public comment on the proposed ESL.<sup>328</sup> Some commenters also propose that we release the

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<sup>322</sup> See 2011 ESL at 22.

<sup>323</sup> See SECA Comments at 50; CDE Comments at 17.

<sup>324</sup> See SECA Comments at 39 (asserting that only the items that are essential for transporting information to classrooms and libraries should be eligible and by limiting the scope of eligible priority two services and equipment, more funding will be available to applicants that have not traditionally had access to funding).

<sup>325</sup> In addition to making the rule changes described herein, we also consolidate all of the rules pertaining to eligible services in section 54.502. See Appendix A, 47 C.F.R. § 54.502 as amended herein.

<sup>326</sup> See Appendix A, 47 C.F.R. § 54.502(b) as amended herein.

<sup>327</sup> *Id.*

<sup>328</sup> See, e.g., AT&T Comments at 21-22.

ESL earlier than the existing deadline.<sup>329</sup> Although we agree that applicants should have ample time to review the final ESL while they prepare their funding applications, the existing rule requires the final ESL to be released at least 60 days prior to the opening of the funding window.<sup>330</sup> We find that this 60 day period, in addition to the period of time applicants had to review the proposed changes released in the draft ESL, should afford applicants a reasonable amount of time to understand any changes to the ESL and prepare their applications.

112. Finally, we adopt our proposal that the final ESL should no longer be required to be released by public notice.<sup>331</sup> We find that it is important that the Commission have the flexibility to release the ESL through a public notice or an order to account for the situations where the Commission will need to provide more detailed explanations as to why a service is deemed eligible or ineligible for E-rate funding. We wish to dispel any concerns that this change would eliminate the opportunity for public comment on any modifications to the ESL.<sup>332</sup> Indeed, the proposed rule attached to the *2009 ESL Further NPRM* states that “[t]he Wireline Competition Bureau will issue a Public Notice seeking comment on the Administrator’s proposed eligible services list,” and we adopt that proposed rule herein.<sup>333</sup>

#### IV. PROCEDURAL MATTERS

##### A. Final Regulatory Flexibility Analysis

113. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>334</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is set forth in Appendix D.

##### B. Paperwork Reduction Act Analysis

114. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

115. In this present document, we establish a trial program to investigate the merits and challenges of wireless off-premises connectivity services, and to help us determine whether and how they should ultimately be eligible for E-rate support.<sup>335</sup> 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. The trial program is limited to schools and libraries that are already implementing or planning to implement wireless off-campus learning, therefore, any

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<sup>329</sup> *Id.*; CenturyLink Reply Comments at 6.

<sup>330</sup> *See* Appendix A, 47 C.F.R. § 54.502(b) as amended herein.

<sup>331</sup> *2009 ESL Further NPRM*, 25 FCC Rcd at para. 46.

<sup>332</sup> *See, e.g.,* Verizon Comments at 14-15; CenturyLink Reply Comments at 5.

<sup>333</sup> *See* Appendix A, 47 C.F.R. § 54.502(b) as amended herein.

<sup>334</sup> *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

<sup>335</sup> *See supra* paras. 41-57.

information collected from participants in this program is limited to information about their current projects.

**C. Congressional Review Act**

116. The Commission will include a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**V. ORDERING CLAUSES**

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

118. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, 303(r), and 403, sections 54.501-54.508, 54.511, 54.513, 54.517-54.519, and 54.522 of the Commission's rules, 47 C.F.R. §§ 54.501-54.508, 54.511, 54.513, 54.517-54.519, and 54.522, ARE AMENDED as set forth in Appendix A, effective thirty (30) days after the publication of this report and order in the Federal Register.

119. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to the authority delegated in sections 0.91, 0.291, 1.3 and 54.723(b) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Petition for Clarification or Waiver filed by E-rate Central, as identified in paragraph 84 herein, IS DISMISSED.

120. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to the authority delegated in sections 0.91, 0.291, 1.3 and 54.723(b) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Petition for Clarification filed by E-rate Central, as identified in paragraph 69 herein, IS DISMISSED.

121. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to the authority delegated in sections 0.91, 0.291, 1.3 and 54.723(b) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Request for Waiver and Clarification filed by the West Virginia Department of Education, as identified in paragraph 33 herein, IS DISMISSED AS MOOT.

122. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R.

Part 54 as follows:

**PART 54 - UNIVERSAL SERVICE**

1. The authority citation for Part 54 continues to read as follows:

Authority: 47 U.S.C. §§ 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.501 by revising the section heading, deleting paragraph (a), revising paragraphs (b)(1), (c)(1), and (d)(1), and re-designating paragraphs (b), (c), and (d) as (a), (b), and (c) to read as follows:

**§ 54.501 Eligible recipients.**

(a) Schools.

(1) Only schools meeting the statutory definitions of “elementary school,” as defined in 20 U.S.C. 7801(18), or “secondary school,” as defined in 20 U.S.C. 7801(38), and not excluded under paragraphs (a)(2) or (a)(3) of this section shall be eligible for discounts on telecommunications and other supported services under this subpart.

(2) \* \* \*

(3) \* \* \*

(b) Libraries.

(1) Only libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (Public Law 104-208) and not excluded under paragraphs (b)(2) or (b)(3) of this section shall be eligible for discounts under this subpart.

(2) \* \* \*

(3) \* \* \*

(c) Consortia.

(1) For purposes of seeking competitive bids for supported services, schools and libraries eligible for support under this subpart may form consortia with other eligible schools and libraries, with health care providers eligible under subpart G, and with public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, when ordering telecommunications and other supported services under this subpart. With one exception, eligible schools and libraries participating in consortia with ineligible private sector members shall not be eligible for discounts for interstate services under this subpart. A consortium may include ineligible private sector entities if the pre-discount prices of any services that such consortium receives are generally tariffed rates.

(2) \* \* \*

(3) \* \* \*

3. Amend § 54.502 to read as follows:

**§ 54.502 Eligible services.**

(a) Supported services. Supported services are listed in the Eligible Services List as updated annually in accordance with subpart (b) of this section. The services in this subpart will be supported in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms. These supported services fall within the following general categories:

(1) Telecommunications services. For purposes of this subpart, supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services.

(2) Telecommunications. For purposes of this subpart, supported telecommunications can be provided in whole or in part via fiber by any entity.

(3) Internet access. For purposes of this subpart, Internet access is as defined in § 54.5 of the Commission's rules.

(4) Internal connections and basic maintenance.

(i) For purposes of this subpart, a service is eligible for support as a component of an institution's internal

connections if such service is necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch. Discounts are not available for internal connections in non-instructional buildings of a school or school district, or in administrative buildings of a library, to the extent that a library system has separate administrative buildings, unless those internal connections are essential for the effective transport of information to an instructional building of a school or to a non-administrative building of a library or the Commission has found that the use of those services meets the definition of educational purpose. Internal connections do not include connections that extend beyond a single school campus or single library branch. There is a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way.

(ii) For purposes of this subpart, basic maintenance services shall be eligible as an internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services. Basic maintenance services do not include services that maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information.

(iii) Each eligible school or library shall be eligible for support for internal connections services, except basic maintenance services, no more than twice every five funding years. For the purpose of determining eligibility, the five-year period begins in any funding year in which the school or library receives discounted internal connections services other than basic maintenance services. If a school or library receives internal connections services other than basic maintenance services that are shared with other schools or libraries (for example, as part of a consortium), the shared services will be attributed to the school or library in determining whether it is eligible for support.

(b) Eligible Services List.

(1) The Administrator shall submit by March 30 of each year a draft list of services eligible for support, based on the Commission's rules for the following funding year. The Wireline Competition Bureau will

issue a Public Notice seeking comment on the Administrator's proposed eligible services list. At least 60 days prior to the opening of the window for the following funding year, the final list of services eligible for support will be released.

(2) All supported services are listed in the Eligible Services List as updated annually in accordance with subsection (b)(1) of this section.

4. Amend § 54.503 to read as follows:

**§ 54.503 Competitive bidding requirements.**

(a) All entities participating in the schools and libraries universal service support program must conduct a fair and open competitive bidding process, consistent with all requirements set forth in this subpart.

(Note: The following is an illustrative list of activities or behaviors that would not result in a fair and open competitive bidding process: the applicant for supported services has a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with inside information; someone other than the applicant or an authorized representative of the applicant prepares, signs, and submits the FCC Form 470 and certification; a service provider representative is listed as the FCC Form 470 contact person and allows that service provider to participate in the competitive bidding process; the service provider prepares the applicant's FCC Form 470 or participates in the bid evaluation or vendor selection process in any way; the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process; an applicant employee with a role in the service provider selection process also has an ownership interest in the service provider seeking to participate in the competitive bidding process; and the applicants FCC Form 470 does not describe the supported services with sufficient specificity to enable interested service providers to submit responsive bids.)

(b) Competitive Bid Requirements. Except as provided in § 54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not

intended to preempt such state or local requirements.

(c) Posting of FCC Form 470.

(1) An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall submit a completed FCC Form 470 to the Administrator to initiate the competitive bidding process. The FCC Form 470 and any request for proposal cited in the FCC Form 470 shall include, at a minimum, the following information, to the extent applicable with respect to the services requested:

(i) a list of specified services for which the school, library, or consortia including such entities, anticipates they are likely to seek discounts; and

(ii) sufficient information to enable bidders to reasonably determine the needs of the applicant.

(2) The FCC Form 470 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium including such entities and shall include that person's certification under oath that:

(i) The schools meet the statutory definition of elementary and secondary schools found under section 254(h) of the Act, as amended in the No Child Left Behind Act of 2001, 20 U.S.C. 7801(18) and (38), do not operate as for-profit businesses, and do not have endowments exceeding \$50 million;

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(iii) All of the individual schools, libraries, and library consortia receiving services are or will be covered by:

(A) technology plans for using the services requested in the application; or

(B) no technology plan is required by Commission rules.

(iv) To the extent a technology plan is required by § 54.508, the technology plan(s) has/have been/will be approved consistent with § 54.508.



(v) The services the school, library, or consortium purchases at discounts will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.513.

(vi) Support under this support mechanism is conditional upon the school(s) and library(ies) securing access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections necessary to use the services purchased effectively.

(vii) All bids submitted for eligible products and services will be carefully considered, with price being the primary factor, and the bid selected will be for the most cost-effective service offering consistent with § 54.511.

(3) The Administrator shall post each FCC Form 470 that it receives from an eligible school, library, or consortium that includes an eligible school or library on its website designated for this purpose.

(4) After posting on the Administrator's website an eligible school's, library's, or consortium's FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's website before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

(d) Gift Restrictions.

(1) Subject to subparagraphs (3) and (4) of this paragraph, an eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth \$20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this rule, if the value of these items

received by any individual does not exceed \$50 from any one service provider per funding year. The \$50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in subparagraph (2)(ii).

(2) For purposes of this paragraph:

(i) the terms “school, library, or consortium” include all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such school, library, or consortium with the Schools and Libraries Program of the Universal Service Fund (E-rate Program), including individuals who prepare, approve, sign or submit E-rate applications, technology plans, or other forms related to the E-rate Program, or who prepare bids, communicate or work with E-rate service providers, E-rate consultants, or with USAC, as well as any staff of such entities responsible for monitoring compliance with the E-rate Program; and

(ii) the term “service provider” includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions (i) are motivated solely by a personal relationship, (ii) are not rooted in any service provider business activities or any other business relationship with any such eligible school, library, or consortium, and (iii) are provided using only the donor’s personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible school, library, or consortium that includes an eligible school or library in the support of its programs as long as such contributions are not directly or indirectly related to E-rate procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other E-rate program rules, including those in section §

54.503(c)(2)(vi), requiring schools and libraries to pay their own non-discount share for the services they are purchasing.

5. Amend § 54.504 to read as follows:

**§ 54.504 Requests for services.**

(a) Filing of the FCC Form 471. An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator. A commitment of support is contingent upon the filing of an FCC Form 471.

(1) The FCC Form 471 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium and shall include that person's certification under oath that:

(i) The schools meet the statutory definition of elementary and secondary schools found under section 254(h) of the Act, as amended in the No Child Left Behind Act of 2001, 20 U.S.C. 7801(18) and (38), do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(iii) The entities listed on the FCC Form 471 application have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services purchased, as well as to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. The billed entity will pay the non-discount portion of the cost of the goods and services to the service provider(s).

(iv) All of the schools and libraries listed on the FCC Form 471 application are or will be covered by:

(A) technology plan(s) for using the services requested in the application; or

(B) no technology plan is required by Commission rules.

- (v) To the extent a technology plan is required by § 54.508, status of technology plan(s) has/have been approved or will be approved by a state or other authorized body.
- (vi) The entities listed on the FCC Form 471 application have complied with all applicable state and local laws regarding procurement of services for which support is being sought.
- (vii) The services the school, library, or consortium purchases at discounts will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.513.
- (viii) The entities listed in the application have complied with all program rules and acknowledge that failure to do so may result in denial of discount funding and/or recovery of funding.
- (ix) The applicant understands that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.
- (x) The applicant recognizes that it may be audited pursuant to its application, that it will retain for five years any and all worksheets and other records relied upon to fill out its application, and that, if audited, it will make such records available to the Administrator.
- (xi) All bids submitted to a school, library, or consortium seeking eligible services were carefully considered and the most cost-effective bid was selected in accordance with § 54.503 of this subpart, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology plan goals.
- (2) [Reserved]
- (b) Mixed eligibility requests. If 30 percent or more of a request for discounts made in an FCC Form 471 is for ineligible services, the request shall be denied in its entirety.
- (c) Rate disputes. Schools, libraries, and consortia including those entities, and service providers may have recourse to the Commission, regarding interstate rates, and to state commissions, regarding intrastate rates, if they reasonably believe that the lowest corresponding price is unfairly high or low.
- (1) Schools, libraries, and consortia including those entities may request lower rates if the rate offered by

the carrier does not represent the lowest corresponding price.

(2) Service providers may request higher rates if they can show that the lowest corresponding price is not compensatory, because the relevant school, library, or consortium including those entities is not similarly situated to and subscribing to a similar set of services to the customer paying the lowest corresponding price.

(d) Service substitution.

(1) The Administrator shall grant a request by an applicant to substitute a service or product for one identified on its FCC Form 471 where:

(i) the service or product has the same functionality;

(ii) the substitution does not violate any contract provisions or state or local procurement laws;

(iii) the substitution does not result in an increase in the percentage of ineligible services or functions; and

(iv) the applicant certifies that the requested change is within the scope of the controlling FCC Form 470, including any associated Requests for Proposal, for the original services.

(2) In the event that a service substitution results in a change in the pre-discount price for the supported service, support shall be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service.

(3) For purposes of this rule, the broad categories of eligible services (telecommunications service, Internet access, and internal connections) are not deemed to have the same functionality with one another.

(e) Mixed eligibility services. A request for discounts for a product or service that includes both eligible and ineligible components must allocate the cost of the contract to eligible and ineligible components.

(1) Ineligible components. If a product or service contains ineligible components, costs must be allocated to the extent that a clear delineation can be made between the eligible and ineligible components. The delineation must have a tangible basis, and the price for the eligible portion must be the most cost-effective means of receiving the eligible service.

(2) Ancillary ineligible components. If a product or service contains ineligible components that are ancillary to the eligible components, and the product or service is the most cost-effective means of

receiving the eligible component functionality, without regard to the value of the ineligible component, costs need not be allocated between the eligible and ineligible components. Discounts shall be provided on the full cost of the product or service. An ineligible component is “ancillary” if a price for the ineligible component cannot be determined separately and independently from the price of the eligible components, and the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality.

(3) The Administrator shall utilize the cost allocation requirements of this subparagraph in evaluating mixed eligibility requests under § 54.504(e)(1).

(f) Filing of FCC Form 473. All service providers eligible to provide telecommunications and other supported services under this subpart shall submit annually a completed FCC Form 473 to the Administrator. The FCC Form 473 shall be signed by an authorized person and shall include that person's certification under oath that:

(1) The prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to those prices, the intention to submit an offer, or the methods or factors used to calculate the prices offered;

(2) The prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program will not be knowingly disclosed by this service provider, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt will be made by this service provider to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

6. Amend § 54.505 by revising paragraph (b)(4) to read as follows:

**§ 54.505 Discounts.**

(a) \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(4) School districts, library systems, or other billed entities shall calculate discounts on supported services described in § 54.502(b) that are shared by two or more of their schools, libraries, or consortia members by calculating an average based on the applicable discounts of all member schools and libraries. School districts, library systems, or other billed entities shall 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 shall receive a proportionate share of the shared services for which support is sought. For schools, the average discount shall be a 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. For libraries, the average discount shall be a simple average of the applicable discounts to which the libraries sharing a portion of the shared services are entitled.

\* \* \* \* \*

6. Amend § 54.506 to read as follows:

**§ 54.506**

[Reserved]

7. Amend § 54.507 by revising paragraphs (a), (a)(1), (a)(2), (g), and (g)(1)(i) and adding paragraphs (a)(3), (a)(3)(i), and (a)(3)(ii) to read as follows:

**§ 54.507 Cap.**

(a) Amount of the annual cap. In funding year 2010 and subsequent funding years, the \$2.25 billion funding cap on federal universal service support for schools and libraries shall be automatically increased annually to take into account increases in the rate of inflation as calculated in subpart (a)(1).

(1) Increase Calculation. To measure increases in the rate of inflation for the purposes of section 54.507(a), the Commission shall use the Gross Domestic Product Chain-type Price Index (GDP-CPI). To compute the annual increase as required by section 54.507(a), the percentage increase in the GDP-CPI from the previous year will be used. For instance, the annual increase in the GDP-CPI from 2008 to 2009 would be used for the 2010 funding year. The increase shall be rounded to the nearest 0.1 percent by rounding 0.05 percent and above to the next higher 0.1 percent and otherwise rounding to the next lower 0.1 percent. This percentage increase shall be added to the amount of the annual funding cap from the previous funding year. If the yearly average GDP-CPI decreases or stays the same, the annual funding cap shall remain the same as the previous year.

(2) Public Notice. When the calculation of the yearly average GDP-CPI is determined, the Wireline Competition Bureau shall publish a Public Notice in the Federal Register within 60 days announcing any increase of the annual funding cap based on the rate of inflation.

(3) Amount of unused funds. All funds collected that are unused shall be carried forward into subsequent funding years for use in the schools and libraries support mechanism in accordance with the public interest and notwithstanding the annual cap.

(i) The Administrator shall report to the Commission, on a quarterly basis, funding that is unused from prior years of the schools and libraries support mechanism.

(ii) Application of unused funds. On an annual basis, in the second quarter of each calendar year, all funds that are collected and that are unused from prior years shall be available for use in the next full funding



year of the schools and libraries mechanism in accordance with the public interest and notwithstanding the annual cap as described in paragraph (a) of this section.

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

(e) \* \* \*

(f) \* \* \*

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

(1) \* \* \*

(i) Schools and Libraries Corporation shall first calculate the demand for telecommunications, telecommunications services, voicemail, and Internet access for all discount categories as determined by the schools and libraries discount matrix in §54.505(c). These services shall receive first priority for the available funding.

\* \* \* \* \*

8. Amend § 54.508 to read as follows:

**§ 54.508 Technology Plans.**

(a) Applicants must develop a technology plan when requesting discounts for internal connections and basic maintenance for internal connections. Applicants must document the date on which the technology plan was created. The technology plan must include the following elements:

- (1) A clear statement of goals and a realistic strategy for using telecommunications and information technology to improve education or library services;
- (2) A professional development strategy to ensure that the staff understands how to use these new technologies to improve education or library services;
- (3) An assessment of the telecommunication services, hardware, software, and other services that will be needed to improve education or library services; and
- (4) An evaluation process that enables the school or library to monitor progress toward the specified goals and make mid-course corrections in response to new developments and opportunities as they arise.

(b) Relevance of approval under Enhancing Education through Technology. Technology plans that meet the standards of the U.S. Department of Education's Enhancing Education Through Technology (EETT), 20 U.S.C. 6764, are sufficient for satisfying paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) of this section.

Furthermore, to the extent that the U.S. Department of Education adopts future technology plan requirements that require one or more of the four elements described in paragraph (a) of this section, such plans will be acceptable for satisfying those elements of paragraph (a) of this section. Applicants with such plans will only need to supplement such plans with the analysis needed to satisfy those elements of paragraph (a) of this section not covered by the future Department of Education technology plan requirements.

(c) Timing of certification. As required under §§ 54.503(c)(2)(iii) and 54.504 (a)(1)(iv), applicants must certify that they have prepared any required technology plans. They must also confirm, in FCC Form 486, that their plan was approved before they began receiving services pursuant to it.

(d) Parties qualified to approve technology plans required in this subpart. Applicants required to prepare and obtain approval of technology plans under this subpart must obtain such approval from either their state, the Administrator, or an independent entity approved by the Commission or certified by the Administrator as qualified to provide such approval. All parties who will provide such approval must apply the standards set forth in paragraphs (a) and (b) of this section.

9. Amend § 54.511 by revising paragraphs (a), (c)(1), (c)(1)(ii) and (d)(1), and deleting paragraph (c)(3) to read as follows:

**§ 54.511 Ordering Services.**

(a) Selecting a provider of eligible services. In selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered.

(b) \* \* \* \* \*

(c) Existing contracts.

(1) A signed contract for services eligible for discounts pursuant to this subpart between an eligible school or library as defined under § 54.501 or consortium that includes an eligible school or library and a service provider shall be exempt from the requirements set forth in § 54.503 as follows:

(i) \* \* \*

(ii) A contract signed after July 10, 1997, but before the date on which the universal service competitive bid system described in § 54.503 is operational, is exempt from the competitive bid requirements only with respect to services that are provided under such contract between January 1, 1998 and December 31, 1998.

(2) \* \* \*

(d)(1) The exemption from the competitive bid requirements set forth in paragraph (c) of this section shall not apply to voluntary extensions or renewals of existing contracts.

(2) \* \* \*

10. Amend § 54.513 by revising paragraph (a), adding a new paragraph (b), and re-designating paragraphs (b) and (c) as (c) and (d) to read as follows:

**§ 54.513 Resale and transfer of services.**

(a) Prohibition on resale. Eligible supported services provided at a discount under this subpart shall not be sold, resold, or transferred in consideration of money or any other thing of value, except as provided in paragraph (b) of this section.

(b) Disposal of Obsolete Equipment Components of Eligible Services. Eligible equipment components of eligible services purchased at a discount under this subpart shall be considered obsolete if the equipment components have has been installed for at least five years. Obsolete equipment components of eligible services may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded.

(c) \* \* \*

(d) \* \* \*

11. Amend § 54.517 to read as follows:

**§ 54.517**

[Reserved]

12. Amend § 54.518 to read as follows:

**§ 54.518 Support for wide area networks.**

To the extent that schools, libraries or consortia that include an eligible school or library build or purchase a wide area network to provide telecommunications services, the cost of such wide area networks shall not be eligible for universal service discounts provided under this subpart.

13. Amend § 54.519 by revising paragraphs (a), (a)(6) and (b) to read as follows:

**§ 54.519 State telecommunications networks.**

(a) Telecommunications services. State telecommunications networks may secure discounts under the universal service support mechanisms on supported telecommunications services (as described in § 54.502(a)) on behalf of eligible schools and libraries (as described in §54.501) or consortia that include an eligible school or library. Such state telecommunications networks shall pass on such discounts to eligible schools and libraries and shall:

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) \* \* \*

(5) \* \* \*

(6) Comply with the competitive bid requirements set forth in § 54.503.

(b) Internet access and installation and maintenance of internal connections. State telecommunications networks either may secure discounts on Internet access and installation and maintenance of internal connections in the manner described in paragraph (a) of this section with regard to telecommunications, or shall be eligible, consistent with § 54.502(a), to receive universal service support for providing such services to eligible schools, libraries, and consortia including those entities.

14. Amend § 54.522 to read as follows:

**§ 54.522**

[Reserved]



**APPENDIX B**

**Eligible Services List for Funding Year 2011**



## Eligible Services List Schools and Libraries Support Mechanism for Funding Year 2011

### Overall Eligibility Requirements for All Categories of Service:

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

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

[Telecommunications Service](#)  
[Telecommunications](#)  
[Internet Access](#)  
[Internal Connections](#)  
[Basic Maintenance](#)  
[Miscellaneous](#)

In addition, the following sections are provided:

[Special Eligibility Conditions](#)  
[Glossary](#), providing additional information about  
the terms used in this Eligible Services List  
[Index](#)

Funding may be provided only for eligible products or services that will be used for educational purposes. See 47 C.F.R. §§ 54.500(b), 54.502-4. The conditions for eligibility are described in the specific entries of this Eligible Services List. Services that are not eligible are listed at the end of each category.

All program participants are reminded to review the Special Eligibility Conditions at the end of this Eligible Services List in addition to all of the entries applicable to the services or products they are requesting. Additional information about eligibility requirements is available at USAC's website at <http://www.usac.org/sl/>, the reference area of the USAC website at <http://www.usac.org/sl/tools/reference-area.aspx>, and in Schools and Libraries News-briefs available at <http://www.usac.org/sl/tools/news-briefs/Default.aspx>. These documents are not incorporated by reference into the Eligible Services List.

This version of the Eligible Services List is dated September 23, 2010. Some eligibility information in this List represents a change from prior funding years and applies to funding requests for Funding Year 2011.



## Telecommunications Services

### Eligibility Requirements for all Telecommunications Services:

To be eligible for support, telecommunications services must be provided by a telecommunications carrier, that is, a company that offers telecommunications services on a common carriage basis. A telecommunications service is "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public..." 47 U.S.C. 153(46). All telecommunications carriers are required under FCC rules to be common carriers and to file FCC Form 499A (*Telecommunications Reporting Worksheet*).

Except as otherwise indicated in this section, support in this funding category is only available for telecommunications services or for services that are an integral component part of a telecommunications service. Support in this category of service is not available for equipment purchases by applicants.

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

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

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

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

	<ul style="list-style-type: none"> <li>• <a href="#">800 service</a>, e.g., a toll-free telephone number for students to contact school regarding questions about homework</li> <li>• <a href="#">Centrex</a></li> <li>• <a href="#">Local phone service</a></li> <li>• <a href="#">Long distance telephone service</a></li> <li>• <a href="#">Interconnected Voice Over Internet Protocol</a></li> <li>• <a href="#">POTS</a> (“Plain Old Telephone Service”)</li> <li>• <a href="#">Radio loop</a></li> <li>• <a href="#">Wireless telephone services</a>, e.g., <a href="#">cellular service</a> and Personal Communications Services (PCS)</li> <li>• Shared telephone service (only that portion of the shared service relating to the eligible use and location is eligible)</li> </ul> <p>Various payment options may be used with these eligible services, and phone bills may include billing terms such as <a href="#">flat rate</a>, <a href="#">local measured service</a>, and <a href="#">message rate service</a>. <a href="#">Phone calling cards</a> may be used if they are used for an educational purpose.</p> <ul style="list-style-type: none"> <li>• Service to an eligible location for educational or library purposes can provide voice communication, fax connections, modem connections, <a href="#">911</a> or an <a href="#">alarm</a>.</li> </ul>
Telephone Service Components	<p>Telephone features indicated in this section are eligible for discount if they are a component part of a telephone service. Generally, this requirement means that these charges will appear on the same bill as the telephone service itself.</p> <ul style="list-style-type: none"> <li>• <a href="#">900\976 Call Blocking</a></li> <li>• <a href="#">Text messaging</a></li> <li>• <a href="#">Custom calling services</a></li> <li>• <a href="#">Direct Inward Dialing (DID)</a></li> <li>• <a href="#">Directory assistance charges</a></li> <li>• An <a href="#">inside wire maintenance</a> plan is eligible as a component part of a telephone service only if charges are minimal.</li> <li>• Installation charges—see the entry for “<a href="#">Installation and Configuration</a>” in the Miscellaneous section</li> </ul>
Other Eligible Telecommunications Services	<p>The telecommunications component of voice or video <a href="#">conferencing services</a> that provide a means for multiple users to participate in group discussions can be eligible if the services are limited only to eligible educational or library purposes.</p> <p>Maintenance and technical support appropriate to maintain reliable operation is eligible for discount when provided as a component of an eligible telecommunications service.</p> <p>Please see the <a href="#">Miscellaneous</a> section of this document for additional entries applicable to Telecommunications Services,</p>

	such as charges for installation and configuration.
<p>Ineligible for E-rate Funding as Telecommunications Services (<i>Not Eligible</i>)</p>	<p>The following services are <b>NOT ELIGIBLE</b> for discount:</p> <ul style="list-style-type: none"> <li>• <a href="#">900\976 service</a></li> <li>• <a href="#">Broadcast "Blast" Messaging</a></li> <li>• <a href="#">Direct Broadcast</a> and other services that provide broadcast content or cable television</li> <li>• <a href="#">Directory advertising</a></li> <li>• Extra costs for directory listings</li> <li>• <a href="#">Payphone</a></li> <li>• <a href="#">Reverse directory assistance</a></li> <li>• <a href="#">Non-telecommunications components</a> of a distance learning service, video service, or interactive television service, such as a scheduling service or services for creation, maintenance, and storage of content</li> <li>• <a href="#">Internet2</a> membership dues</li> <li>• Charges for creation, configuration, or maintenance of content</li> <li>• Services that go beyond a telecommunications service, such as monitoring services for <a href="#">911</a>, or an <a href="#">alarm telephone line</a></li> <li>• Telephone services that connect to a residential facility or home, except as allowed by the Commission in FCC 10-175 for the residential areas of residential schools that serve unique populations</li> <li>• Services that provide voice, video, or data connectivity exclusively within school or library grounds are not eligible for funding as Telecommunications Services but may be eligible as Internal Connections</li> <li>• Services to ineligible locations</li> <li>• Applications (including GPS) for wireless devices are not eligible for discount. Charges for telecommunications service or Internet access service used solely for the provision of these applications are not eligible.</li> </ul> <p>Please see the <a href="#">Miscellaneous</a> section of this document for additional entries applicable to Telecommunications Services. For example, finance charges and termination charges are not eligible.</p>

## Telecommunications

### Eligibility Requirements for Telecommunications:

Non-telecommunications carriers may provide telecommunications via fiber in whole or in part. *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No, 09-51, Report and Order, FCC 10-175 (2010).

Telecommunications is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. 153(43).

Function	Description
<p>Fiber or Dark Fiber</p>	<p>Fiber capacity, lit or dark and provided by any entity, including a non-telecommunications carrier, is eligible. Dark fiber is eligible as long as applicants light the fiber immediately.</p> <p>Certain maintenance and installation costs are eligible, including charges for installation within the property line. Special construction charges to build out connections from an applicant's facilities to an off-premises fiber network are NOT eligible. Special construction charges include design and engineering costs, project management costs, digging trenches and laying fiber.</p> <p>The purchase and ownership of modulating electronics associated with lighting dark fiber is NOT eligible. Applicants are also not permitted to use E-rate discounts to acquire unneeded capacity or warehouse dark fiber for future use.</p> <p>Applicants should apply for fiber service as a telecommunications service if they select a telecommunications carrier to provide the fiber but should apply for the fiber service as Internet access if they select a non-telecommunications carrier to provide the fiber.</p> <p>We include dark fiber as an eligible service irrespective of whether the FCC has classified this service as a telecommunications service or an information service. As such, the regulatory classification of dark fiber does not affect its inclusion as an eligible service.</p>

## Internet Access

### Eligibility Requirements for All Internet Access Services:

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

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

Service providers for Internet access need not be telecommunications carriers.

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

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

	<p>included in the cost of basic conduit access to the Internet or may be provided at a separate cost, either as a fixed charge and/or on a per-user or other basis.</p> <p>Some e-mail services may include substantial ineligible features, such as collaboration tools, and services to ineligible users. Funding is limited strictly to the eligible e-mail portion. <a href="#">E-mail archiving</a> is not eligible for discount. Any <a href="#">cost allocation</a> must be based on tangible information that provides a reasonable and appropriate delineation between the eligible and ineligible components.</p>
<p>Internet Access</p>	<p>Basic conduit access to the Internet is eligible regardless of technology platform. Access technologies include but are not limited to:</p> <ul style="list-style-type: none"> <li>• <a href="#">Broadband over Power Lines (BPL)</a>-enabled Internet access service</li> <li>• <a href="#">Cable Modem</a></li> <li>• <a href="#">Digital Subscriber Line (DSL)</a></li> <li>• Fiber optics</li> <li>• Telephone dial-up</li> <li>• <a href="#">T-1</a> lines</li> <li>• Wireless</li> </ul> <p>Eligible Internet access may include features typically provided for adequate functionality and performance when provided as a standard component of a vendor's Internet access service. Such features may include <a href="#">Domain Name</a>, <a href="#">Dynamic Host Configuration</a>, and basic <a href="#">firewall</a> protection against unauthorized access. Firewall protection may not be provided by a vendor other than the Internet access provider.</p> <p>A wireless Internet access service is eligible under the same provisions as wired access to the Internet.</p> <p><a href="#">Wide Area Network</a> facilities can be eligible for funding as a part of Internet access if the service is limited to basic conduit access to the Internet and the offering is the most cost-effective means of accessing the Internet.</p> <p>A wireless Internet access service designed for portable electronic devices is eligible if used for educational purposes and if off-campus use is cost-allocated. Applications (including GPS) for wireless devices are not eligible for discount. Service/Data charges dedicated solely to the provision of these applications are not eligible and require cost allocation.</p>
<p>Other Eligible Internet Access Services</p>	<ul style="list-style-type: none"> <li>• Maintenance and technical support appropriate to maintain reliable operation is eligible for discount when provided as a component of an eligible Internet access service.</li> </ul>

	<ul style="list-style-type: none"> <li>• <a href="#">Interconnected Voice over Internet Protocol</a></li> <li>• A <a href="#">web hosting</a> service that provides a means for a school or library to display content on the Internet is eligible. The following web hosting functions are eligible: 1) Provision of web site traffic (bandwidth); 2) Provision of disk space for storing applicant provided content; 3) Provision of File Transfer Protocol (FTP) transfer or a Web interface to upload files. In addition, web hosting may include password-protected pages, interactive communication features such as blogging and webmail, and other features that facilitate real-time interactive communication such as instant messaging and chat. Web hosting does NOT include content created by third-party vendor and any features involving data input or retrieval – including searching of databases for grades, student attendance files, or other reports – and will not include support for the applicants necessary to run online classes or collaborative meetings.</li> <li>• <a href="#">Domain name registration</a> necessary for the creation of a school or library website is eligible for discount.</li> </ul> <p>Please see the <a href="#">Miscellaneous</a> section of this document for additional entries applicable to Internet access, such as charges for installation and configuration.</p>
<p>Ineligible for E-rate Funding as Internet Access Services</p> <p><i>(Not Eligible)</i></p>	<p>The following services are <b>NOT ELIGIBLE</b> for discount:</p> <ul style="list-style-type: none"> <li>• <a href="#">Online Backup Solutions</a></li> <li>• <a href="#">Internet</a> content or charges for the creation or display of information. Internet access that provides features or content that go beyond basic conduit access to the Internet is not eligible for funding. (E-mail service and e-mail account fees, however, are not considered Internet content. Applicants may accept an Internet Access service with minimal content included if the content meets the limitations for Ancillary Use. See Special Eligibility Conditions below for Ancillary Use.)</li> <li>• Costs attributable to the creation or modification of information, such as a <a href="#">web site creation fee</a> or content maintenance fee</li> <li>• Web hosting features, including software applications, end-user file storage, and content editing features other than those specified in FCC 10-175. Web hosting does not include content created by third-party vendor and any features involving data input or retrieval – including searching of databases for grades, student attendance files, or other reports – and will not include support for the applicants necessary to run online</li> </ul>



classes or collaborative meetings.

- Charges to access Internet content or limited-access information
- Charges for distance learning or video conferencing utilities, such as web meetings or online collaboration solutions, even they are provided via the Internet
- Software, services, or systems used to create or edit Internet content
- [Internet2](#) membership fees
- Training in the use of the Internet
- Costs for training provided via the Internet
- Services that go beyond basic conduit access to the Internet
- Point-to-point connectivity of data, video, or voice applications that are to be provided only by eligible telecommunications carriers, except if provided via fiber or dark fiber.
- Specialized services that go beyond basic conduit access to the Internet, such as Virtual Private Network services
- Web site creation fee
- Electronic library/on-line public access and associated software
- Applications (including GPS) for wireless devices are not eligible for discount. Charges for telecommunications service or Internet access service used solely for the provision of these applications are not eligible.

Separate pricing for the following components when not included in the standard configuration of an Internet access service is **NOT ELIGIBLE**:

- [Caching](#)
- Content [filtering](#)
- Firewall service
- [Web Casting](#)

Please see the [Miscellaneous](#) section of this document for additional entries applicable to Internet access. For example, finance charges and termination charges are not eligible.

## Internal Connections

### Eligibility Requirements for All Internal Connections:

Internal Connections are components located at the applicant site that are necessary to transport information to classrooms, publicly accessible rooms of a library, and to eligible administrative areas or buildings. Internal Connections include connections within, between or among instructional buildings that comprise a school campus or library branch, but do not include services that extend beyond the school campus or library branch.

Components at the applicant site are eligible only if they are an essential element in the transmission of information within the school or library. The components must be necessary to transport information all the way to individual classrooms or public areas of a library.

Internal Connections do not include services that extend across a public right-of-way beyond the school or library facility.

Funding for Internal Connections is subject to the provisions of the "[Two-in-Five Rule](#)."

Function	Description
Cabling/ Connectors	<p><a href="#">Cabling</a>, <a href="#">connectors</a>, and related components used for eligible voice, video, and data transmission within an eligible location are eligible for discount. Eligible components include:</p> <ul style="list-style-type: none"> <li>• Cable (e.g., copper, fiber, coax, twisted pair)</li> <li>• Connectors and couplers</li> <li>• Jacks, panels, <a href="#">faceplates</a> and <a href="#">wire managers</a></li> <li>• <a href="#">Conduit and raceway</a></li> <li>• Other cabling components necessary to transport information all the way to individual classrooms or public areas of a library.</li> </ul> <p><a href="#">Consumable</a> are eligible only when included as part of the original installation of eligible components.</p> <p><u>Eligibility limitations</u> If cabling or cabling components are used for both eligible and ineligible purposes, the cost of the ineligible portion must be <a href="#">cost allocated</a>.</p>
Circuit Cards/ Components	<p><a href="#">Circuit</a> and related components, such as <a href="#">memory modules/Random Access Memory (RAM)</a> are eligible if they are necessary for adequate performance of an eligible component, such as an eligible PBX, router, or server.</p> <p><a href="#">Network interface cards</a> that are separately priced or used in eligible equipment are eligible.</p>

	<p>Processors and a <a href="#">processor terminator card</a> are eligible if used in an eligible component.</p> <p><a href="#">Phone modems</a> can be eligible if used with an eligible server or other eligible device for providing remote dial-in network access, if the remote access is limited to connections from eligible locations.</p>
<p>Data Distribution</p>	<p>Components used to distribute information from telecommunication or Internet access facilities all the way to individual classrooms or public areas of a library are eligible.</p> <p>Such components may include:</p> <ul style="list-style-type: none"> <li>• <a href="#">Access Point</a> used in a LAN environment</li> <li>• <a href="#">Hub</a></li> <li>• <a href="#">Multiplexer</a> used as part of a LAN</li> <li>• Network Switches are eligible for discount when used for an eligible purpose</li> <li>• Routers are eligible for a discount when used for an eligible purpose</li> <li>• <a href="#">Wireless LAN Controller</a></li> </ul> <p><a href="#">Voice/Video over IP</a> are eligible as Internal Connections.</p> <p>Components such as those indicated above are typically configured into a <a href="#">local area network</a> or <a href="#">wireless</a> area network.</p> <p>Some products may have modules or features that are not eligible, (e.g., content filtering, network management, and caching). If these ineligible components are available separately, or the applicant specifically seeks the ineligible functions, their cost must be subtracted from the amount eligible for discount.</p>
<p>Data Protection</p>	<p>Data protection components are used to ensure the continued operation of eligible equipment by protecting equipment and computer files from environmental or security hazards. The following components are eligible if used to provide basic and reasonable measures for data protection:</p> <ul style="list-style-type: none"> <li>• <a href="#">Firewall</a>, if included in the standard configuration of an Internet access service</li> <li>• <a href="#">Proxy Server</a></li> <li>• <a href="#">Tape Backup</a> when used as part of an eligible server</li> <li>• <a href="#">Virtual Private Network</a></li> <li>• Tape backup cartridge units are eligible when used as part of an eligible server. A cartridge included with a tape backup may be provided as an integral component of the backup unit, if the cartridge is part of the standard product configuration and provided at no additional cost.</li> </ul>

	<p>An <a href="#">Uninterruptible Power Supply (UPS)/Battery Backup</a> that protects eligible equipment is eligible as a data protection component, but no funding will be provided for UPS systems that can provide continued backup power for substantial periods in excess of that necessary for basic power protection.</p> <p>The following components used for the reliable operation of a UPS are eligible:</p> <ul style="list-style-type: none"> <li>• <a href="#">UPS</a></li> <li>• <a href="#">Relay I/O Module</a></li> </ul>
<p>Interfaces, Gateways, Antennas</p>	<p>Interfaces, gateways, and antennas represent miscellaneous components that are eligible when used for an eligible purpose to transport telecommunications or Internet access information all the way to individual classrooms or public areas of a library.</p> <p>The following components are generally eligible:</p> <ul style="list-style-type: none"> <li>• <a href="#">Bridge</a></li> <li>• <a href="#">Cable Modem</a> (but not for receipt of cable TV service; may also be leased as part of Internet access service)</li> <li>• <a href="#">Channel Service Unit/Data Service Unit (CSU)</a> (may also be leased as part of Priority One service)</li> <li>• <a href="#">Copper-to-Fiber</a></li> <li>• <a href="#">FRAD</a></li> <li>• <a href="#">Gateway</a></li> <li>• <a href="#">Interface/Edge Device</a></li> <li>• <a href="#">Network Interface Device</a></li> <li>• <a href="#">Media Converter</a></li> <li>• <a href="#">Terminal Adapter</a></li> <li>• <a href="#">Transceiver</a></li> <li>• <a href="#">Voice/Fax network module</a></li> </ul> <p><u>Eligibility limitations for antennas</u></p> <p><a href="#">Antennas</a> and related components, such as <a href="#">satellite</a> used for eligible purposes, are eligible for discount if they are priced separately on a contract or are sold separately. Antennas embedded in ineligible equipment such as computer workstations are not eligible.</p> <p>Antennas and other components used for the receipt of over-the-air radio and television broadcast signals or for radio signals from cable television operators are not eligible.</p> <p>While an antenna <a href="#">mast</a> that supports eligible Internal Connections is eligible, large antenna towers are not eligible as Internal Connections.</p>
<p>Servers</p>	<p>Computers used as <a href="#">servers</a> or similar centralized functions are</p>

	<p>eligible if the use is necessary to transport information all the way to individual classrooms or public areas of a library.</p> <p>A server can be eligible or not eligible, depending on how it is used. An eligible server must serve as a conduit for information rather than as a source for content. Servers typically provide multiple functions. If servers are used for both eligible and ineligible purposes, the cost of the ineligible portion must be <a href="#">cost allocated</a>. The following uses are eligible:</p> <ul style="list-style-type: none"> <li>• <a href="#">Dynamic Host Configuration</a></li> <li>• <a href="#">Domain Name</a></li> <li>• <a href="#">E-mail</a></li> <li>• <a href="#">Firewall</a>, if included in the standard configuration of an Internet access service, or <a href="#">Proxy Server</a></li> </ul> <p>The following servers are eligible only in certain cases:</p> <p><a href="#">Remote Access Components</a>— Eligible if steps are taken to ensure that remote access is limited to connections from eligible locations. Remote access cannot be provided to homes or other non-school or non-library sites.</p> <p><a href="#">Terminal Server</a>— Eligible to the extent that the use meets the other eligible server types indicated in this section but not eligible as a source for ineligible software applications or other ineligible uses.</p> <p><a href="#">Web Server</a>— Eligible if used to provide content to users of the Internet but not eligible as a source for software applications, database functions, or storage of end-user files.</p> <p>One <a href="#">monitor</a> per eligible server or other eligible component requiring a visual display is eligible for discount. However, special-purpose devices, such as large screen monitors, are not eligible.</p> <p>A <a href="#">KVM switch</a> (“keyboard-video-mouse” switch) is eligible if cost-effective in comparison to the individual components necessary.</p>
Software	<p>Some types of computer <a href="#">software</a> are eligible for discount.</p> <p><a href="#">Operating system software</a>, such as network operating system software required to obtain operation of an eligible component, is eligible, including functionality provided with the core operating system at no cost. Additional software products available separately that provide optional operational features are not eligible for discount.</p> <p><a href="#">E-mail</a> software that is a server-based, shared product is eligible. If such a software product provides substantial</p>

	<p>additional functionality that is not eligible, such as archiving, database, workflow, or groupware features, only the e-mail portion of the product is eligible and the cost of the ineligible portion must be <a href="#">cost allocated</a>.</p> <p>E-mail software or other eligible components that include content filtering as an integral component part are eligible, but a separately priced content filtering module or product is not eligible.</p> <p>Software for a server-based, shared <a href="#">voice mail</a> system is eligible.</p> <p>Software for server based, VoIP user licenses are eligible.</p> <p><a href="#">Client Access Licenses</a> for eligible software products are eligible, but Client Access Licenses for ineligible software products are not eligible.</p> <p><a href="#">Virtualization software</a> that is a server based, shared product is eligible if used for an eligible server function. If such a software product is used for or provides substantial functionality that is ineligible, such as archiving, applications, network management, a cost allocation to remove the ineligibles is required.</p>
Storage Devices	<p>Storage devices provide electronic data storage on magnetic or other media. Devices include <a href="#">hard disk drives</a>, CD ROM drives, DVD drives, and floppy disk drives.</p> <p>Storage products may be used to store the operating system of an eligible product, such as a network server used for an eligible purpose. (See the entry for <a href="#">Servers</a> for further information.) In addition, storage products may be used for eligible e-mail files but not for e-mail archiving.</p> <p>An eligible server or other eligible component that provides a storage product such as a DVD drive as an integral component part at no additional cost is eligible.</p>
Telephone Components	<p>Centralized components that are an essential element in the transport of telephone services within a school or library are eligible. This includes:</p> <ul style="list-style-type: none"> <li>• <a href="#">Private Branch Exchange (PBX)</a></li> <li>• <a href="#">Key System (KSU)</a></li> <li>• <a href="#">Voice Mail</a></li> <li>• <a href="#">Wireless</a></li> <li>• <a href="#">VoIP Telephony Equipment</a></li> </ul> <p>In addition, the following features are eligible:</p> <ul style="list-style-type: none"> <li>• <a href="#">Automatic Route Selection (ARS)</a></li> </ul>

	<ul style="list-style-type: none"> <li>• <a href="#">E911</a></li> <li>• <a href="#">Voice Compression Module</a></li> <li>• <a href="#">Voice Interface Card</a></li> </ul> <p>One <a href="#">switchboard/attendant console</a> necessary for operation of each eligible PBX or eligible Centrex telephone service is eligible.</p> <p>An intercom system that is an integral component of a PBX or other eligible product can be included in the cost of the eligible component.</p>
Video Components	<p>Centralized <a href="#">video</a> necessary to transport information all the way to individual classrooms or public areas of a library are eligible. This includes:</p> <ul style="list-style-type: none"> <li>• <a href="#">CODEC</a></li> <li>• <a href="#">Master Control Unit</a></li> <li>• <a href="#">Multipoint Control Unit</a></li> <li>• <a href="#">PVBX</a></li> <li>• <a href="#">Video Amplifier</a></li> <li>• <a href="#">Video Channel Modulator</a></li> <li>• Enhanced Multimedia Interface</li> </ul> <p>Equipment that is used to control the programming, distribution, and selection of video content can be eligible if used in the transport of information to individual classrooms or public areas of a library, however such components are not eligible if used in end-user equipment and/or are operated directly by end-users.</p>
Other Eligible Internal Connections Components	<p><a href="#">Documentation</a> in hard copy or electronic form is eligible for discount if it is basic and is provided as part of the purchase of eligible components.</p> <p><a href="#">Racks</a> are eligible only to the extent that the components they contain are eligible. A surge protector provided as an integral component of a rack or cabinet without separately identifiable cost can be included in the cost of the rack or cabinet, but a separately-priced surge protector is not eligible.</p> <p><a href="#">System improvements and upgrades</a> to eligible components are eligible for discount. Memory upgrades, for example, to eligible servers are eligible, but memory upgrades would not be eligible in end-user workstations.</p> <p>Please see the <a href="#">Miscellaneous</a> section of this document for additional entries applicable to Internal Connections, such as charges for installation and configuration.</p>

Ineligible for E-rate Funding as Internal Connections Components

*(Not Eligible)*

Products and services are only eligible as Internal Connections if they are an essential element in the transmission of information within the school or library.

The following components are **NOT ELIGIBLE**:

- [Asbestos removal](#)
- [Broadcast](#)
- [Electrical system upgrades](#)
- Multimedia content, such as encyclopedias on CD ROM, video information, etc., also including [multimedia kits](#)
- [Intercom](#) and [public address \(PA\) system](#)
- [Spare parts](#)
- External [speakers](#) (except when provided at no cost as an integral part of an eligible component)
- [Test Equipment](#)
- [Consumable Kits](#) which contain installation tools
- Wiring and components providing electrical service or for radio or television broadcast or cable services
- [Network interface cards](#) that are embedded in ineligible equipment (such as end-user equipment) or included in the pricing for ineligible equipment
- [Phone modems](#) that are provided in or with end-user equipment, or used to provide dial-in access from ineligible locations such as homes or other non-school or non-library sites
- [Lightning Arrestor](#)
- [Surge Protector](#)
- [Power Distribution Units](#)
- [Power Strips](#)
- [Disaster Recovery](#)
- [Environmental Monitoring](#)
- Components that are installed in standby mode, redundant, not active and online, or otherwise not an essential element in the transmission of information within the school or library

Ineligible Servers:

- Storage of application software, databases accessed by end users, or end-user files other than e-mail files
- End-user [personal computers/workstations](#), even if the device also provides server functionality
- [Caching](#) server and print server. (However, caching and print server features provided by the core network operating system may be utilized if the principal function of the server is for other purposes that are eligible).
- [Laptop](#) (presumed to not be eligible because a laptop is typically used as an end user workstation).



Ineligible Software:

- All end-user software such as reading programs or [softphones](#)
- [Application Software](#) other than server-based, shared e-mail
- Developmental software
- [Network management](#) software
- Operating system software for end-user computers
- Security software
- Utility software, such as anti-virus and anti-spam software

Ineligible Storage:

- Devices used to supplement storage requirements of personal computers on a network. For example, storage devices are not eligible if used to store the following information: end-user files other than eligible e-mail files; application software; other ineligible software; archival information including archived e-mail files; [caching](#) information
- Storage devices in end-user components, such as end-user computer workstations
- Consumable [storage](#), such as floppy disks, recordable CD ROM media, and [cartridge magnetic tape](#)
- [Video Content Storage](#)

Ineligible Data Protection Components:

- [Intrusion Detection/Intrusion Prevention](#)
- [Online Backup Solutions](#)
- Tape backup cartridge units when part of a PC or workstation
- Cost of purchasing additional or separate tapes

Ineligible Telephone Components:

- [Automatic Call Distribution System \(ACD\)](#)
- [Call Accounting System](#)
- [Call Sequencer](#)
- [Homework Hotline](#)
- [Station Message Detail Recording \(SMDR\)](#)
- An [intercom](#) or [public address](#) system

Ineligible End-user Equipment:

- [Computer workstations](#)
- End-user telephone sets
- [Fax machine](#)
- Cameras
- Microphones

- Videotape recorders
- [Personal digital assistant \(PDA\)](#)
- [CD/](#)
- [Pager](#)
- [Printer](#)
- [Two-way radio](#)
- End-user [telephones](#) and end-user [voice mail](#) such as answering machines are not eligible. In addition, telephone components not essential for the transport of telephone services within the school or library are not eligible (unless included as an integral component of a standard product offering for an eligible product at no additional cost).
- [Interactive White Boards](#)

Ineligible Video Components:

- End-user video equipment and equipment for the creation of video content is not eligible for discount. Examples include video monitors, televisions, video cameras, and video recorders and playback devices.
- [Broadcast and cable television equipment](#) used for the display or distribution of broadcast and cable television signals

See the [Miscellaneous](#) section of this document for additional entries applicable to Internal Connections. For example, finance charges and termination charges are not eligible.

## Basic Maintenance of Internal Connections

Basic Maintenance ensures the necessary and continued operation of eligible internal connection components at eligible locations.

No funding for a technical support contract will be provided if it includes services that exceed basic maintenance as defined in this section.

All requests in this category are for services to be delivered within the July 1 to June 30 Funding Year.

Although Internal Connections is subject to the provisions of the "[Two-in-Five Rule](#)," this rule does not apply to Basic Maintenance.

Maintenance and Technical Support of Internal Connections

Necessary basic maintenance services are defined as follows: "but for the maintenance at issue, the connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services without E-rate discounts." The following maintenance services are eligible:

- Repair and upkeep of eligible hardware
- Wire and cable maintenance
- Basic technical support
- Configuration changes

Basic maintenance is eligible for discount only if it is a component of a maintenance agreement or contract for eligible components. The agreement or contract must specifically identify the eligible components covered, including product name, model number, and location.

Ineligible Basic Maintenance of Internal Connections

The following products and services are **NOT ELIGIBLE**:

- [Unbundled Warranties](#), including prepaid retainers for service that may not actually need to be performed.
- On-site technical support (*i.e.*, contractor duty station at the applicant site) when off-site technical support can provide basic maintenance on an as-needed basis.
- Services such as network management and 24-hour network monitoring.
- Help desks that provide a comprehensive level of support beyond basic maintenance of only eligible components.
- Technical support contracts that are more than basic maintenance.

In addition, software [Client Access Licenses](#) are not eligible as Basic Maintenance. However, Client Access Licenses for eligible software products may be eligible in the Internal

	<p>Connections funding category.</p> <p>Eligible basic maintenance does not include services to maintain ineligible equipment, to enhance the utility of equipment beyond the transport of information, or to provide diagnostic services in excess of those necessary to maintain the equipment's ability to transport information.</p>
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## Miscellaneous

The service category for entries in this section should reflect the same category as the product or service being installed or obtained—Telecommunications Services, Internet Access, or Internal Connections.

Product Type (Function)	Description
Installation and Configuration	<p>Installation, activation, and initial configuration of eligible components are eligible if they are part of a contract or bid for those eligible components. Such eligible services may include basic design and engineering costs and basic project management costs if these services are provided as an integral component part coincident with installation.</p> <p>In addition, on-site training is eligible as a part of installation services but only if it is basic instruction on the use of eligible equipment, directly associated with equipment installation, and a part of the contract or agreement for the equipment. Training must occur coincidentally or within a reasonable time after installation.</p>
Miscellaneous Fees and Charges	<p>Fees and charges that are a necessary component of an eligible product or service are generally eligible, including:</p> <ul style="list-style-type: none"> <li>• <a href="#">Change fees</a></li> <li>• <a href="#">Freight assurance fees</a></li> <li>• <a href="#">Shipping charges</a></li> </ul> <p>The following fees and charges are eligible only if a contract with a vendor for eligible product or services specifically provides for these costs:</p> <ul style="list-style-type: none"> <li>• <a href="#">Per diem</a></li> <li>• <a href="#">Travel time</a></li> </ul> <p>A manufacturer's multi-year warranty for a period up to three years and provided as an integral part of an eligible component without separately identifiable cost can be included in the cost of the component.</p> <p>Lease fees to rent or lease eligible components are eligible.</p> <p>Taxes, surcharges, and other similar, reasonable charges incurred in obtaining an eligible product or service are eligible. This includes customer charges for universal service fees but does not include additional charges for universal service administration.</p>

	<p>A reasonable <a href="#">contingency fee</a> is eligible only if it is a regular business practice of the service provider.</p>
<p>Voice Mail Service</p>	<p>A <a href="#">voice mail service</a> is eligible.</p> <p>Funding requests for a voice mail service may be submitted in the Telecommunications Services category of service if provided by an eligible telecommunications carrier or may be submitted in the Internet Access category of service if provided by any service provider.</p> <p>In addition, voice mail equipment may be requested in the Internal Connections category of service, but funding is not available for end-user products such as answering machines.</p>
<p>Other Miscellaneous Ineligible Components</p> <p><i>(Not Eligible)</i></p>	<p>In addition to components indicated in other sections of this Eligible Services List, the following components are <b>NOT ELIGIBLE</b> for discount:</p> <ul style="list-style-type: none"> <li>• Interest or finance charges</li> <li>• Late payment fees</li> <li>• Performance bond</li> <li>• Termination charges</li> </ul> <p>Any product or service that is <a href="#">duplicative</a> of a service for which funding has already been requested. Services that provide necessary bandwidth requirements consistent with an applicant's Technology Plan, such as multiple T-1 lines when appropriate for the population served and the services to be received, are not duplicative.</p> <p>Failover products or services are not eligible. Any stand alone products or services that are only utilized when the primary fails are not eligible.</p> <p>Broadcast television, cable television, Instructional Television Fixed Service (ITFS), and satellite television are not eligible for discount.</p> <p>Creation of software programs or functions such as through computer programming is not eligible.</p> <p><u>Ineligible Installation and Configuration:</u></p> <p>Consulting services not directly tied to and coincident with basic installation and configuration of eligible services are not eligible. Services that are <b>NOT ELIGIBLE</b> include but are not limited to the following:</p> <ul style="list-style-type: none"> <li>• Initial planning to determine the technology and/or components to be deployed.</li> <li>• Network architecture design.</li> <li>• Development of technology plans.</li> </ul>

- Application assistance, program advice, and other activities not tied directly to actual installation and initial configuration of components.

In addition, the following Installation and Configuration components are **NOT ELIGIBLE**:

- Labor costs for school and library personnel.
- Costs for contractor personnel to operate components.
- Costs for [network management](#) software, services, and equipment.
- [Test equipment](#) and tools.
- End-user training, such as training of teachers and staff in the use of covered services in their programs of instruction or for professional development.
- Construction costs, other than incidental charges to restore a facility to pre-installation conditions.

## Special Eligibility Conditions

The Universal Service Administrative Company maintains additional documentation regarding the administration of the Schools and Libraries Support Mechanism at the Schools and Libraries Division website, available at <http://www.usac.org/sl/>. These documents are not included by reference in this Eligible Services List.

<p>Ancillary Use</p>	<p>If a product or service includes ineligible functionality, then, in general, the proportionate cost of this functionality must be removed from funding requests through a cost allocation process. However, in certain limited cases, if any ineligible functionality is not significant and strictly ancillary to the principle uses of the product or service, the full product or service may be eligible for discounts.</p> <p>The following conditions are considered when evaluating whether ineligible functionality is ancillary: (1) a price for the ineligible component cannot be determined separately and independently from the price of the eligible components, and (2) the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality. In addition, the applicant may not be specifically seeking one or more of the ineligible components.</p> <p>Funding requests that include only a single price for components that contain both eligible and ineligible functionality, and fail to meet the requirements for Ancillary Use, are fully ineligible. Therefore, applicants are encouraged to utilize a cost allocation process to remove ineligible functionality whenever feasible. For further information, see <a href="#">Cost Allocation Guidelines for Products and Services</a>.</p>
<p>Cost Allocation</p>	<p>If a product or service contains both eligible and ineligible features, an applicant may use cost allocation to provide a fair delineation of the eligible and ineligible components so that partial funding can be provided. When no cost allocation is provided for funding requests that require cost allocation, USAC will contact the applicant to request such cost allocation. See the web document "<a href="#">Cost Allocation</a>" for additional information.</p>
<p>Cost Allocation for File Servers</p>	<p>File servers and other components can be used simultaneously for multiple purposes, some of which are eligible and some not eligible. Cost allocation is required to remove any ineligible functionality from funding requests. However, the exact usage of a file server or</p>



	<p>other product with multiple uses may be difficult to determine before the product is installed and utilized. A simplified method of cost allocation is available to accommodate this situation. It is based on a simple averaging process of the different functions of the product that is described more fully in the web document "<a href="#">Cost Allocation</a>."</p>
<p>Eligible Users and Locations</p>	<p>Activities that are integral, immediate, and proximate to the education of students or the provision of library services to patrons, qualify as "educational purposes." The presumption is that activities on school or library property meet this standard.</p> <p>Residential schools that serve students with special circumstances – schools on Tribal lands; schools designated to serve students with medical needs; schools designed to serve students with physical, cognitive or behavioral disabilities; and schools where 35 percent or more of their students are eligible for the national school lunch program – are eligible for support. Some services outside of a school or library location can also be eligible for discount in certain cases, such as use by teachers or other school staff while accompanying students on a field trip or sporting event.</p> <p>The term "school or library property" includes a district office or similar facility, but does not include businesses or organizations separate from a school or library organization. For example, the facilities of a business that has contracted with a school to provide bus service do not constitute a location eligible for E-rate support.</p> <p>Employees of a school or library with a normal duty station at an eligible location are eligible users. Employees of a non-school or non-library activity, even if located on school or library property, such as a state government office with responsibilities other than education or library services (<i>e.g.</i>, a division of motor vehicles), are not eligible users.</p>
<p>Internet Access with Ineligible Features</p>	<p>Some Internet Access services may include features that are not themselves eligible, such as specialized content, caching services, and/or filtering services. In general, funding requests that provide only a single price for a product or service that contains both eligible and ineligible functionality are fully ineligible. However, cost allocation may be used to provide separated pricing for the eligible and ineligible components.</p> <p>In addition, in certain limited cases, an eligible product or service can include ineligible components on an ancillary basis. See the Special Eligibility Condition for Ancillary Use</p>

	for additional information about the conditions and limitations of the Ancillary Use approach.
Lease of Wide Area Network Infrastructure	Facilities that provide a Wide Area Network may only be leased by applicants—not purchased. Limitations apply to the reimbursements that are available for initial implementation costs (leased equipment and its installation) of service provider infrastructure. The <a href="#">Wide Area Network Fact Sheet</a> has full details about exclusive access limitations, amortization requirements, and other eligibility conditions for lease of Wide Area Network functionality.
Two-in-Five Rule	<a href="#">“Two-in-Five Rule”</a> indicates that each eligible entity may obtain support for Internal Connections funding requests every two out of five years. This limitation applies only to Internal Connections and not to requests appropriately categorized as Telecommunications Services, Internet Access, or Basic Maintenance of Internal Connections.
Wide Area Networks	The <a href="#">Wide Area Network Fact Sheet</a> contains additional information about eligibility requirements for Wide Area Network services. For example, reimbursement for up-front infrastructure costs of service providers installing a telecommunications or Internet access service is limited.
WAN Versus LAN Components (On-Premise Priority One Equipment)	<p>For data and other networks, the distinction between Wide Area Network (WAN) functionality and Local Area Network (LAN) functionality can be essential for selecting the proper Category of Service for funding requests—Telecommunications Services, Telecommunications, Internet Access, or Internal Connections. FCC rules establish a rebuttable presumption that a connection does not constitute an Internal Connection if it crosses a public right of way.</p> <p>In order to determine what may be properly funded as Internal Connections, a demarcation point between a Wide Area Network service and the Local Area Network components must be established. This approach is described more fully in the web document <a href="#">On-premise Priority 1 Equipment</a> located in the SLD Reference Area of the USAC web site.</p>

## Glossary

<p>800 Service (<a href="#">Telephone Service</a>)</p>	<p>800 Service provides toll calling that is paid by the called party rather than the calling party. The name comes from the original Area Code used for all toll-free numbers. Current and future "800 Service" area codes use the convention 8NN, when N is a specific digit, for example 888, 877, and 866.</p>
<p>900/976 Call Blocking (<a href="#">Telephone Service Components</a>)</p>	<p>Call Blocking is a monthly or recurring telephone company charge for the blocking of calls, such as to 900 or 976 numbers. The blocking prevents callers from completing calls to 900 or 976 numbers.</p>
<p>900/976 Charges (<a href="#">Ineligible Telecommunications</a>)</p>	<p>"900" is an area code used to reach a wide range of information providers. Examples of the information that may be provided via a 900 number are adult content programming, weather reports, lottery results, or caller voting for various topics such as television polls. 900 Service calls are charged to the party originating the call. Charges for accessing 900 calls are often included in the toll charges on the local telephone bill. 976 service provides a local, pay-per-call telephone service.</p>
<p>911/E911 Trunks/Lines (<a href="#">Telephone Service</a>)</p>	<p>911 and E911 trunks or lines are dedicated telecommunications links specifically or exclusively used for connection between a school/library and a Public Safety Answering Point (PSAP).</p>
<p>Access Point (<a href="#">Data Distribution</a>)</p>	<p>An Access Point is a base station in a wireless LAN. Access points are typically stand-alone devices that may plug into an Ethernet hub or server or may provide a repeater function for wireless networks.</p>
<p>Alarm Telephone Line (<a href="#">Telephone Service</a>)</p>	<p>An alarm telephone line is a telecommunications line specifically dedicated to a school or library burglar or fire alarm system. It may be the equivalent of a POTS line or a dedicated line between the school or library and the alarm company.</p>
<p>Antennas (<a href="#">Interfaces</a>)</p>	<p>An antenna is a device for transmitting and/or receiving radio frequency signals.</p>
<p>Application Software (<a href="#">Software</a>—Ineligible)</p>	<p>Application software applies to software accessed directly by end users, such as word</p>

	processors, spreadsheets, utility, anti-virus, and graphics programs.
Asbestos Removal ( <a href="#">Ineligible Internal Connections Components</a> )	Some older buildings were constructed using products that contain asbestos, which has been determined to be harmful to health. Renovations and installations in such buildings require special treatment such as asbestos removal.
Asynchronous Transfer Mode (ATM) ( <a href="#">Digital Transmission Services</a> )	ATM is a high-speed Digital Transmission Service that can provide bandwidth of 622 Megabits per second or higher.
Automatic Call Distribution System (ACD) ( <a href="#">Telephone</a> —Ineligible)	An Automatic Call Distribution (ACD) system, typically used with a PBX, provides a means of automatically distributing calls evenly, on a next available agent basis so that productivity is maintained and inbound calls are handled efficiently. The system also allows the monitoring of operation on a real-time basis. Additionally, some systems compile historic reports that enable better utilization of resources in the handling of incoming calls.
Automatic Route Selection (ARS) ( <a href="#">Telephone Components</a> )	Automatic Route Selection (ARS) is a PBX and Centrex service that allows for automatic selection of the most efficient and cost-effective route. It may also be referred to as “least cost routing”. By using the ARS feature, outgoing phone calls from PBX and Centrex stations are routed to the most cost-efficient service or facilities.
Bridge ( <a href="#">Interfaces</a> )	A bridge is a data communications device that connects two or more network segments, often translating information from one type of network protocol to another.
Broadband over Power Lines (BPL) ( <a href="#">Digital Transmission Services</a> ) ( <a href="#">Internet Access</a> )	Broadband over Power Lines (BPL) is a carrier current system installed and operated on an electric utility service as an unintentional radiator that sends radio frequency energy on frequencies between 1.705 MHz and 80 MHz over medium voltage lines or low voltage lines to provide broadband communications and is located on the supply side of the utility service’s points of interconnection with customer premises.
Broadcast and Cable Television Equipment ( <a href="#">Video Components</a> —Ineligible)	Broadcast/cable equipment applies to equipment used in the transmission or receipt of broadcast TV, broadcast radio, broadcast satellite, or cable television service.

Broadcast "Blast" Messaging ( <a href="#">Ineligible Telecommunications</a> )	Broadcast "Blast" Messaging is a service that allows for a message to be created and delivered to a user defined group typically via voice or text message.
Cable Modem ( <a href="#">Internet Access</a> ) ( <a href="#">Interfaces</a> )	A cable modem is a modem designed for use on a TV coaxial cable circuit and provides a high-speed data path. It can provide high-speed access to the Internet over a cable television line.
Cabling ( <a href="#">Cabling</a> )	Cabling refers to the wires or groups of wires capable of carrying voice, video, or data transmissions. Cabling provides electrical (or, in the case of fiber optics, lightwave) connectivity between points.
Caching ( <a href="#">Servers</a> —Ineligible) ( <a href="#">Storage Devices</a> —Ineligible)	Caching is a method that stores recently accessed information. Caching components such as caching servers store information locally so that the information is accessible more quickly than if it must be transmitted across a network from a distant server.
Caching Service ( <a href="#">Ineligible Internet Access</a> )	A caching service is a special high-speed storage mechanism at the border of a network and the Internet that holds frequently accessed Internet information, thereby reducing retrieval times for information often requested from the Internet.
Call Accounting System ( <a href="#">Telephone</a> —Ineligible)	A Call Accounting System records information about telephone calls. It can provide comprehensive information about call costs by associating call records with users, phone extensions, or profiles.  Such systems may include <a href="#">Station Message Detail Recording</a> (SMDR) or Call Detail Recording (CDR), which are software/hardware PBX components that provide the capability to generate reports on call details such as call duration, PBX station number, time and date, dialed number, and cost of call.
Call Sequencer ( <a href="#">Telephone</a> —Ineligible)	An Automatic Call Sequencer is a component used with a PBX or Key system. The call sequencer distributes incoming telephone calls among a select number of stations or telephones. Some call sequencers are designed to generate statistical reports on number of calls and how calls were handled.
Cartridge Magnetic Tape ( <a href="#">Storage Devices</a> —Ineligible)	Cartridge magnetic tape is used in tape backup devices, and provides replaceable and

	archivable storage capacity.
CD/ DVD Player ( <a href="#">Ineligible Internal Connections Components</a> )	A Compact Disc or Digital Video Disc (CD/DVD) Player is a device that plays or reproduces the music, voice, and/or video from a CD or Digital Video Disc.
Cellular Service ( <a href="#">Telephone Service</a> )	Cellular Service uses radio transmissions to provide a wireless telephone service.
Centrex ( <a href="#">Telephone Service</a> )	Centrex is a business telephone service that consists of a wide variety of features, such as call forwarding and call transfer, provided by central office software.
Change Fees ( <a href="#">Miscellaneous Fees and Charges</a> )	Change fees are charges imposed for the modification of an existing service.
Channel Service Unit /Data Service Unit (CSU/DSU) ( <a href="#">Interfaces</a> )	A CSU/DSU is a device that terminates a digital channel at a customer's premises. A CSU/DSU often serves as a demarcation between a local network and wide area network facilities.
Circuit Cards ( <a href="#">Circuit Cards</a> )	Circuit cards provide microprocessors, transistors, and other components on a circuit board. Circuit cards often are designed to fit into a slot of a larger component, such as a telephone PBX, router, or computer.
Client Access Licenses ( <a href="#">Software</a> )	A Client Access License is a software licensing approach used by some vendors that provides authorization to access a software product.
CODEC / Video Encoder ( <a href="#">Video Components</a> )	A CODEC (coder/decoder), also known as a video encoder, is a device comprising an encoder and decoder in the same equipment. The CODEC produces a coded output and compresses and decompresses audio and video signals.
Conduit and Raceway ( <a href="#">Cabling</a> )	Conduit and raceway are metal or plastic pipe or channels used to protect cable.
Conferencing Services ( <a href="#">Other Eligible Telecommunications</a> )	Conferencing Services provide a means for multiple users to participate in group discussions via telephone circuits or video facilities.
Connectors ( <a href="#">Cabling</a> )	Connectors are devices that connect wires or fibers.
Consumable Components ( <a href="#">Cabling</a> )	Consumables consist of miscellaneous components that are depleted with use, such as tape, splicing materials, labels, and wire wrap.

Contingency Fee ( <a href="#">Miscellaneous Fees and Charges</a> )	A contingency fee is a specific dollar allowance for possible unforeseeable elements that may occur within the scope of a project.
Copper-to-fiber (TX-to-FX) Converter ( <a href="#">Interfaces</a> )	A Copper-to-fiber converter, also known as a TX-to-FX converter, is a device that converts a copper connection to a fiber optic connection.
Couplers ( <a href="#">Cabling</a> )	Couplers are passive devices that accepts one input broadband signal and replicate it onto another or multiple outputs.
Custom Calling Services ( <a href="#">Telephone Service Components</a> )	Custom calling services extend the features available with telephone service. Features available include (but are not necessarily limited to) call waiting, 3-way calling, speed calling, distinctive ring, and call forwarding.
Dark Fiber Service ( <a href="#">Dark Fiber</a> )	Dark fiber refers to fiber optic cable for which the service provider has not provided modulating electronics.
Digital Subscriber Line (DSL) ( <a href="#">Telecommunications/Internet Access</a> )	Digital Subscriber Line (DSL) is a technology that provides high-speed connections over telephone lines. Different types of DSL service are available, using descriptions such as ADSL, HDSL, and SDSL. The DSL family of technologies sometimes goes by the general name xDSL.
Direct Broadcast Satellite (DBS) ( <a href="#">Ineligible Telecommunications</a> )	Direct Broadcast Satellite (DBS) is a technology that uses satellite to transmit TV programs to subscribers. The transmitted signals are received using individual rooftop antennas. Program reception of the subscriber is limited to those channels broadcast by a specific provider.
Direct Inward Dialing (DID) ( <a href="#">Telephone Service Components</a> )	Direct Inward Dialing (DID) service allows outside calls to be directed to a Private Branch Exchange station line without the use of an operator.
Directory Advertising ( <a href="#">Ineligible Telecommunications</a> )	Directory Advertising is advertising in a telephone directory yellow pages, Internet, or elsewhere. This may be provided by the telephone company or another entity.
Directory Assistance Charges ( <a href="#">Telephone Service</a> )	Directory Assistance Charges are those charges assessed for calls made to 411 or other Directory Assistance numbers such as (201) 555-1212 for information. Typically charges are assessed on a per call basis.
Directory Listings ( <a href="#">Ineligible</a> )	A telephone company directory contains an alphabetical listing, by name, of all telephone

<p><a href="#">Telecommunications</a>)</p>	<p>subscribers except those requesting unlisted or non-published service. Typically, the initial directory listing is provided free of charge to the subscriber, but extra-cost services are available, such as additional listings, unlisted or non-published numbers, and bolded entries.</p>
<p>Disaster Recovery (<a href="#">Data Protection</a>—Ineligible)</p>	<p>Disaster recovery describes a means of restoring service to a computer network that has suffered a disaster. Such costs may include the rental of a site that houses links and equipment that is modeled after the damaged network.</p>
<p>Distance Learning (<a href="#">Digital Transmission Services</a>)</p>	<p>Distance Learning utilizes video and audio technologies to allow students who are remotely located from other students or the lecturer to participate interactively with the class.</p>
<p>Documentation (<a href="#">Other Eligible Internal Connections Components</a>)</p>	<p>Documentation includes support material provided in the form of paper or electronic media. It may include diagrams, blueprints, equipment specifications, or instruction manuals for services and products.</p>
<p>Domain Name Registration (<a href="#">Web Hosting</a>)</p>	<p>A Domain Name indicates an address of location on the Internet. For the e-mail address portion of a symbolic abc@xyz.org, the domain name is xyz.org. Domain Name Registration is the registering of the name and the charge associated with the registration process.</p>
<p>Domain Name Service (DNS) (<a href="#">Internet Access</a>) (<a href="#">Servers</a>)</p>	<p>Domain names, such as <a href="http://www.fcc.gov">www.fcc.gov</a>, are alphabetic, so they are easier to remember than the IP addresses on which the Internet is based. A Domain Name Service translates the alphabetical names input by users into the IP addresses used by Internet devices.</p>
<p>DS-1 (<a href="#">Digital Transmission Services</a>)</p>	<p>DS-1 is a type of Digital Transmission Service, and stands for “Digital Signal, level 1.” It operates at a bandwidth of 1.544 megabits per second. Other DS levels—DS-2, DS-3, and DS-4—operate at higher bandwidths.</p>
<p>Duplicative Services (<a href="#">Other Miscellaneous Ineligible Components</a>)</p>	<p>Duplicative services are those that deliver the same functionality to the same population in the same location during the same period of time.</p>
<p>Dynamic Host Configuration Protocol (DHCP) (<a href="#">Internet Access</a>) (<a href="#">Servers</a>)</p>	<p>Standard networks need each computer to have a unique address for communication to take place. Dynamic Host Configuration Protocol (DHCP) is a system that provides this</p>



	unique address from a central computer, so that each individual computer does not need to be separately configured.
E911 Reader Board ( <a href="#">Telephone</a> )	The E911 Reader Board is adjunct hardware for a PBX and is used to access E911 Emergency service.
Electrical System Upgrades ( <a href="#">Ineligible Internal Connections Components</a> )	Electrical system upgrades refer to products and services that provide, upgrade, or enhance the provision of electrical power.
E-mail ( <a href="#">Software</a> ) ( <a href="#">Servers</a> )	E-mail stands for “electronic mail.” E-mail or electronic mail, is a system for sending text messages and other information across a network.
E-mail Archiving ( <a href="#">E-mail</a> ) ( <a href="#">Servers</a> ) ( <a href="#">Storage Devices</a> )	E-mail archiving is a form of electronic recordkeeping, often compressing e-mail files to make available greater inbox space.
E-mail Service ( <a href="#">E-mail</a> )	An e-mail service provides for the transmission of text messages and other embedded data such as file attachments. It enables the transmission of messages over a local or world-wide computer network.
Environmental Monitoring Components ( <a href="#">Data Protection</a> —Ineligible)	Environmental monitoring components provide information about heat, humidity, or other factors in order to provide a warning system for conditions that may affect the correct operation of equipment. For example, an environmental monitoring card is sometimes available as an optional feature of an uninterruptible power supply and is used to monitor the environmental conditions of a rack, computer room, or data center.
Ethernet ( <a href="#">Digital Transmission Services</a> )	Ethernet is a type of Digital Transmission Service. Traditionally, Ethernet operates at a bandwidth commonly known as 10Base-T which is equivalent to 10 megabits per second (Mb/s). 100Base-T at 100 Mb/s and Gigabit (1,000Mb/s) are also available.
Faceplates ( <a href="#">Cabling</a> )	Faceplates are covers that fit over a jack, outlet, or dial.
Fax Machine ( <a href="#">Ineligible Internal Connections Components</a> )	A facsimile, or fax, machine is a device in which the image of a document is electronically transferred over the telephone network and printed out elsewhere.
Fiber Optics or Fiber ( <a href="#">Digital Transmission</a> )	Fiber Optics is a technology that uses light to transport information and can provide a Digital

<a href="#">Services</a> )	Transmission Service.
Filtering Service ( <a href="#">Ineligible Internet Access</a> )	A filtering service protects users from dangerous or inappropriate content most often by selectively blocking certain words or certain Internet sites.
Firewall ( <a href="#">Internet Access</a> ) ( <a href="#">Data Protection</a> ) ( <a href="#">Servers</a> )	A firewall is a hardware and software combination that sits at the boundary between an organization's network and the outside world, and protects the network against unauthorized access or intrusions.
Flat Rate ( <a href="#">Telephone Service</a> )	Flat Rate is a billing method for telephone service that, for a set price per month, provides a user an unlimited number of local calls.
FRAD ( <a href="#">Interfaces</a> )	A Frame Relay Assembler/Disassembler (FRAD) is a communications device that breaks a data stream into frames for transmission over a Frame Relay network and recreates a data stream from incoming frames. A Frame Relay router serves the same purpose but provides more intelligence in avoiding congestion.
Frame Relay ( <a href="#">Digital Transmission Services</a> )	Frame relay is a type of Digital Transmission Service. Frame relay networks in the United States support data transfer rates at T-1 (1.544 Mbps) and T-3 (45 Mbps) speeds.
Freight Assurances ( <a href="#">Miscellaneous Fees and Charges</a> )	Freight assurance fees are fees assessed to the purchaser for the guarantee of safe delivery to their premises of goods, <i>i.e.</i> , they provide shipping insurance.
Gateway ( <a href="#">Interfaces</a> )	A gateway is a network device that acts as an entrance to another network and often is used to connect two otherwise incompatible networks.
Hard Disk Drives ( <a href="#">Storage Devices</a> )	Hard disk drives are storage devices that consist of magnetic platters that spin like a record player and magnetic pickup devices, called heads, that are like the needle of a record player. All this is sealed in a vacuum in order to maintain tight tolerances and enhance service life.
Homework Hotline Equipment ( <a href="#">Telephone</a> —Ineligible)	Homework Hotline equipment provides an automated response or call routing system that provides information to callers about school assignments.
Homework Hotline Service ( <a href="#">Other Eligible Telecommunications</a> )	A Homework Hotline Service is typically provided as a toll-free telephone number for students to contact the school regarding

	questions on homework.
Hub ( <a href="#">Data Distribution</a> )	Hubs are central connection points for some types of local area networks with interconnecting cabling from many individual devices, such as computer workstations, printers, servers, and other hubs.
Inside Wire Maintenance Plan ( <a href="#">Telephone Service</a> )	An Inside Wire Maintenance Plan is a monthly recurring charge that provides for the repair, replacement, and maintenance of customer owned inside-premise wire. Cost of the service is sometimes included in regular monthly bills for local and long distance telephone services.
Integrated Services Digital Network ( <a href="#">Digital Transmission Services</a> )	Integrated Services Digital Network (ISDN) is a type of Digital Transmission Service that uses traditional phone lines to transmit digital voice and data over telephone lines. There are two types of service. Basic Rate Interface (BRI) provides a total bandwidth of 144 kilobits per second. Primary Rate Interface (PRI) provides a total bandwidth of 1.544 megabits per second.
Interactive Television ( <a href="#">Digital Transmission Services</a> )	Interactive TV (ITV) provides a means for a viewer to interact with the television set in ways other than controlling the channel and the volume and handling videotapes. In an education setting, such as in a school, ITV provides a means for teachers and students who are remotely located in different places to conduct a class and to interact with each other. ITV requires a special “set-top box” to be added to the existing television set.
Interactive White Board ( <a href="#">Ineligible Internal Connections Components</a> )	An Interactive White Board is a device that allows for end-users to display information with a vast array of interactive features such as online annotation, the ability to control a personal computer, and distance learning.
Intercom ( <a href="#">Telephone</a> —Ineligible) ( <a href="#">Ineligible Internal Connections Components</a> )	An intercom is an internal communication system, originally consisting of multiple speaker/microphone devices connected into an amplifier system. Now most intercoms are a part of telephone systems, although separate intercom systems continue to be used in many schools.
Interconnected Voice over Internet Protocol ( <a href="#">Interconnected VoIP</a> ) ( <a href="#">Telephone Service</a> ) ( <a href="#">Internet Access</a> )	Interconnected VoIP is defined as a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet protocol-compatible customer

	premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.
Interface/Edge Device ( <a href="#">Interfaces</a> )	An Interface or Edge Device is a physical device that can pass packets between some types of networks and an <a href="#">Asynchronous Transfer Mode</a> (ATM) network. The device may be a router or Ethernet-to-ATM switch that directly connects to an ATM network.
Internet Access ( <a href="#">Internet Access</a> )	Internet access provides a connection to the Internet, which is the publicly available worldwide system of interconnected computer networks that uses agreed-upon technical standards based on the Internet Protocol (IP). Internet access provides a connection to a vast quantity of information and services, such as electronic mail and the documents and features of the World Wide Web. Service Providers for Internet access need not be telecommunications carriers.
Internet Content ( <a href="#">Ineligible Internet Access</a> )	Internet Content refers to all forms of information that are available on the Internet, such as text, pictures, sound recordings, animation, and video clips.
Internet2 ( <a href="#">Ineligible Internet Access</a> )	Internet2 is a consortium of universities, industry, and government for development and deployment of advanced network applications and technologies.
Intrusion Detection/Intrusion Prevention ( <a href="#">Ineligible Internal Connections Components</a> )	Intrusion Detection/Intrusion Prevention devices function in addition to firewalls to monitor, detect, and deter threats to a network from external and internal attacks.
Key System (KSU) ( <a href="#">Telephone Components</a> )	A Key System, also known as Com Key System or a KSU, is a type of phone system that permits more than one telephone line, PBX extension, private line, or intercom line to appear on a single telephone.
KVM Switch ( <a href="#">Servers</a> )	A keyboard-video-mouse (KVM) switch is a switchbox that is used to control two or more computers from a single keyboard, monitor, and computer mouse.
Laptop / Notebook Computer ( <a href="#">Servers</a> —Ineligible)	A laptop or notebook computer is a lightweight portable computer designed for mobility.
Lightning Arrestor ( <a href="#">Data Protection</a> —Ineligible)	A lightning arrestor is a device that protects equipment from lightning strikes and static.

<p>Local Area Network (<a href="#">Data Distribution</a>)</p>	<p>A Local Area Network (LAN) is a short distance data communications network used to link together computers and peripheral devices under some form of standard control. The LAN is most often connected by cabling or wireless links within the same building. A LAN consists of several components, including cabling, servers, computer workstations, network interface cards, printers, and data distribution equipment, such as network switches, hubs, and routers.</p>
<p>Local Measured Service (<a href="#">Telephone Service</a>)</p>	<p>Local telephone companies use several methods to bill for local phone service, such as Flat Rate, Message Rate, Measured Rate, and Local Measured Service. Local Measured Service typically allows an unlimited number of incoming calls. Outgoing calls beyond a certain threshold result in extra charges.</p>
<p>Local Phone Service (<a href="#">Telephone Service</a>)</p>	<p>Local phone service is a service provided by a local exchange carriers (LEC). Phone lines from homes and businesses terminate at a central office of a LEC, which in turn connects to other local exchanges and to carriers for long distance service.</p>
<p>Long Distance Telephone Service (<a href="#">Telephone Service</a>)</p>	<p>Long distance telephone service is provided by interexchange carriers and provides telephone service outside of a local calling area.</p>
<p>Mast (<a href="#">Interfaces</a>)</p>	<p>A mast is a pole or structure on which an antenna is placed.</p>
<p>Master Control Unit (<a href="#">Video Components</a>)</p>	<p>A Master Control Unit (MCU) is a device that controls the main operating functions of a video system.</p>
<p>Media Converter (<a href="#">Interfaces</a>)</p>	<p>A media converter is a module that converts one type of media to another type of media for network compatibility. The actual media can vary, such as fiber, coax, or twisted pair.</p>
<p>Memory Modules / Random Access Memory (RAM) (<a href="#">Circuit Cards</a>)</p>	<p>A memory module is the electronic holding place for instructions and data that a computer's microprocessor can reach quickly. The module usually holds multiple Random Access Memory (RAM) chips. Common types are SIMM, DIMM, RDRAM, and SDRAM.</p>
<p>Message Rate Service (<a href="#">Telephone Service</a>)</p>	<p>Local telephone companies use several methods to bill for local wireline service, such as Flat Rate, Message Rate, Measured Rate, and Local Measured Service. Message Rate Service provides a certain number of "call</p>

	units." Various call lengths and distances can use a different number of call units. Calls in excess of the message rate allocation result in additional charges.
Monitor ( <a href="#">Servers</a> )	A monitor is the video display unit (television screen) that is used to display information from a computer.
Multimedia Kits ( <a href="#">Ineligible Internal Connections Components</a> )	Multimedia kits provide a package of hardware and software that adds multimedia capabilities to a computer. A multimedia kit may include a CD ROM or DVD player, a sound card, speakers, and a bundle of CD ROMs.
Multiplexer ( <a href="#">Data Distribution</a> )	A multiplexer is electronic equipment that allows two or more signals to pass over one communications circuit. The circuit may be a telephone line, dedicated line, or radio signal. It provides an economic approach for transporting, for example, up to 24 voice-grade lines on a single circuit.
Multipoint Control Unit ( <a href="#">Video Components</a> )	A Multipoint Control Unit (MCU) is a bridging or switching device used for multipoint videoconferencing.
Network Interface Cards (NICs) ( <a href="#">Circuit Cards</a> )	Network interface cards (NICs) are electronic devices that connect workstations, servers, or other devices to a network. NICs work with the network software and computer operating system to transmit and receive messages on the network.
Network Interface Device ( <a href="#">Interfaces</a> )	A Network Interface Device (NID) is a component installed between a telephone network and the inside wire of a customer premises. The NID is usually provided by the telephone company and is the transition, or demarcation point, between the company's network and the customer's inside wiring.
Network Management ( <a href="#">Software</a> —Ineligible)	Network Management is a system of equipment or software used in monitoring, controlling, and managing a communications network.
Network Switch ( <a href="#">Data Distribution</a> )	A switch is a mechanical or electronic device that completes or breaks an electrical path or that selects the paths for communication. More specifically, network switches provide capability similar to a network <a href="#">hub</a> but provide a dedicated bandwidth at each network port, rather than shared bandwidth among all ports.
OC-1 ( <a href="#">Digital Transmission</a> )	OC-1 stands for "optical carrier 1," which is a Digital Transmission Service that operates at

<a href="#">Services</a> )	51.84 Megabits per second. Multiples of this bandwidth are also available, such as OC-3 and OC-12.
Online Backup Solution ( <a href="#">Ineligible Internet Access</a> ) ( <a href="#">Ineligible Internal Connection Components</a> )	An Online Backup Solution provides off-site data storage generally accessible from any Internet connection.
Operating System Software ( <a href="#">Software</a> )	Operating System software enables the basic operations of a computer system or other electronic device. For example, it can configure the communication paths between memory and storage, and provides basic functions for other software to operate correctly.
Pager ( <a href="#">Ineligible Internal Connections Components</a> )	A Pager (also known as a Beeper) is the receiving end of a paging service and is a small device worn on the belt or carried in a handbag. Pagers provide text or voice messages or both.
Paging Services ( <a href="#">Paging</a> )	Paging is a service designed to deliver a message to a person whose exact location is unknown. The service employs radio signals that activate a paging receiver carried by the intended recipient to deliver a text, numeric, or voice message.
Payphone Telephone Service ( <a href="#">Ineligible Telecommunications</a> )	Payphone (or coin) telephone service is provided in a public or semi-public place and requires the use of coins, credit card, pre-paid card, or other means of payment at the time of placing the call.
Per Diem ( <a href="#">Miscellaneous Fees and Charges</a> )	Per diem is a dollar amount designated to a vendor for daily expenses such as lodging and food. It may or may not include travel time.
Performance Bond ( <a href="#">Other Miscellaneous Ineligible Components</a> )	A Performance Bond, also known as a Bid Bond, is a legal obligation, generally obtained by the vendor or contractor from a third party, that guarantees the terms of the contract or agreement are met. In the event of default or failure to meet the terms, the bond would be used to complete the contracted work.
Permanent Virtual Circuit (PVC) ( <a href="#">Digital Transmission Services</a> )	Permanent Virtual Circuits (PVCs) are shared connections between end-points. PVCs play a central role in Frame Relay networks. They're also supported in some other types of networks, such as X.25.
Personal Communications Services (PCS) ( <a href="#">Telephone Service</a> )	Personal Communications Services (PCS) is a digital wireless telecommunications service, similar to cellular service, but operating on

	different radio frequencies.
Personal Computers/ Workstations ( <a href="#">Servers</a> —Ineligible) ( <a href="#">Ineligible Internal Connections Components</a> )	Personal computers, or workstations, are computers designated or designed as end-user equipment. They may operate in a stand-alone environment or may be connected to a host computer as part of a network. They are differentiated from computers configured as servers that are designed to route information to and from end-user equipment.
Personal Digital Assistant (PDA) ( <a href="#">Ineligible Internal Connections Components</a> )	A Personal Digital Assistant (PDA) is a handheld device that can provide several functions such as calendaring, telephone, and e-mail. Some PDAs have wireless networking features.
Phone Calling Cards ( <a href="#">Telephone Service</a> )	Phone Calling Cards generally have the appearance of a credit card and provide a means to make long distance calls from any phone. Charges for the call are subtracted from the calling card balance or are included in the calling card subscriber's monthly phone bill.
Phone Modems ( <a href="#">Circuit Cards</a> )	Phone modems are devices that convert data signals into suitable form for transmission and receipt over a telephone line.
POTS ( <a href="#">Telephone Service</a> )	"POTS" stands for "Plain Old Telephone Service" and provides local telephone dial-tone service.
Power Strips/Power Distribution Units(PDU) ( <a href="#">Ineligible Internal Connections Components</a> )	A Power Strip is a group of sockets that allow for multiple power cords to plug into a single device. A Power Distribution Unit is a power strip designed for data centers or racks with greater capacity and features than a power strip.
Printer ( <a href="#">Ineligible Internal Connections Components</a> )	A printer is a device that receives computer information and prints it on paper.
Private Branch Exchange (PBX) ( <a href="#">Telephone Service</a> )	A PBX is a centralized telephone switching system located at a business or organization site. The PBX provides internal station-to-station dialing and access to the public switched network.
Processor Terminator Card ( <a href="#">Circuit Cards</a> )	A processor terminator card is a device installed in a multi-processor computer to signal the computer that only one processor is installed.
Proxy Server ( <a href="#">Data Protection</a> ) ( <a href="#">Servers</a> )	A proxy server is a device that sits between "trusted clients" (e.g., workstations inside an organization) and "untrusted clients" (e.g., the



	Internet) and provides security features and often times address translation. To the “untrusted clients”, communication appears to be taking place with the proxy, even though the communication is passed to and from the trusted clients.
Public Address (PA) System ( <a href="#">Telephone</a> —Ineligible) ( <a href="#">Ineligible Internal Connections Components</a> )	A Public Address System allows the user to make announcements through the use of amplifiers and speakers.
PVBX ( <a href="#">Video Components</a> )	A Private Video Branch Exchange (PVBX) is a PBX designed for video information. A PVBX can link classrooms or other locations together and can interconnect end-user and other equipment, such as cameras, monitors, and videocassette recorders.
Racks and Cabinets ( <a href="#">Other Eligible Internal Connections Components</a> )	A rack is a metal supporting framework for mounting cables, equipment, and/or wires. A cabinet is an enclosure for equipment, terminating cables, connection devices, and/or wires.
Radio Loop ( <a href="#">Telephone</a> )	Radio Loop is provided by a local exchange telecommunications carrier and is also called Basic Exchange Telecommunications Radio Service (BETRS). BETRS is used by local telephone companies to provide dial tone to subscribers in certain circumstances, such as when it is either not technically possible or not cost-effective to provide the service by conventional means.
Relay I/O Module ( <a href="#">Data Protection</a> )	A Relay I/O Module allows protection by an Uninterruptible Power Supply (UPS) for equipment not pre-designed for a UPS interface
Remote Access Components ( <a href="#">Servers</a> )	Remote access components, such as a remote access router or communications server, allow users to access network resources by dialing in from an off-site location in order to connect their local computer with network devices. Dialing in most typically utilizes standard telephone lines but, in some cases, can be based on other technologies.
Reverse Directory Assistance ( <a href="#">Ineligible Telecommunications</a> )	Reverse Directory Assistance is a service that can use a phone number to provide the name and, in some cases, the address of the owner of that phone number.
Router ( <a href="#">Data Distribution</a> )	Routers are switching devices that can act as an interface between two networks and connect different

	segments, such as departments or floors in a building. Functionally, routers select the routing path for traffic, may provide features such as load balancing, and can provide trouble-shooting diagnostic capabilities.
Satellite Dishes ( <a href="#">Interfaces</a> )	Satellite Dishes are antennas capable of receiving signals from and, in some cases, transmitting signals to communications satellites.
Satellite Service ( <a href="#">Digital Transmission Services</a> )	Satellite service provides communication between points on Earth by using an orbiting satellite as a communications relay point.
Servers ( <a href="#">Servers</a> )	Servers are computers on a local area network that can provide access to files, software, printers, or other features that are shared among multiple users.
Shipping Charges ( <a href="#">Miscellaneous Fees and Charges</a> )	Shipping Charges are the charges associated with the delivery of products from their point of origin to the customer premises.
Softphone ( <a href="#">Ineligible Internal Connections Components</a> )	A Softphone is end-user application software that allows users the use of a personal computer's microphone and speakers to make telephone calls.
Software ( <a href="#">Software</a> )	Software refers to the detailed instructions that operate a computer, distinct from the computer hardware.
Spare Parts ( <a href="#">Ineligible Internal Connections Components</a> )	Spare parts are components on hand to replace hardware that fails.
Speakers ( <a href="#">Ineligible Internal Connections Components</a> )	Speakers are the components that provide sound from a computer, phone, intercom, or other device.
Station Message Detail Recording (SMDR) ( <a href="#">Telephone</a> —Ineligible)	Station Message Detail Recording (SMDR) and Call Detail Recording (CDR) are software/hardware PBX components that provide the ability to generate reports on call details. Those details include, but are not limited to, call duration, PBX station numbers, time and date, trunk route, dialed number, and cost of call.
Storage Media ( <a href="#">Storage Devices</a> —Ineligible)	Storage media includes products such as floppy disks and recordable CD ROM that provide replaceable storage.
Surge Protector ( <a href="#">Data Protection</a> —Ineligible)	Surge protectors provide electrical AC power outlets with circuitry that protects equipment against voltage spikes and electrical disturbances.

Switchboard / Attendant Console ( <a href="#">Telephone Components</a> )	The operation of a PBX or Centrex system may require the use of a switchboard or attendant console for the transfer of incoming calls to the appropriate extension when systems are not equipped with Direct Inward Dialing. The switchboard or attendant console may include Direct Station Selection (DSS), which provides an easy means for transferring calls.
Switched Multimegabit Data Service (SMDS) ( <a href="#">Digital Transmission Services</a> )	Switched Multimegabit Data Service (SMDS) is a type of Digital Transmission Service offered by telephone companies that operates at speeds of from 1.544 Megabits per second to 45 Megabits per second or even more.
System Improvements and Upgrades ( <a href="#">Other Eligible Internal Connections Components</a> )	A system improvement or upgrade provides enhanced functionality to an existing product or configuration of products.
T-1 ( <a href="#">Digital Transmission Services</a> )	T-1, which stands for Trunk Level 1, is a Digital Transmission Service that operates at 1.544 Megabits per second. Greater speeds are available from other Trunk Levels, such as T-2 (6.312 Mbps) or T-3 (44.736 Mbps); slower speeds are known as Fractional T-1.
Tape Backup ( <a href="#">Data Protection</a> )	Tape Backup units provide copies of computer files on magnetic tape, for protection against a catastrophic failure. Tape backup technologies include QIC, DAT, 8mm, DLT, AIT, and ADR.
Telephones ( <a href="#">Telephone</a> —Ineligible)	Telephones, also known as telephone sets, telephone instruments, digital voice terminals, and voice terminals, are the end-user equipment used to transmit and receive telephone communications.
Terminal Adapter ( <a href="#">Interfaces</a> )	A Terminal Adapter (TA) is a device that connects a computer to an external digital communications line, such as an ISDN line.
Terminal Server ( <a href="#">Servers</a> )	A Terminal Server is a specialized server that connects multiple terminals into a network. Traditionally, terminal servers were used to connect multiple “dumb” terminals into network resources but today are additionally used to provide increased connectivity and performance for older computers workstations.
Termination Charges ( <a href="#">Other Miscellaneous Ineligible Components</a> )	Termination charges are fees assessed for the removal or discontinuation of a product or service.
Test Equipment	Test Equipment is used to test hardware,

<a href="#">(Ineligible Internal Connections Components)</a>	software, cable continuity, telecommunications links, etc.
Text Messaging <a href="#">(Telephone Service Components)</a>	Text messaging or short message service (SMS) is a service that enables the transmission of alphanumeric messages, typically up to 160 characters.
Transceiver <a href="#">(Interfaces)</a>	A transceiver is a device that transmits and receives analog or digital signals. The term is used most frequently to describe the component in local area networks (LANs) that actually applies signals onto the network wire and detects signals passing through the wire. For many LANs, the transceiver is built into the network interface card (NIC).
Travel Time <a href="#">(Miscellaneous Fees and Charges)</a>	Travel time refers to the time required for service provider personnel to travel to and/or from locations necessary to provide eligible services.
Trunk lines <a href="#">(Digital Transmission Services)</a>	A trunk line is a communications path between two switching systems, such as equipment in a telephone company central office and a Private Branch Exchange (PBX). Central Office trunks connect a PBX to the central office switching system at the central office. Tie trunks connect two PBXs together.
Two-Way Radio <a href="#">(Ineligible Internal Connections Components)</a>	Two-way radios are wireless end-user devices used to communicate, typically over short distances.
Unbundled Warranty <a href="#">(Ineligible Basic Maintenance of Internal Connections)</a>	A separately priced warranty allowing for broken equipment to be fixed or, in the event that the problem is beyond repair, replaced.
Uninterruptible Power Supply (UPS) / Battery Backup <a href="#">(Data Protection)</a>	An Uninterruptible Power Supply (UPS), also called a battery backup, is a device that provides backup electric energy to a piece of equipment in case the event of a power failure.
UPS Interface Expander <a href="#">(Data Protection)</a>	A UPS Interface Expander allows an Uninterruptible Power Supply (UPS) to provide power management to multiple devices.
Video Amplifier <a href="#">(Video Components)</a>	A Video Amplifier is a device that strengthens the level of a video signal.
Video Channel Modulator <a href="#">(Video Components)</a>	A Video Channel Modulator is a distribution box that takes standard video and audio input from video cameras, recorders, and other video components and distributes the signals to end users.

Video Components ( <a href="#">Video Components</a> )	Video components provide the capabilities and technologies to enable moving images on television screens or computer monitors.
Video Content Storage ( <a href="#">Other Eligible Internal Connections Components</a> )	Video content storage enables the storage of videos and makes such videos available for retrieval at any given time.
Video Service ( <a href="#">Digital Transmission Services</a> )	Video services involve the transmission of visual images.
Virtualization software ( <a href="#">Software</a> )	Virtualization software allows for the creation of multiple virtual servers on a single server. The virtual servers share the hardware of the server upon which the software is installed.
Virtual Private Network (VPN) Components ( <a href="#">Data Protection</a> )	A Virtual Private Network (VPN) uses encryption and/or tunneling services in order to provide highly secure communication over the public Internet or in some cases over point-to-point links.
Voice Compression Module ( <a href="#">Telephone Components</a> )	A Voice Compression Module allows voice and fax traffic to share the same lines as data and LAN traffic.
Voice Interface Card ( <a href="#">Telephone Components</a> )	Voice Interface Cards (VIC) are usually components of a router or PBX system that interface with internal systems and the public switched telephone network. Examples are FXO Cards, E&M Cards, and FXS Cards.
Voice Mail Components ( <a href="#">Telephone Components</a> )	Voice mail components allow users to receive voice messages left by telephone callers and may have other features, such as message forwarding.
Voice Mail Service ( <a href="#">Voice Mail Service</a> )	A voice mail service allows users to receive voice messages left by telephone callers and may have other features such as message forwarding. A voice mail service is classified as an information service that is distinct from a telecommunications service or Internet access.
Voice/Fax Network Module ( <a href="#">Interfaces</a> )	A Voice/Fax module is an access product that enables the transmission of multiprotocol data—voice, fax and LAN--over telecommunications services.
Voice/Video over IP (VoIP) Components ( <a href="#">Data Distribution</a> )	Voice/video over IP (VoIP) components refer to equipment that utilizes the TCP/IP suite of protocols to provide voice and/or video communications.
Web Casting	Web Casting is a service provided over the

( <a href="#">Ineligible Internet Access</a> )	Internet that delivers news or other content via web browser software or to an E-mail address. A user accesses a Web Casting site and chooses what news or content he/she wants to be informed about. Information content is then periodically delivered by the Web Casting supplier.
Web Hosting ( <a href="#">Eligible Internet Access</a> )	A web hosting service is one that hosts a school's or library's website.
Web Server ( <a href="#">Servers</a> —Ineligible)	A web server is a computer server used to provide information to Internet users and can also be used to provide web-based software applications and other web-based functions.
Web Site Creation Fee ( <a href="#">Ineligible Internet Access</a> )	A web site creation fee is a separate charge for creating a website.
Wide Area Networks (WANs) ( <a href="#">Digital Transmission Services</a> )	A wide area network is a voice, data, and/or video network that provides connections from within an eligible school or library to other locations beyond the school or library.
Wire Managers ( <a href="#">Cabling</a> )	Wire managers are wire restraints to house or arrange wiring and cabling. They can be aluminum or plastic and may be rack-mountable.
Wireless Local Area Network ( <a href="#">Data Distribution</a> )	A Wireless Local Area Network provides the functionality of a local area network using wireless components rather than cabling.
Wireless Local Area Network Controller ( <a href="#">Data Distribution</a> )	A Wireless Local Area Network Controller is used in conjunction with access points to create a wireless local area network.
Wireless PBX Adjunct ( <a href="#">Telephone Components</a> )	A Wireless PBX Adjunct functions in conjunction with a Private Branch Exchange to enable use of cordless telephones on an organization's premises.
Wireless Telephone Services ( <a href="#">Telephone Service</a> )	Wireless telephone services provide connection to the public switched telephone network similar to traditional phone service, but utilize portable electronic devices and radio frequencies rather than hard-wired handsets.
Workstation ( <a href="#">Ineligible Internal Connections Components</a> )	See the entry for <a href="#">Personal Computers/Workstations</a> .

# Index

- 3-Way Calling, 43
- 800 Service, 6, 38
- 900 Call Blocking, 7
- 900 Calls, 38
- 900 Service, 9
- 911, 6, 9, 38
- 976 Call Blocking, 7
- 976 Charges, 38
- 976 Service, 9
- Access Point, 18, 38
- ACD, 39
- Activation, 31
- Administration, 31, 34
- Alarm, 6
- Alarm Telephone Line, 9, 38
- Ancillary Use, 34
- Answering Machines, 25, 32
- Antennas, 19, 39, 43, 51, 56
- Anti-Virus, 25, 39
- Application Assistance, 32
- Application Software, 25, 39
- Archiving, 13, 21, 22, 25, 45
- Asbestos Removal, 25, 39
- Asynchronous Transfer Mode, 5, 39, 49
- ATM, 5, 39, 49
- Attendant Console, 22
- Automatic Call Distribution System, 25, 39
- Automatic Route Selection, 22, 39
- Basic Conduit, 12, 13, 15
- Basic Maintenance of Internal Connections, 29, 36
- Basic Maintenance Of Internal Connections, 1, 29
- Battery Backup, 18, 59
- Beeper, 53
- Bloggng, 14
- Blueprints, 44
- BRI, 5, 48
- Bridge, 19, 39
- Broadband over Power Lines, 5, 13, 40
- Broadcast "Blast" Messaging, 9, 40
- Broadcast Equipment, 40
- Broadcast Television, 25, 32, 40
- Burglar Alarm, 38
- Cabinet, 23, 55
- Cable, 17, 42
- Cable Equipment, 40
- Cable Maintenance, 29
- Cable Modem, 13, 19, 40
- Cable Services, 25
- Cable Television, 19, 25, 32, 40
- Cabling, 17, 40, 42, 43, 46, 62
- Caching, 15, 25, 40
- Call Accounting System, 25, 41
- Call Blocking, 38
- Call Detail Recording, 41, 57
- Call Forwarding, 41, 43
- Call Sequencer, 25, 41
- Call Transfer, 41
- Call Waiting, 43
- Calling Cards, 54
- Cameras, 25, 55, 60
- Cartridge Magnetic Tape, 25, 41
- CD, 25, 41, 51, 57
- CD ROM, 51
- CDR, 41, 57
- CDROM, 25, 57
- Cellular Service, 3, 6, 41, 54
- Centrex, 6, 22, 39, 41, 57
- Change Fees, 31, 42
- Children's Internet Protection Act, 3
- Circuit, 18, 42, 51, 52, 53, 54, 55
- Circuit Cards, 18, 42
- Client Access Licenses, 21, 29, 42
- Coax, 17, 51
- CODEC, 23, 42
- Coincident with Installation, 31, 32
- Collaboration Tools, 13
- Compact Disc, 41
- Components, 9, 17, 18, 19, 23, 25
- Computer Workstations, 25
- Conduit and Raceway, 17, 42
- Conferencing Services, 8, 42
- Configuration, 8, 9, 13, 14, 15, 18, 20, 23, 29, 31, 32, 45, 58
- Connectors, 17, 42
- Construction Costs, 32
- Consulting Services, 32
- Consumables, 17, 25, 42
- Content, 9, 11, 12, 15, 20, 21, 23, 25, 38, 46, 49, 61
- Content Filtering, 21

Contingency Fee, 31, 43  
Contractor Duty Station, 29  
Contractor Personnel, 32  
Copper, 17, 43  
Copper-To-Fiber Converter, 43  
Cost Allocation, 13, 17, 20, 21, 34, 35  
Cost-Effective, 13, 14, 20, 29, 31, 39, 55  
Couplers, 17, 43  
Creation Configuration, 9  
Creation of Video Content, 25  
CSU, 19, 42  
Custom Calling Services, 7, 43  
Dark fiber, 15  
Dark Fiber, 11, 12, 43  
Data Charges, 13  
Data Distribution, 18, 38, 47, 50, 52, 56, 61, 62  
Data Protection, 18, 44, 46, 50, 55, 56, 57, 58, 59, 60  
Design, 31, 32  
DHCP(Dynamic Host Configuration Protocol), 45  
Diagnostic Services, 29  
Diagrams, 44  
DID, 7, 43  
Digital Subscriber Line, 13, 43  
Digital Transmission Services, 5  
Digital Video Disc, 41  
Direct Broadcast Satellite, 9, 43  
Direct Inward Dialing, 7, 43, 57  
Direct Station Selection, 57  
Directory Advertising, 9, 44  
Directory Assistance Charges, 7, 44  
Directory Listings, 9, 44  
Disaster Recovery, 25, 44  
Distance Learning, 5, 9, 12, 15, 44, 48  
Distinctive Ring, 43  
Documentation, 23, 44  
Domain Name, 13, 20, 44, 45  
Domain Name Registration, 14  
DS-1, 5, 45  
DS-3, 5, 45  
DSL, 13, 43  
DSU, 42  
Duplicative Services, 32, 45  
DVD, 22, 41, 51  
E911, 9, 22, 38, 45  
Electrical Power, 45  
Electrical System Upgrades, 25, 45  
Eligible Users and Locations, 35  
E-Mail, 13, 20, 21, 22, 25, 44, 45, 54, 61  
E-Mail Services, 13  
Encyclopedias, 25  
End-User Equipment, 25, 54  
End-User Products, 32  
End-User Training, 32  
Engineering, 31  
Enhanced Multimedia Interface, 23  
Environmental Monitoring, 25, 46  
Faceplate Cover, 46  
Faceplates, 17  
Failover, 32  
Fax Machines, 6, 25, 46, 60, 61  
Fiber, 5, 11, 12, 13, 15, 19, 43, 46  
Fiber Coax, 17, 51  
Fiber Optics, 40, 43, 46  
File Servers, 34  
Filtering Service, 15, 46  
Finance Charges, 9, 15, 25, 32  
Fire Alarm, 38  
Firewall, 13, 18, 20, 46  
Flat Rate, 6, 46, 50, 51  
Floppy Disk Drive, 22  
Floppy Disks, 25, 57  
Fractional T-1, 5, 58  
FRAD, 19, 47  
Frame Relay, 5, 47, 53  
Freight Assurance Fees, 31  
Gateways, 19  
Gateways, 47  
Glossary, 1, 38  
GPS, 9, 13, 15  
Hard Disk Drive, 22, 47  
Homework Hotline Equipment, 47  
Homework Hotline Service, 25, 47  
Hubs, 18, 47  
Incidental Charges, 32  
Index, 1, 63  
Ineligible Components, 25, 32, 45, 57  
Ineligible Features, 35  
Ineligible Services, 9, 15  
Ineligible Telecommunications, 38, 43, 44, 56  
Infrastructure, 36  
Initial Configuration, 31, 32  
Initial Planning, 32  
Inside Wire Maintenance, 7  
Inside Wire Maintenance Plan, 48  
Installation, 5, 7, 8, 11, 14, 17, 23, 25, 31, 32, 36  
Installation Tools, 25  
Instant Messaging, 14  
Instruction, 31, 32, 44



Instructional Television Fixed Service, 32  
Integral Component, 12, 23, 25  
Integrated Services Digital Network, 5, 48  
Interactive Television, 5, 48  
Interactive White Board, 25, 48  
Intercom, 25, 48, 49, 57  
Interconnected Voice Over Internet Protocol, 3, 6, 12, 14, 48  
Interest, 32  
Interface/Edge Device, 19, 49  
Interfaces, 19, 39, 40, 42, 43, 47, 49, 51, 52, 56, 58, 59, 61  
Internal Connections, 1, 9, 17, 18, 19, 23, 25, 29, 31, 32  
Internet, 5, 12, 13, 15, 20, 40, 43, 44, 45, 46, 55, 60, 61  
Internet Access, 1, 3, 12, 13, 14, 15, 18, 19, 31, 32, 35, 36, 40, 46, 48, 49, 53, 61, 62  
Internet Content, 49  
Internet2, 5, 9, 15, 49  
Intrusion Detection/Intrusion Prevention, 25, 49  
ISDN, 5, 48, 58, 61  
ITFS, 32  
ITV, 48  
Jacks, 17  
Key System, 22, 49  
Keyboard, 20, 50  
KVM Switch, 20, 50  
Labor, 32  
LAN, 38, 50, 60, 61  
LAN Components, 36  
Laptop Computer, 25, 50  
Late Payment Fees, 32  
Lease Fees, 31  
Lightning Arrestors, 25, 50  
Limited-Access Information, 15  
Local Area Networks, 18, 47, 50, 56, 59, 62  
Local Measured Service, 6, 50  
Local Network, 42  
Local Phone Service, 3, 6, 50  
Long Distance, 3, 6, 48, 50, 51, 54  
Maintenance, 8, 9, 11, 14, 15, 29, 36, 48  
Master Control Unit, 23, 51  
Masts, 19, 51  
MCU, 51, 52  
Media Converter, 19, 51  
Memory, 18, 23, 51  
Message Rate Service, 6  
Microphones, 25  
Miscellaneous Components, 19, 42  
Miscellaneous Fees and Charges, 31  
Miscellaneous Services, 1, 8, 9, 14, 15, 23, 25, 31  
Modem, 6, 40  
Modulating Electronics, 11, 43  
Module, 21, 51, 61  
Monitor, 20, 50, 51  
Monitoring, 9, 29, 39  
Multimedia, 25, 51  
Multimedia Kits, 25  
Multiplexer, 18, 52  
Multipoint Control Unit, 23, 52  
Network Architecture, 32  
Network Interface Cards, 18, 25, 52, 59  
Network Interface Device, 19, 52  
Network Management, 29, 32, 52  
Network Switch, 18, 52  
NIC, 18, 52, 59  
Notebook Computer, 50  
Numeric Message, 53  
OC-1, 5, 52  
OC-12, 5, 52  
OC-3, 5, 52  
OC-n, 5  
Off-Site Location, 29, 56  
Online Backup Solutions, 15, 25  
On-premise Priority 1 Equipment, 36  
On-Site Technical Support, 29  
On-Site Training, 31  
Operating System, 21, 22, 25, 52  
Operating System Software, 53  
Optic Cable, 43  
Other Eligible Telecom Services, 8  
Pagers, 25, 53  
Paging Service, 6, 53  
Panels, 17  
Password-Protected Pages, 14  
Payphone, 9, 53  
PBX, 18, 22, 39, 41, 42, 45, 49, 55, 57, 59, 61, 62  
PCS, 6, 54  
PDA, 25, 54  
PDU, 54  
Per Diem, 31, 53  
Performance Bond, 32  
Permanent Virtual Circuits, 5, 53  
Personal Communications Services, 6, 54  
Personal Computers, 54

[Personal Digital Assistants, 25](#)  
[Phone Calling Cards, 6](#)  
[Phone Modems, 18, 25, 54](#)  
[Plain Old Telephone Service, 6](#)  
[Point-to-Point, 15](#)  
[POTS, 6, 38, 54](#)  
[Power Distribution Units, 25, 54](#)  
[Power Strip, 25, 54](#)  
[PRI, 5, 48](#)  
[Printers, 25, 55](#)  
[Private Branch Exchange, 22, 43, 55, 59, 62](#)  
[Processor Terminator Card, 18, 55](#)  
[Processors, 18](#)  
[Program Advice, 32](#)  
[Programming, 23, 32, 38](#)  
[Project Management, 31](#)  
[Proxy Server, 18, 20, 55](#)  
[PSAP, 38](#)  
[Public Address System, 25, 55](#)  
[Public Safety Answering Point, 38](#)  
[PVBX, 23, 55](#)  
[PVC, 5, 53](#)  
[Racks, 23, 46, 55, 62](#)  
[Radio, 19, 25, 39, 40, 41, 52, 53, 54](#)  
[Radio Loop, 6, 55](#)  
[Recorders, 25](#)  
[Redundant, 25](#)  
[Relay I/O Module, 18, 56](#)  
[Remote, 18](#)  
[Remote Access, 20](#)  
[Remote Access Components, 20, 56](#)  
[Remote Access Router, 56](#)  
[Repair and Upkeep, 29](#)  
[Reverse Directory Assistance, 9, 56](#)  
[Routers, 18, 42, 47, 49, 56, 61](#)  
[Residential Schools, 9, 35](#)  
[Satellite, 5, 19, 32, 40, 43, 56](#)  
[Satellite Television, 32](#)  
[Scheduling Service, 9](#)  
[Security Features, 55](#)  
[Security Hazards, 18](#)  
[Servers, 18, 20, 21, 22, 23, 25, 38, 40, 45, 46, 47, 50, 51, 52, 54, 55, 56, 58, 61](#)  
[Shared Telephone Service, 6](#)  
[Shipping Charges, 31, 57](#)  
[SMDR, 41, 57](#)  
[SMDS, 5, 58](#)  
[Software, 15, 20, 21, 25, 29, 32, 39, 41, 42, 46, 51, 52, 53, 56, 57, 59, 61](#)  
[Software Applications, 20, 61](#)  
[Spare Parts, 25, 57](#)  
[Speakers, 25, 51, 55, 57](#)  
[Special Construction Charges, 11](#)  
[Special Eligibility Conditions, 1, 15, 34](#)  
[Specialized Services, 15](#)  
[Speed Calling, 43](#)  
[Standby, 25](#)  
[Station Message Detail Recording, 41, 57](#)  
[Storage, 9, 20, 22, 25, 40, 41, 47, 53, 57](#)  
[Storage Media, 57](#)  
[Surcharges, 31](#)  
[Surge Protectors, 23, 25, 57](#)  
[Switch, 20](#)  
[Switch Board or Attendant Console, 57](#)  
[Switched Multimegabit Data Service, 5, 58](#)  
[System Improvements, 23, 58](#)  
[System Upgrade, 58](#)  
[T-1, 5, 13, 47, 58](#)  
[T-3, 5, 47, 58](#)  
[Tape Backup, 18, 25, 58](#)  
[Taxes, 31](#)  
[Technical Support, 8, 14, 29](#)  
[Technical Support Contracts, 29](#)  
[Technology Plans, 32](#)  
[Telecommunications, 1, 11, 12, 15, 18, 19, 36, 38, 40, 42, 49, 53, 54, 55, 59, 61](#)  
[Telecommunications Services, 1, 3, 5, 8, 9, 11, 12, 15, 31, 32, 36, 43, 47](#)  
[Telephone, 6, 7, 13, 22, 38, 39, 41, 44, 54, 58, 62](#)  
[Telephone Components, 7, 22, 41, 45, 47, 48, 49, 55, 57, 60, 61](#)  
[Telephone Features, 7](#)  
[Telephone Service, 6, 7, 22, 38, 39, 41, 43, 46, 48, 50, 51, 53, 54, 55, 62](#)  
[Telephone Service Components, 38, 43, 59](#)  
[Telephone Sets, 25, 58](#)  
[Television, 19, 25, 32, 38, 40, 43, 48, 51, 60](#)  
[Terminal Adapter, 19, 58](#)  
[Terminal Server, 20, 58](#)  
[Termination Charges, 9, 15, 25, 32, 59](#)  
[Test Equipment, 25, 32, 59](#)  
[Text Messages, 7, 45, 53, 59](#)  
[Text Paging, 53](#)  
[Toll Charges, 38](#)  
[Toll-Free, 38, 47](#)

[Tools, 32](#)  
[Towers, 19](#)  
[Training, 15, 31, 32](#)  
[Transceiver, 19, 59](#)  
[Travel Time, 31](#)  
[Trunk Lines, 5, 59](#)  
[Trunk Route, 57](#)  
[Twisted Pair, 17, 51](#)  
[Two-in-Five Rule, 17, 29, 36](#)  
[Two-Way Radios, 25, 59](#)  
[TX-to-FX, 43](#)  
[TX-To-FX, 43](#)  
[Unbundled Warranty, 29, 59](#)  
[Uninterruptible Power Supply, 18, 59](#)  
[Universal Service Fees, 31](#)  
[Upgrade, 45](#)  
[UPS, 18, 56, 59, 60](#)  
[Video, 5, 8, 9, 15, 17, 20, 23, 25, 40, 41, 42, 44, 49, 50, 51, 55, 60, 61](#)  
[Video Amplifier, 23, 60](#)  
[Video Channel Modulator, 23, 60](#)  
[Video Components, 23, 40, 42, 51, 52, 55, 60](#)  
[Video Conferencing, 8, 12, 15](#)  
[Video Encoder, 42](#)  
[Video Service, 60](#)  
[Videocassette Recorders, 25, 55, 60](#)  
[Videoconferencing Components, 12](#)  
[Virtual Private Network, 15, 18, 60](#)  
[Virtualization Software, 21, 60](#)  
[Voice Compression Module, 22, 60](#)  
[Voice Interface Card, 22, 61](#)  
[Voice Mail, 21, 22, 25, 32, 61](#)  
[Voice Mail Components, 61](#)  
[Voice Mail Service, 32, 61](#)  
[Voice Message, 53](#)  
[Voice/Fax Network Module, 19, 61](#)  
[Voice/Video over IP, 18, 61](#)  
[VoIP Telephony Equipment, 22](#)  
[VPN, 60](#)  
[WAN, 36, 62](#)  
[WAN Components, 36](#)  
[Warranty, 31](#)  
[Web Casting, 15, 61](#)  
[Web Hosting, 14, 44, 61](#)  
[Web Meetings, 12, 15](#)  
[Web Server, 20, 61](#)  
[Web site creation fee, 15, 62](#)  
[Web Site Creation Fee, 15, 62](#)  
[Webmail, 14](#)  
[Wide Area Network, 5, 13, 36, 42, 62](#)  
[Wide Area Network Infrastructure, 36](#)  
[Wire, 48, 62](#)  
[Wire Maintenance, 29](#)  
[Wire Managers, 17](#)  
[Wireless, 5, 13, 18, 22, 38, 41, 50, 54, 59, 62](#)  
[Wireless Devices, 9, 13, 15](#)  
[Wireless Internet Access, 13](#)  
[Workstations, 19, 23, 25, 47, 50, 54, 55, 58, 62](#)  
[Yellow Pages, 44](#)

## APPENDIX C

## List of Commenters

**Comments and Reply Comments in Response to the  
*E-rate Broadband Notice of Proposed Rulemaking, Eligible Services List Further Notice of Proposed Rulemaking, and the E-rate Draft Eligible Services List for Funding Year 2011***

GN Docket No. 09-51

CC Docket No. 02-6

Commenters

1. Adam Anderson
2. Alan Jamison
3. Alan Merly
4. Alexandra Ito
5. Alexis Smith
6. Allen Bordelon
7. Alvin Buerkle
8. Alyson McDonald
9. American Library Association
10. Amy Berry
11. Amy Burgin
12. Amy Ripkowski
13. Amy Schanne
14. Anchorage School District
15. Andy Arnold
16. Andy Fish
17. Andy Schwartz
18. Angela Burke
19. Angela Hallock
20. Ann Hodges
21. Anthony Machado
22. Ariel Owen
23. Arnie Unger
24. Art Collier
25. Ashley Fareno
26. AT&T, Inc.
27. Austin Arlington
28. Babylon Williams
29. Barbara Hudgens
30. Barry Zakes
31. Becky Dale
32. Benny Hendrix
33. Beth Bausher
34. Beth Kight
35. Beth Verstraete
36. Bethel Park School District
37. Beverly Thomas
38. Bill Poole
39. Blackboard, Inc.
40. Bluffs School
41. Bob Howell
42. Branch Independent School District
43. Brian Beisigl
44. Brian Groff
45. Brian Patrick
46. Brian Ricca
47. Bruce Umpstead
48. Brunswick County Schools
49. Bryan Cofer
50. Buzz Eyler
51. C. Maloof
52. California Department of Education
53. California Public Utilities Commission
54. Carol Broughton
55. Carol Foster
56. Carole Treta
57. Catherine Hamilton
58. Cathy Eredia
59. Central Heights School District
60. Charles Naas
61. Charlotte Hoya
62. Charter Communications, Inc.
63. Chesconet
64. Chester County Intermediate Unit
65. Chicago Public Schools
66. Chris Guest
67. Chris Hamilton
68. Chris Jarka
69. Chris Moddelmog
70. Chris Usrey
71. Chuck King
72. Cindy Oliver
73. Cisco Systems
74. City and County of San Francisco
75. Clearwire Corporation
76. Cleburne Independent School District

77. Cleveland School District
78. CloudED Mobility
79. Colleen Calvano
80. Colleen LaGrange
81. Connie Richardson
82. Constance Bryson
83. Conterra Ultra Broadband, LLC
84. Council of the Great City Schools
85. Craig Smith
86. Cristo Rey Network
87. CTIA - The Wireless Association
88. Cushing Independent School District
89. Cynthia Heidorn
90. Dale Savage
91. Dan Christ
92. Dan Klaber
93. Dana Horst
94. Daryl Smith
95. Dave Frick-Wright
96. David Calkins
97. David Greenberg
98. David Palme
99. David Schlossman
100. David Schothauer
101. De Ann M. Ramey
102. Debbie Compton
103. Debbie Long
104. Dee Benson
105. Dell, Inc.
106. Denise Ollestad
107. Denita Hill
108. Dennis Myhand
109. Derek Roh
110. Don Blanchard
111. Donna Seelbach
112. Dotty Gonsalves
113. Doug Evans
114. Dustin Artwohl
115. eChalk, Inc
116. Edie Rudolf
117. Edline and ePals, Inc.
118. Education & Libraries Networks Coalition
119. Educational Networks
120. Elliott Paul
121. E-Rate Management Professionals  
Association, Inc.
122. E-rate Provider Services
123. E-rate Service Providers Association
124. Eric Brunning
125. Eric Gebhart
126. Erica Stein
127. Eugenia Normand
128. Evelyn Baugh
129. Flozzy McNeal
130. Foundation for Educational Services
131. Frank Foti
132. Funds For Learning, LLC
133. Gabriel Buono
134. Gary Adams
135. Gary Massaglia
136. Generic Conferencing, LLC
137. Glen Granberry
138. Greg Godwin
139. Gregg Faith
140. Gregg Spivey
141. Heather Broome
142. Hempfield Area Schools
143. Hispanic Information and  
Telecommunications Network
144. Holliday
145. Holy Family Elementary
146. Homer Delk
147. Hugh Wilson
148. Immaculate Conception School
149. Intel Corp.
150. Internet2 K20 Initiative
151. J Wulff
152. James Conley
153. James Mason
154. James Ratchford
155. Jan Fernback
156. Jan Horning
157. Jane Hill
158. Janice Winbligler
159. Jay Bosworth
160. Jay Furmanek
161. Jay Parker
162. Jeff Burbank
163. Jeff Nicoll
164. Jennifer Blake
165. Jennifer Fogel
166. Jennifer Palioni
167. Jeremy Rhoades
168. Jerry Swadley
169. Jerry T. White
170. Jim Baker
171. Jim Galloway
172. Jim Jaskovsky
173. Jim Ochs
174. Joe Leacu
175. Joe Steele
176. Jonathan Ellis

177. Joseph Palicki
178. Joshua Pack
179. Julia Monteith
180. Julian Diaz
181. Julie Mansour
182. Julie Pierce
183. Karen DeCamp
184. Karen Guidry
185. Katarin Jurich, Ph.D.
186. Kathi Morgenstern
187. Kathy Easter
188. Kathy English
189. Kathy Fayrem
190. Kathy Ridge
191. Kathy Steinert
192. Kay Highbarger
193. Kellogg & Sovereign Consulting
194. Ken Briggs
195. Ken Korzi
196. Ken Westgate
197. Kent Dillingham
198. Keri Shofner
199. Kerri Lear
200. Kevin Welch
201. Kim Goodrich
202. Kimberly Couch
203. Kimberly Friends, CSM, Inc.
204. Kimberly Rupert
205. Kirsten McClendon
206. Kristi Rice
207. Kristin DeProspero
208. Kurt Gwin
209. Kyle Menchhofer
210. Kyle Zorzi
211. Lance Lennon
212. Landon Scism
213. Larry Smith
214. Lee Ann Wentzel
215. Linda Adams
216. Linda Howard
217. Lisa Petzinger
218. Loretta Dale
219. Lori Hewling
220. Lori Leugers
221. Lori Paup
222. Lori Wells
223. Lowell Shira
224. Lylia King
225. Lynette H. Duhamell
226. M.K. Beedle
227. Marge Schmierer
228. Marie Tada
229. Mark Jacquinet
230. Mark Knaack
231. Mark McMurray
232. Mark Pingry
233. Marlboro County School District
234. Martha Ann Rabon
235. Mary Jo Peters
236. Mary Kammeyer
237. Mary Mehsikomer
238. Mary Meinardus
239. Melissa Jensen
240. Meritte Threadgill
241. Merri Larson
242. Michael D Williams
243. Michael Lmpson
244. Michael Nace
245. Michael Owens
246. Michael Roberts
247. Michael Roth
248. Michael Shrontz
249. Michele Crowley
250. Michele White
251. Mike Asbury
252. Mike Cale
253. Mike Ingram
254. Mike Oswald
255. Mike Parchman
256. Mike Sanders
257. Mitch Thompson
258. Mollie McLeod
259. Motorola, Inc.
260. Nadine Smith, Rock Hills Supt
261. Nancy von Langen-Scott
262. National Cable & Telecommunications Association
263. National Hispanic Media Coalition
264. National LambdaRail, Inc.
265. National Telecommunications Cooperative Association
266. NATOA, NACo, New America Found.
267. New York City Dept of Education
268. New York State Education Department
269. New York State Office of Children & Family Services
270. Noelle Ellerson
271. Norma Guerra
272. North Carolina Department of Public Instruction
273. Ohio E-Rate Consortium
274. Olumide Adebo

- 
275. One Economy Corporation  
276. One Ministries, Inc  
277. Our Lady of Grace School  
278. Patricia Palmer  
279. Patricia Rabalais  
280. Patti Balon  
281. Paul Thomas  
282. Paul Zeller  
283. Paula Raulerson  
284. Peg Fisher  
285. Penny Chennell  
286. Phil Carolan  
287. Philip B Gieseler  
288. Phyllis David  
289. Pittsburgh Public Schools  
290. Public Broadcasting Service (PBS)  
291. Qualcomm Incorporated  
292. Qwest Communications International, Inc.  
293. R&E Network Community  
294. Rachel Hathhorn  
295. Rami Hamadeh  
296. Rebecca B. Comer  
297. Rebecca Davis  
298. Reggie Clinton  
299. Renita Heideman  
300. Richard Clark /President  
301. Richard Kojis  
302. Richmond Public Library  
303. Rita Whitaker  
304. Rob Frierson  
305. Robert Birdsell - President - Cristo Rey  
Network  
306. Robert Costley  
307. Robert Lucas  
308. Robert Normand  
309. Robert Strugala  
310. Robert Walton  
311. Roger Schnitzler  
312. Ron Mayfield  
313. Ron Swanberg  
314. Ronny Murray  
315. Rosemary Karcher  
316. Roy Cockerham  
317. Ruth Allen  
318. Samuel Platt  
319. San Diego County Office of Education  
320. Sandra Braa  
321. Sara Sarensen, Lake County ESD  
322. Schoolwires, Inc.  
323. Scott Hand  
324. Shana Covell  
325. Shari Wildman  
326. Shaun Ford  
327. Sheldon K. Smith, Ed. D.  
328. Show Low School District  
329. Schools, Health, and Libraries Broadband  
Coalition  
330. Sister June Favata  
331. Sonny Portacio  
332. South Carolina Telephone Coalition  
333. Sprint Nextel Corporation  
334. St. John's Catholic Schools  
335. Stacie Lowe  
336. Stacy Fees  
337. Stan Winbourne  
338. State Consortium Group  
339. State E-rate Coordinators Alliance  
340. Stephanie Snyder  
341. Steve Jarrett  
342. Steve Woloszyn  
343. Steven Howe  
344. Suellen Brazil  
345. Sunesys, LLC  
346. Susan Lynch  
347. Suzanne Chachere  
348. Synovia Corporation  
349. Tamar Sydney-Gens  
350. Tammy McLane  
351. Tammy Merritt  
352. Tazewell County Schools  
353. Butte Falls School District  
354. Ted Dubsy  
355. Teri Wing  
356. Terry Sue Fanning  
357. Texas Education Telecommunications  
Network  
358. Theresa Jamison  
359. Thomas Casey  
360. Tom Steele  
361. Tracy Rich  
362. Twanda Banks  
363. United School District 273  
364. United School District 325  
365. United School District 379  
366. United School District 429  
367. United States Cellular Corporation  
368. Utah Education Network  
369. State of Alaska  
370. Verizon and Verizon Wireless  
371. Victor Coleman  
372. Vincent Vanier  
373. Westmoreland Intermediate Unit #7

- |   |                    |
|---|--------------------|
| 374. West Virginia Department of Education        | Instruction        |
| 375. White Settlement Independent School District | 379. Xavier Gillon |
| 376. Wilda Stanfield                              |                    |
| 377. William Seus                                 |                    |
| 378. Wisconsin Department of Public               |                    |

**Reply Commenters**

1. American Library Association
2. AT&T, Inc.
3. Benton Foundation
4. Blackboard, Inc.
5. California Department of Education
6. California K-12 High Speed Network
7. CenturyLink
8. Cisco Systems, Inc.
9. City and County of San Francisco
10. Clark County School District
11. Communications Workers of America
12. Computers for Youth Foundation, Inc.
13. Council of the Great City Schools
14. CTIA - The Wireless Association
15. Edline and ePals
16. E-Rate Consultants, LLC
17. Hartford Public Schools and Hartford Public Library
18. Hispanic Information and Telecommunications Network, Inc.
19. Internet2 K20 Initiative
20. Montgomery County Public Schools
21. NATOA, NACo, New America Foundation
22. Nevesem, Inc.
23. Norlight Telecommunications, Inc.
24. Philip B. Gieseler
25. Qualcomm Incorporated
26. Qwest
27. West Virginia Department of Education



**Comments and Reply Comments in Response to the  
*E-rate Community Use NPRM***

**CC Dkt No. 02-6**

**Commenters**

1. Education and Libraries Networks Coalition
2. Massachusetts Department of Telecommunications and Cable
3. National Association of State Utility Consumer Advocates
4. Sprint Nextel Corporation
5. State E-rate Coordinators' Alliance
6. Verizon and Verizon Wireless

**Reply Commenters**

1. California Public Utilities Commission
2. Communities Connect Network
3. National Association of State Utility Consumer Advocates
4. State E-Rate Coordinators' Alliance
5. Stephen Ronan

## APPENDIX D

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules considered in the *E-rate Broadband NPRM* in CC Docket No. 02-6 and GN Docket No. 09-51.<sup>2</sup> The Commission sought written public comment on the proposals in the *E-rate Broadband NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

**A. Need for, and Objectives of, the Report and Order**

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.<sup>3</sup> On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.<sup>4</sup> Specifically, under the schools and libraries universal service support mechanism, also known as the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.<sup>5</sup>

3. The National Broadband Plan (NBP), issued on March 16, 2010, recommended that the Commission take a fresh look at the E-rate program and identify potential improvements to reflect changes in technology and evolving teaching methods used by schools.<sup>6</sup> In May 2010, the Commission issued a Notice of Proposed Rulemaking seeking public comment on proposals to ensure that the E-rate program continues to help our children and communities prepare for the high-skilled jobs of the future and reap the full benefits of the Internet.<sup>7</sup> In this Report and Order, the Commission adopts a number of the proposals put forward in the *E-rate Broadband NPRM*.<sup>8</sup>

4. The revisions adopted by the Commission in the Report and Order fall into three conceptual categories. First, the Commission enables schools and libraries to better serve students, teachers, librarians, and their communities by providing more flexibility to select and make available the most cost-effective broadband and other communications services. Specifically, the Commission allows applicants to lease fiber from the most cost-effective provider, including not-for-profit entities, so that applicants can choose the services that best meet their needs from a broad set of competitive options and in the most cost-effective manner available in the marketplace. It also changes the rules to permit schools

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking, 25 FCC Rcd 6872 (2010) (*E-rate Broadband NPRM*).

<sup>3</sup> See 47 U.S.C. § 254 *passim*.

<sup>4</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9006-9008, paras. 431-434 (1997).

<sup>5</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>6</sup> 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](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf) (last visited Sept. 20, 2010).

<sup>7</sup> See *E-rate Broadband NPRM*, 25 FCC Rcd at 6872.

<sup>8</sup> *Id.*

to allow community use of E-rate funded services outside of school hours and supports broadband connections to the residential portion of schools that serve students with special circumstances. The Commission further indexes E-rate's funding cap to inflation to preserve the purchasing power of a successful program. Additionally, the Commission seeks proposals for a limited pilot program to establish best practices to support off-campus wireless connectivity for portable learning devices outside of regular school or library operating hours. Second, the Commission simplifies and streamlines the E-rate application process by removing the technology plan requirement for priority one telecommunications and Internet access services, and facilitating the disposal and recycling of obsolete equipment supported by E-rate by authorizing schools and libraries to receive consideration for such equipment. Third, the Commission improves safeguards against waste, fraud, and abuse by codifying the requirement that competitive bidding processes be fair and open. In addition, the Commission adopts the eligible services list for funding year 2011.<sup>9</sup>

5. As a result of these changes, schools and libraries throughout the country can make their limited dollars go further. The changes adopted in this Report and Order will increase the ability of students and the public to utilize broadband services for educational needs. In addition, the changes to simplify the E-rate program will help reduce the cost of participating in the program, thereby making the program more accessible, particularly to smaller school districts and libraries that are often located in more rural areas and may not have staff dedicated to managing E-rate applications and related activities.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

6. No comments specifically addressed the IRFA.

**C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply**

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>10</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>11</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>12</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>13</sup> Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>14</sup> A

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<sup>9</sup> See *Wireline Competition Bureau Announces Comment Deadlines on E-rate Broadband Notice of Proposed Rulemaking, Eligible Services List Further Notice of Proposed Rulemaking, and on E-rate Draft Eligible Services List For Funding Year 2011*, CC Docket No. 02-6, GN Docket No. 09-51, Public Notice, 25 FCC Red 7317 (Wireline Comp. Bur. 2010).

<sup>10</sup> 5 U.S.C. § 603(b)(3).

<sup>11</sup> 5 U.S.C. § 601(6).

<sup>12</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>13</sup> Small Business Act, 15 U.S.C. § 632.

<sup>14</sup> See SBA, Office of Advocacy, "Frequently Asked Questions," <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (revised Sept. 2009).

“small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>15</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>16</sup> 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.”<sup>17</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>18</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>19</sup> 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.<sup>20</sup>

#### **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.”<sup>21</sup> 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.<sup>22</sup> For-profit schools, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program.<sup>23</sup> Certain other restrictive definitions apply as well.<sup>24</sup> The SBA has also defined for-profit, elementary and secondary schools having \$7 million or less in annual receipts as small entities.<sup>25</sup> 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

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<sup>15</sup> 5 U.S.C. § 601(4).

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

<sup>17</sup> 5 U.S.C. § 601(5).

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

<sup>19</sup> 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.*

<sup>20</sup> 47 C.F.R. §§ 54.502, 54.503, 54.517(b).

<sup>21</sup> 47 C.F.R. § 54.500(c).

<sup>22</sup> 47 C.F.R. § 54.500(k).

<sup>23</sup> 47 C.F.R. § 54.501.

<sup>24</sup> *See id.*

<sup>25</sup> 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.<sup>26</sup> According to Commission data, 1,311 incumbent carriers reported that they were engaged in the provision of local exchange services.<sup>27</sup> Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees.<sup>28</sup> 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.”<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.<sup>32</sup> According to the Commission’s *2008 Trends Report*, 300 companies reported that they were engaged in the provision of interexchange services.<sup>33</sup> Of these 300 IXCs, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees.<sup>34</sup> 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.<sup>35</sup> This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.<sup>36</sup> According to the *2008 Trends Report*, 1,005 CAPs and competitive local exchange carriers

<sup>26</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>27</sup> 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).

<sup>28</sup> *Id.*

<sup>29</sup> 5 U.S.C. § 601(3).

<sup>30</sup> 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).

<sup>31</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>32</sup> *Id.*

<sup>33</sup> *2008 Trends Report*, Table 5.3, page 5-5.

<sup>34</sup> *Id.*

<sup>35</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>36</sup> *Id.*

(competitive LECs) reported that they were engaged in the provision of competitive local exchange services.<sup>37</sup> Of these 1,005 CAPs and competitive LECs, an estimated 918 have 1,500 or few employees and 87 have more than 1,500 employees.<sup>38</sup> 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.<sup>39</sup> Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”<sup>40</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>41</sup> 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.<sup>42</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>43</sup> 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.<sup>44</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>45</sup> 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).<sup>46</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>47</sup> According to the *2008 Trends Report*, 434 carriers reported that they were engaged in wireless telephony.<sup>48</sup> Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.<sup>49</sup> We have

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<sup>37</sup> *2008 Trends Report*, Table 5.3, page 5-5.

<sup>38</sup> *Id.*

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

<sup>40</sup> 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>.

<sup>41</sup> 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).

<sup>42</sup> 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).

<sup>43</sup> *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.”

<sup>44</sup> 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).

<sup>45</sup> *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.”

<sup>46</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>47</sup> *Id.*

<sup>48</sup> “Trends in Telephone Service” at Table 5.3.

<sup>49</sup> “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).<sup>50</sup> Prior to that time, such firms were within the now-superseded category of “Paging.”<sup>51</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>52</sup> 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.<sup>53</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> The SBA has approved this definition.<sup>57</sup> An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>58</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>59</sup> 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.<sup>60</sup> 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

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

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

<sup>52</sup> 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).

<sup>53</sup> 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).

<sup>54</sup> *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.”

<sup>55</sup> *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).

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

<sup>57</sup> 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*”).

<sup>58</sup> See “*929 and 931 MHz Paging Auction Closes*,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>59</sup> See *id.*

<sup>60</sup> See “*Lower and Upper Paging Band Auction Closes*,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

very small business status won 2,093 licenses.<sup>61</sup>

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.<sup>62</sup> Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>63</sup> 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,<sup>64</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>65</sup> The latter are within the category of All Other Telecommunications,<sup>66</sup> which has a size standard of annual receipts of \$25 million or less.<sup>67</sup> The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup> 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

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<sup>61</sup> 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.

<sup>62</sup> “Trends in Telephone Service” at Table 5.3.

<sup>63</sup> “Trends in Telephone Service” at Table 5.3.

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

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

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

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

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

<sup>69</sup> 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).

<sup>70</sup> 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.”<sup>71</sup> The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees.<sup>72</sup> According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year.<sup>73</sup> Of this total, 511 had employment of under 1,000, and an additional seven had employment of 1,000 to 2,499.<sup>74</sup> 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.”<sup>75</sup> The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.<sup>76</sup> According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.<sup>77</sup> Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.<sup>78</sup> 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

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

<sup>72</sup> 13 C.F.R. § 121.201, NAICS code 334210.

<sup>73</sup> 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.

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

<sup>75</sup> 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>.

<sup>76</sup> 13 C.F.R. § 121.201, NAICS code 334220.

<sup>77</sup> 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.

<sup>78</sup> *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).”<sup>79</sup> The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.<sup>80</sup> According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.<sup>81</sup> Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999.<sup>82</sup> 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.<sup>83</sup> 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)<sup>84</sup> and adequately protects against waste, fraud, and abuse;

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

<sup>80</sup> 13 C.F.R. § 121.201, NAICS code 334290.

<sup>81</sup> 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.

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

<sup>83</sup> See *E-rate Broadband Report and Order*, paras. 40-49.

<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup>

25. In this Report and Order, as detailed above,<sup>87</sup> 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.<sup>88</sup> 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.<sup>89</sup> 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*.<sup>90</sup>

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<sup>85</sup> See *E-rate Broadband Report and Order*, para. 114.

<sup>86</sup> See 5 U.S.C. § 603(c).

<sup>87</sup> See FRFA, para. 4.

<sup>88</sup> See *E-rate Broadband NPRM*.

<sup>89</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>90</sup> 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 21<sup>st</sup> 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 21<sup>st</sup> 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.<sup>426</sup>

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

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<sup>426</sup> 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.<sup>427</sup> 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

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<sup>427</sup> *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.