

Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

*Information Repositories:* Repositories have been established to provide detailed information concerning this decision at the following address: EPA Region V Library, 77 W. Jackson, Chicago, IL 60604, (312) 353-5821, Monday through Friday 8:00 a.m. to 4:00 p.m.; the Minnesota Pollution Control Agency, 520 Lafayette Rd. North, St. Paul, Minnesota 55155-4194, (651) 296-6300, Monday through Friday 8:00 a.m. to 4:30 p.m.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: January 31, 2002.

**David A. Ullrich,**

*Acting Regional Administrator, Region V.*  
[FR Doc. 02-3654 Filed 2-15-02; 8:45 am]

**BILLING CODE 6560-50-P**

---

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 02-6, FCC 02-8]

#### Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission initiates a focused review of certain Commission rules governing the schools and libraries universal service support mechanism. The Commission initiates this review to ensure the continued efficient and effective implementation of Congress's goals as established in the statute, and to explore a variety of suggestions for improvement offered by schools and libraries, service providers, state and local governments, and other interested parties.

**DATES:** Comments are due on or before April 5, 2002. Reply comments are due on or before May 6, 2002. Written

comments by the public on the proposed information collections are due April 5, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before April 22, 2002.

**ADDRESSES:** All filings sent by U.S. regular, Express or Priority mail must be sent to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Hand-delivered or messenger-delivered paper filings for the Commission's Acting Secretary should be delivered to Vistronix at 236 Massachusetts Ave., NE., Suite 110, Washington, DC 20002 (8:00 a.m. to 5:30 p.m.). Other messenger-delivered or overnight mail documents (other than USPS Express and Priority Mail) must be delivered to 9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.). In addition, parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5-B540, Washington, DC 20554, or hand delivered to Sheryl Todd at 236 Massachusetts Ave., NE., Suite 110, Washington, DC 20002. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 02-6), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on diskette. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to [jthornto@omb.eop.gov](mailto:jthornto@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Jonathan Secrest, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400. For additional information concerning the information

collection(s) contained in this document, contact Judy Boley at 202-418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 02-6 released on January 25, 2002. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC, 20554.

This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

#### Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**OMB Control Number:** None.

**Title:** Schools and Libraries Universal Service Support Mechanism, CC Docket 02-6, NPRM, Proposed ADA Certification.

**Form No.:** N/A.

**Type of Review:** Proposed Collection.

**Respondents:** Not for Profit Institutions; Business or other for Profit.

Title	Number of respondents	Estimated time per response	Total annual burden (hours)
ADA Certification .....	30,000 .....	1 minute (.02) .....	600
Computerized List of Eligible Products and Services .....	30,000 .....	1 minute (.02) .....	600

*Total Annual Burden:* 1,200 hours.  
*Cost to Respondents:* \$0.

*Needs and Uses:* In this NPRM, the Commission is seeking comment on certain rules governing the schools and libraries universal service support mechanism. The Commission goals in the proceeding are to: (1) Consider changes that would fine-tune its rules to improve program operation; (2) ensure that the benefits of the universal service support mechanism for schools and libraries are distributed in a manner that is fair and equitable; and (3) improve its oversight over the program. Among other things, affected respondents may be required to certify to compliance with the Americans with Disabilities Act and related statutes. The NPRM solicits comment on whether the Commission should establish a computerized list accessible online, whereby applicants could select specific project or service as part of their FCC Form 471 application. The information will be used to ensure that schools and libraries are eligible to receive discounted Internet access, telecommunications services, and internal connections and that they are in compliance with the requirements of the ADA and related statutes.

**I. Introduction**

1. In this Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (Commission) initiates a focused review of certain rules governing the schools and libraries universal service support mechanism. The Commission initiates this review to ensure the continued efficient and effective implementation of Congress’s goals as established in the statute, and to explore a variety of suggestions for improvement offered by schools and libraries, service providers, state and local governments, and other interested parties.

2. The Commission implemented the schools and libraries universal service support mechanism based on the requirement in the Telecommunications Act of 1996 (1996 Act) that “[a]ll telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide

such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties.” The schools and libraries community and the participating service providers have now had four years of experience with the program. As of July 2001, the Universal Service Administrative Company (USAC or the Administrator) had committed over \$5.958 billion in funds for the first three funding years. Over this period, the schools and libraries mechanism has provided discounts enabling millions of school children and library patrons, including those in many of the nation’s poorest and most isolated communities, to obtain access to modern telecommunications and information services for educational purposes, consistent with the statute.

3. During the last four years, numerous parties, including schools and libraries, service providers, and representatives of local and state governments, have approached the Commission with a variety of proposals that they believe will improve the program. In this proceeding, we present those ideas for public comment in order to explore whether these ideas, as well as any additional ideas presented by the public, will help to achieve our stated goals. The Commission continues to seek ways to ensure that the program funds are utilized in an efficient, effective, and fair manner, while preventing waste, fraud, and abuse. The Commission concludes that it is appropriate at this time to ask whether the various suggestions from the public will streamline and improve the program in a manner consistent with section 254. We determine that it is appropriate to review the overall program by reaching out to the constituents of the program and other interested parties for their input. The Commission seeks comment from USAC on the operational and administrative impact of possible changes discussed in this NPRM. The Commission also encourages input from the State members of the Federal-State Joint Board on Universal Service (Joint Board), and commit to ongoing informal

consultations with the Joint Board on these issues.

4. Our goals in undertaking this proceeding, consistent with the statute, are three-fold: (1) To consider changes that would fine-tune our rules to improve program operation; (2) to ensure that the benefits of this universal service support mechanism for schools and libraries are distributed in a manner that is fair and equitable; and (3) to improve our oversight over this program to ensure that the goals of section 254 are met without waste, fraud, or abuse. The Commission intends to build on the solid foundation we have established.

5. With these goals in mind, in this NPRM, the Commission seeks comment on several changes to the schools and libraries universal service support mechanism. First, with respect to the application process, we seek comment on (1) issues related to the process for determining eligible services, and the eligibility for schools and libraries universal service support of such services as Wide Area Networks, wireless services, and voice mail; (2) permitting schools and libraries to receive discounts for Internet access that may in certain limited cases contain content, as long as it is the most cost-effective form of Internet access; (3) the 30 percent processing benchmark for reviewing funding requests that include both eligible and ineligible services; (4) whether to require a certification by schools and libraries acknowledging their compliance with the requirements of the Americans With Disabilities Act and related statutes; and (5) modifying our rule governing when members of a consortium may receive service from a tariffed service provider at below-tariff rates.

6. Second, the Commission also seeks comment on several issues that arise once discounts have been committed to applicants: (1) Providing schools and libraries the flexibility either to make up-front payments for services and receive reimbursement via the Billed Entity Applicant Reimbursement (BEAR) form process, or be charged only the non-discounted cost by the service providers, and require that service providers remit BEAR reimbursements to applicants within twenty days; (2) limiting transferability of equipment

obtained with universal service discounts; and (3) allowing members of rural remote communities to use excess capacity from services obtained through the universal service support mechanism in certain limited situations.

7. Third, with respect to the appeals process, the Commission seeks comment on increasing time limits for filing appeals to 60 days, and considering appeals filed as of the day they are post-marked, and on procedures for funding successful appeals. Fourth, we seek comment on measures to strengthen our existing enforcement tools, including adopting a rule explicitly authorizing independent audits, and barring from the program certain applicants, service providers, and others that engage in willful or repeated failure to comply with program rules. Fifth, on the issue of unused program funds, the Commission seeks comment on the reasons for unused funds, and on how the Commission should treat unused funds. We also deny certain petitions for reconsideration relating to unused funds, and seek comment on revising or eliminating outmoded administrative or procedural rules or policies relating to the schools and libraries universal service support mechanism.

## II. Notice of Proposed Rule Making

8. By initiating this inquiry, the Commission seeks to further three goals. First, the Commission seeks to streamline and improve the program. Second, we seek to ensure fair and equitable distribution of funds. Third, we seek to protect the schools and libraries mechanism against waste, fraud, and abuse consistent with our goals. In the discussion that follows, the Commission seeks comment on ways in which these goals may be achieved through specific changes to various stages of the application and funding process. The Commission frames the discussion in the context of the yearly program cycle to help commenters understand the changes to the program on which we seek comment. At each stage of the process, the Commission invites parties to address whether and how our specific goals can be met by the changes discussed and to suggest other ways to further these goals.

### A. Application Process

#### 1. Eligible Services

9. Applicants under the universal service discount mechanism for schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections. The Commission currently

directs the Administrator to determine whether particular services fall within the eligibility criteria established under the 1996 Act and the Commission's rules and policies. The Administrator evaluates, on an on-going basis, particular services offered by service providers, and determines their eligibility. In order to provide applicants with general guidance, the Administrator makes available on its website a list of categories of service that are eligible or ineligible, though not specific brands or items. Applicants or service providers can appeal a determination by the Administrator that a given service is ineligible for discounts only after a requested service is rejected. Accordingly, in this section, the Commission seeks comment on changes in the application process that relate to eligible services and that will serve to improve program operation and our oversight of the program. The Commission emphasizes that, in this section of the NPRM, we seek comment on changes to eligible services only as they relate to applications under the universal service support mechanism for schools and libraries.

10. Many parties, including schools and libraries as well as service providers, have recommended that the Commission seeks comment on the efficiency and fairness of this process for determining the eligibility of particular products and services. In response, we invite parties to submit proposals for changes that will improve the operation of the eligibility determination process in terms of efficiency, predictability, flexibility, and administrative cost. The Commission notes that GAO has recommended that the Administrator implement stronger measures to ensure that applicants receive funding only for eligible services, and that the Administrator has already implemented changes in response to that recommendation. One possible alternative approach that has been suggested would be to establish a computerized list accessible online, whereby applicants could select the specific product or service as part of their FCC Form 471 application. Because applicants would only select from pre-approved products and services, this presumably would decrease the number of instances in which applicants seek funding for ineligible services. It has also been suggested that such a process would considerably simplify the application review process. Further, by helping to avoid accidental funding of ineligible services, it would further the Commission's goal of preventing fraud

and abuse. We seek comment on whether this approach is desired, consistent with our goals, and on the feasibility of such a system. We seek comment on how often such a list would be updated. We also seek comment on how we could ensure that maintaining such a list does not inadvertently limit applicants' ability to take advantage of products and services newly introduced to the marketplace. In addition, we seek comment on how interested parties could best provide input to the Administrator on an ongoing basis regarding what specific products and services should be eligible. Additionally, we seek comment on how to handle services and equipment that are eligible only if used in certain ways.

11. The Commission seeks comment on whether we need to reconsider or modify the current selection of products and services eligible for support under the schools and libraries mechanism. In particular, the Commission seeks comment on whether the mechanism could be improved by changes in our current eligibility policies regarding (a) Wide Area Networks, (b) wireless services, and (c) voice mail.

12. The Commission seeks comment on whether to change our current policy, as set forth in our rules and decisions, regarding Wide Area Networks (WANs). In the Commission's *Fourth Order on Reconsideration*, 63 FR 2094 (December 30, 1997), the Commission concluded that the building and purchasing of WANs to provide telecommunications is not eligible for discounts. The Commission first concluded that the building and purchasing of WANs themselves does not constitute telecommunications services or internal connections. The Commission further found that WANs built and purchased by schools and libraries do not appear to fall within the narrow provision that allows support for access to the Internet because WANs provide broad-based telecommunications. The Commission noted, however, that schools and libraries may receive universal service discounts on WANs provided over leased telephone lines, because such an arrangement constitutes a telecommunications service.

13. In the Commission's *Tennessee Order*, (not published in **Federal Register**) the Commission established that universal service funds may be used to fund equipment and infrastructure build-out associated with the provision of eligible services to eligible schools and libraries. The Commission subsequently affirmed this principle in the *Brooklyn Order*, (not

published in **Federal Register**) but expressed its concern that “by authorizing unrestricted up-front payments for multiple years of telecommunications service when there is significant infrastructure build-out, [the Commission] could create a critical drain upon the universal service fund, and reach the annual spending caps quickly.” In attempting to strike a fair and reasonable balance between the desire not to unnecessarily drain available universal service funds by committing large amounts annually to a limited number of applicants, and the desire to ensure that eligible schools and libraries receive supported services, the Commission determined that recipients may receive discounts on the non-recurring charges associated with capital investment in an amount equal to the investment prorated equally over a term of at least three years.

14. Certain state government representatives have suggested that we reconsider whether our policies regarding WANs have resulted in an efficient use of program funds, and, in particular, whether providing discounts on the cost of telecommunications service utilizing WANs has indeed caused a “critical drain” on program resources. Leased WAN service is, under our rules, a Priority One service. The costs of leasing WANs therefore decreases funds available for other Priority One services. The Commission seeks comment on the effectiveness and fairness of our WAN policy, and on whether other policies could result in a more equitable distribution of discounts in the program.

15. One possible approach would be to increase the three-year period of time over which WAN-related capital expenses must be recovered through telecommunications service charges, so that the annual burden on available program funds is reduced. The Commission seeks comment on this and other possible approaches.

16. Similarly, the Commission seeks comment on whether our decision in the *Tennessee Order* to consider leased WANs as a Priority One service has led to a fair and equitable distribution of funds. Some parties have suggested that the marked increase in demand for Priority One services arises from applicants leasing equipment from telecommunications providers for which they are likely to receive discounts rather than purchasing the equipment as internal connections, which have a high likelihood of not being funded under the current priority rules. The Commission seeks comment on whether a change in our approach to WAN-related expenses is warranted by

this increase in demand, and if so, what changes consistent with the statutory restrictions of section 254 of the Act should be adopted to meet the program’s goals of improved operation, a fair and equitable distribution of funds, and effective oversight to prevent waste, fraud and abuse.

17. As wireless service has become more commonplace, we have received numerous recommendations that we reconsider our policies regarding the eligibility of wireless services. Wireless telephone service, for example, is not currently eligible when used by school bus drivers or other non-teaching staff of a school, including security personnel, because we have interpreted the statutory requirement that universal service discounts be provided only for “educational purposes” to exclude use by such support staff. We seek comment on whether broadening eligibility for wireless services under the schools and libraries mechanism, consistent with the statute, would improve the application review process and whether it would increase opportunities for fraud and abuse. In addition, in light of changing wireless technologies, the Commission seeks comment on whether we need to modify any rules or policies regarding the eligibility of wireless services for support under the schools and libraries mechanism so that distribution of funds is consistent with our principle of competitive neutrality and does not favor wireline technology over wireless technology.

18. Many parties have recommended that the Commission reconsider its initial determination regarding the eligibility of voice mail for support under the schools and libraries mechanism. In the *Universal Service Order*, 62 FR 32862 (June 17, 1997), the Commission determined that voice mail would not “at [that] time” be eligible, based, in part, on the recommendation of the Federal-State Joint Board on Universal Service that such information services not be eligible. The increasing need for, and prevalence of, voice mail as a way of communicating with school and library staff for educational purposes raises the issue of whether voice mail, which serves a similar purpose as email (which is eligible for support under the schools and libraries mechanism), should also be eligible. The Commission also notes that making voice mail eligible may streamline the application review process, by reducing administrative effort and costs associated with determining what portion of a school or library’s telecommunications costs are related to voice mail, and ensuring that the school or library does not receive discounts for

those costs. Accordingly, the Commission seeks comment on whether a change in voice mail eligibility would improve the operation of the program or otherwise further our goals of preventing fraud, waste and abuse and promoting the fair and equitable distribution of the program’s benefits.

## 2. Discounts for Internet Access When Bundled With Content

19. In the *Universal Service Order*, the Commission concluded that schools and libraries may receive discounts on access to the Internet, but not on separate charges for particular proprietary content or other information services. The Commission held that if it is more cost-effective for a school or library to purchase Internet access provided by a telecommunications carrier that bundles a minimal amount of content with such Internet access, a school or library may obtain discounts on that bundled package. If the telecommunications carrier provides bundled Internet access with proprietary content to a school or library, and also offers content separate from Internet access, the school or library may only obtain discounts on the price of the Internet access, as determined by the price of the bundled access and content less the price of the separately-priced content. Thus, if the only Internet access a provider offers is bundled with content for a total of \$50.00 per month, and that provider sells the content separately for \$30.00 per month, a school or library purchasing the bundled package would currently be eligible for discounts on \$20.00 per month.

20. Various affected applicants have suggested, both to us and to the Administrator, that Internet access that includes content from one provider may provide more cost-effective access to the Internet than another provider’s Internet access containing minimal or no content. For example, an applicant may receive bids for Internet access from two providers, each offering service at \$50.00 a month. One provider offers access and content bundled together, and separately offers content alone for \$30.00, while the second provider just offers Internet access. An applicant might find that the bundled access and content may provide more cost-effective Internet access when considering cost, reliability, and other factors than Internet access without content from the other provider. Under our current rules, a recipient would be eligible for discounts on only \$20.00 per month for the package of access and content, but could obtain discounts on the full \$50.00 for Internet access without

content from the second provider. In such a case, our rules may create undesirable incentives for an applicant to choose a provider with a similar price but poorer service and reliability.

21. The Commission seeks comment on whether a modification of our rules governing funding of Internet content would improve program operation consistent with our other goals of ensuring a fair and equitable distribution of benefits and preventing waste, fraud and abuse. Specifically, we seek comment on whether, if the only Internet access a provider offers is bundled with content but the provider also offers the content separately without Internet access, an applicant may receive full discounts on that Internet access package (including content) if that package provides the most cost-effective Internet access. Such a modification to our rules may also increase administrative efficiencies, for both applicants and the Administrator, by eliminating effort and costs associated with ensuring that applicants receive no discounts for bundled content. The Commission seek input on the costs and benefits of such a change, including whether providers might take advantage of this approach by adding content to Internet access in order to maximize revenues. We also seek comment on whether, in keeping with our current rules, universal service discounts would continue to be available for a provider only for the cost of access without content, if a service provider offers Internet access to consumers both with and without content.

### 3. Review of Requests Including Eligible and Non-Eligible Services

22. Currently, acting pursuant to Commission oversight, the Administrator utilizes a 30 percent processing benchmark when reviewing funding requests that include both eligible and ineligible services. If less than 30 percent of the request seeks funding of ineligible services, the Administrator normally will consider the request and issue a funding commitment for the eligible services, denying funding only of the ineligible part. If 30 percent or more of the request is for funding of ineligible services, the Administrator will deny the funding request in its entirety. The 30 percent policy allows the Administrator to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants to determine what part of the discounts requested is associated with eligible services. It also provides an

incentive to applicants to eliminate ineligible services from their requests before submitting their applications, further reducing the Administrator's administrative costs. For example, without the procedure, an applicant who has contracted for the construction of a new school for a lump sum might submit a request for the entire amount knowing that the Administrator must then perform the necessary work to identify the costs of any eligible components, such as the telecommunications wiring. Because the Administrator's annual administrative costs are drawn from the same \$2.25 billion that supports the award of discounts, an increase in the administrative costs of eligibility review would directly reduce the amount of funds available for actual discounts.

23. The Commission seeks comment on the operational benefits and burdens of this procedure to applicants and to the Administrator. We specifically seek input on whether there are alternatives that would improve program operation or otherwise further the other two goals of preventing fraud, waste, and abuse and promoting the equitable distribution of the program's funds, while still providing appropriate incentives to applicants to seek discounts only for eligible services.

### 4. Compliance With the Americans With Disabilities Act

24. The Americans With Disabilities Act (ADA) provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. Related statutes, which are referenced by the ADA, include the Rehabilitation Act of 1973, and the Individuals with Disabilities Education Act. The current FCC Form 471, on which entities apply for universal service discounts, contains the following notice: "The Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act, and the Rehabilitation Act may impose obligations on entities to make the services purchased with these discounts accessible to and usable by people with disabilities." The Commission does not, however, explicitly require compliance with these statutory requirements as a condition of receipt of universal service discounts.

25. Some parties have suggested that the Commission require applicants to certify that the services for which they seek discounts will be used in compliance with these acts. The Commission seeks comment on whether we should adopt such a certification

requirement. In commenting on such a change, parties should comment on the language of any ADA certification, and on the timing for the ADA certification in the application process. To the extent that we would adopt such a change, we also solicit comment on whether any rule changes are needed to ensure that applicants that fail to comply with the certification no longer receive discounts. The Commission further seeks comment on whether, and how, the Administrator and the Commission would verify and enforce compliance, and the extent that such actions promote our three goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

### 5. Consortia

26. Section 54.501(d)(1) implements the Commission's determinations in the *Universal Service Order* as to when eligible entities seeking discounts as part of a consortium can obtain interstate telecommunications services at prices below tariffed rates. The Commission found that there was congressional support for allowing eligible schools and libraries to obtain services at pre-discount prices below tariffed rates. However, it concluded that where such eligible entities sought services as members of a consortium including private sector non-eligible members, allowing the private non-eligible businesses to obtain below-tariff rates would compromise federal and state policies of non-discriminatory pricing. The Commission therefore concluded that a consortium that included private sector ineligible members could obtain tariffed services only if "the pre-discount prices of [the tariffed services] are generally tariffed rates."

27. The Commission seeks comment on whether a change to section 54.501(d)(1), recommended by consortia members and service providers working with consortia, would improve program operation. We also invite comment on whether changes to other consortia rules might achieve a greater consistency or fairness in our approach to the participation of consortia in the program. The language in the current rule provides that "[w]ith one exception, eligible schools and libraries participating in consortia with ineligible private sector members shall not be eligible for discounts for interstate services." Parties have argued that this language is unclear and could be construed to prohibit such consortia from obtaining services other than tariffed services. The Commission seeks comment on whether to clarify the rule

to establish clearly that only ineligible private sector members seeking services as part of a consortium with eligible members are prohibited from obtaining below-tariffed rates from providers that offer tariffed services (tariffed providers). The Commission specifically requests comment on the impact of this rule on program operation, whether administrative costs would result from the proposed change, what these costs would be, and whether these costs would outweigh the benefits of the change.

28. The Commission also seeks comment on any proposals as to how we might clarify, change or reorganize the other rules and requirements relating to consortia, to help ensure that these rules and requirements reflect a fair and consistent approach to the role and obligations of consortia leaders and the consequences to consortia members of violations by leaders and other members. We seek comment on how we might improve program operation or otherwise further our interest in fairly distributing benefits of the program and limiting fraud, waste, and abuse, by making consortia application and participation requirements more transparent, so that it is clear what consortia may do and what their responsibilities are.

#### *B. Post Commitment Program Administration*

##### 1. Choice of Payment Method

29. Under existing law and Commission procedure, the Administrator of the universal service support mechanism does not provide funds directly to schools and libraries, but rather, provides funds to eligible service providers, who then offer discounted services to eligible schools and libraries. Under existing Administrator's procedures, service providers and applicants are advised to work together to determine whether the applicant will either (1) pay the service provider the full cost of services, and subsequently receive reimbursement from the provider for the discounted portion, after the provider receives reimbursement through the Billed Entity Applicant Reimbursement (BEAR) process, or (2) pay only the non-discounted portion of the cost of services, with the service provider seeking reimbursement from the Administrator for the discounted portion. Because it is not clear in our rules whether the provider or the applicant may make the final determination of which of the two payment processes to pursue, the potential exists for service providers to

insist that applicants to whom they provide services use the first method of paying the up-front costs, and later seeking reimbursement. Indeed, some large providers require recipients to use the BEAR form.

30. The Commission seeks comment on whether our rules should specify that service providers must offer applicants the option of either making up-front payments for the full cost of services and being reimbursed via the BEAR form process, or paying only the non-discounted portion up-front. We seek comment on the costs and benefits of our proposal to all affected parties and whether it would improve program operation overall.

31. The Commission also seeks comment on whether, to further improve program operation and prevent fraud and abuse, we should incorporate enforcement measures regarding remittal of BEAR payments into our rules. Under current Administrator procedure, service providers reimbursing billed entities via the BEAR process must remit to the billed entity the discount amount authorized by the Administrator to the billed entity within ten days of receiving the reimbursement payment from the Administrator and prior to tendering or making use of the payment from the Administrator. The Administrator has implemented this procedure pursuant to ongoing Commission oversight of the program, but this procedure has not been formally codified in our rules. We have received reports from both the Administrator and from affected schools and libraries that, in certain cases, service providers have failed to remit these payments to applicants until well past the ten-day limit. In order to address this problem, we seek comment on whether service providers should be required to remit these payments to the applicants within twenty days of having received them, and that failure to do so will constitute a rule violation potentially subjecting the service provider to fines and forfeitures under section 503 and/or other law enforcement action.

32. The Commission seeks comment on whether this proposed twenty-day period imposes a significant economic burden on small entity providers (as defined in paragraphs 88 through 98 of the Order). We welcome any suggestions as to how the remittance process might be modified to minimize such impact. We also seek comment on the extent to which a modification such as lengthening the remittance period would have a deleterious impact on eligible schools and libraries that is inconsistent with our three goals of improving program operation, ensuring

that the benefits of the program are equitably distributed, and preventing fraud, waste, and abuse.

##### 2. Equipment Transferability

33. The Commissions rules provide that eligible services purchased at a discount "shall not be sold, resold, or transferred in consideration for money or any other thing of value." Nothing in our rules, however, prevents transferring equipment obtained with universal service discounts from the eligible recipient to another entity without consideration for money or anything of value. We have received reports from state authorities, schools and libraries, and the Administrator that some recipients are replacing, on a yearly or almost-yearly basis, equipment obtained with universal service discounts, and transferring that equipment to other schools or libraries in the same district that may not have been eligible for such equipment.

34. Although the Commission recognizes that schools and libraries may legitimately desire to upgrade their equipment frequently as a result of the rapid pace of technological change, we seek comment on whether it is appropriate to balance this desire against the impact of such action on other parties seeking discounts under the program. We seek comment on whether the program's goals would be improved by requiring that schools and libraries make significant use of the discounted equipment that they receive, before seeking to substitute new discounted equipment. In particular, we seek comment on whether there may be insufficient incentives in the schools and libraries mechanism to prevent wasteful or fraudulent behavior, without imposing restrictions on these transfers of equipment. The Commission specifically seeks comment on whether, as a condition of receipt of universal service discounts, we should adopt measures to ensure that discounted internal connections are used at the location and for the use specified in the application process for a certain period of time.

35. One option could be to adopt a rule limiting transfers for three years from the date of delivery and installation of equipment for internal connections other than cabling, and ten years in the case of cabling. Under this option, an applicant could replace only ten percent of its old cabling per year with new discounted internal connections (such as upgrading from copper wire to fiber optics). Otherwise, an applicant seeking discounts on new equipment to replace universal service-funded equipment that has been in

place for less than the specified time periods could do so only if it traded the existing equipment to its service provider for a credit toward the purchase of the cost of the new discounted equipment. The Commission seeks comment on whether this option would achieve the goals of efficient and equitable use of the mechanism's funds, and whether this approach would prevent both waste and fraud. We also seek comment on how this change might most effectively be implemented, and on attendant benefits and costs.

36. An alternate approach could be to deny internal connections discounts to any entity that has already received discounts on internal connections within a specified period of years regardless of the intended use of the new internal connections. The Commission seeks comment on whether we should adopt such a rule, on the appropriate time frame for such a rule, and whether we should impose this limitation only in situations where the applicants have previously received discounts above a specified threshold in the relevant time period. We also seek comment on the administrative costs that would be incurred, both in the application process and in post-disbursement auditing, to ensure compliance with a rule prohibiting an entity from receiving discounts on internal connections if it previously had received such discounts. We seek comment on these and any other proposals to address this issue and thus give us further insight on how, with regard to equipment issues, we might further our goals of improving program operation, ensuring that the mechanism's benefits are fairly and equitably distributed, and eliminating fraud, waste, and abuse.

### 3. Use of Excess Services in Remote Areas

37. The Act requires that discounts on services be provided for educational purposes to schools and libraries. In the *Universal Service Order*, the Commission implemented this provision by requiring schools and libraries to certify that the services obtained through discounts from the schools and libraries mechanism will be used solely for educational purposes. The Commission determined that the certification rules, including the educational purposes rule, were reasonable and not unnecessarily burdensome, especially in light of the Commission's goals to reduce fraud, waste, and abuse.

38. In some instances, the discounted services received by schools and libraries through the schools and

libraries program are provided on a non-usage sensitive basis and are used for educational purposes during hours when the schools and libraries are open, but remain unused during off-hours when the entities are closed. As a result, due to the non-usage sensitive nature of the services, services that could be used after the operating hours of schools and libraries presently go unused.

39. The State of Alaska recently requested a waiver of the restriction in § 54.504(b)(2)(ii) that requires applicants to certify that the services obtained from the schools and libraries mechanism would be used for solely educational purposes. In many communities in Alaska, services from the schools and libraries program have provided the only means to deliver Internet access to communities in rural remote areas. Specifically, the State of Alaska asked to use the telecommunications and Internet access services as an Internet "point of presence" in rural remote communities. To the extent that a school or library will not be fully utilizing the services it ordered for educational purposes, and these services would otherwise be wasted, the State of Alaska requested that others in the community be allowed to use these services for non-educational purposes.

40. On December 3, 2001, the Commission granted the State of Alaska a limited waiver of § 54.504(b)(2)(ii) of the Commission's rules. In the *Alaska Order*, 66 FR 67112 (December 28, 2001), the Commission concluded that there is nothing in section 254(h)(1)(B) that prohibits the Commission from granting a waiver of § 54.507(b)(2)(ii) of its rules to expand the use of such services, so long as in the first instance they are used for educational purposes. The Commission further determined that based on the special circumstances outlined in Alaska's petition, there was good cause to waive § 54.504(b)(2)(ii) of the Commission's rules for rural remote communities in Alaska who lack local or toll-free dial-up access to the Internet.

41. The Commission seeks comment more broadly on the types of situations that might warrant utilization of excess service obtained through the universal service mechanism for schools and libraries when services are not in use by the schools and libraries for educational purposes. Although we believe the Commission's current rule relating to educational purposes is appropriate in the overwhelming majority of circumstances, we seek comment on whether the Commission should revise its rules in order to expressly address such situations, and whether such revisions would further the goals of improving program operation, ensuring

a fair and equitable distribution of benefits and preventing waste, fraud, and abuse.

42. If the Commission were to modify its rules expressly to address the use of excess services in limited circumstances, we seek comment on whether to consider conditioning such use on several criteria: (1) That the school or library request only as much discounts for services as are reasonably necessary for educational purposes; (2) the additional use would not impose any additional costs on the schools and libraries program; (3) services to be used by the community would be sold on the basis of a price that is not usage sensitive; (4) the use should be limited to times when the school or library is not using the services; and (5) the excess services are made available to all capable service providers in a neutral manner that does not require or take into account any commitments or promises from the service providers. With respect to the fifth condition, we previously found that such a condition was "consistent with the Act, which prohibits any discounted services or network capacity from being sold, resold, or transferred by such user in consideration for money or any other thing of value." The Commission seeks comment on the legal, operational, and enforcement issues raised by this approach.

43. The Commission believes that, to the extent we should adopt any such change, the resulting policy would need to be carefully circumscribed to prevent fraud, waste, and abuse. In light of these concerns, and our desire to ensure that the appropriate safeguards are in place, we also seek comment regarding how such an arrangement would function. In particular, we seek comment on how to ensure that any revised rule would not indirectly impose costs on the schools and libraries program or that applicants would not request more service than is necessary for educational purposes.

### C. Appeals

#### 1. Appeals Procedure

44. In the *Eighth Order on Reconsideration*, (not in **Federal Register**), the Commission established a process by which aggrieved parties could seek review from the Commission of decisions of the Administrator. As of January 1, 2002, the Commission has reviewed 740 appeals from the Administrator's decisions. Of these, 592 were denied or dismissed, 135 were granted, and 13 were granted in part. Of those appeals granted, a number involved situations where the Commission concluded that a close

examination of the rules and policies applicable to the underlying request was warranted. Our history to date thus leads us to conclude that the Administrator is applying existing rules and policies correctly in the vast majority of cases. Nevertheless, the opportunity for Commission review remains an important method by which we provide effective oversight of the Administrator's activities.

45. Our current rules provide that any person aggrieved by a decision of any Division of the Administrator may file an appeal directly with the Commission within 30 days of the date of the issuance of the decision. Alternately, the person may appeal the decision of a Division within 30 days of the date of the decision to the relevant Committee governing that Division, in which case the time for filing an appeal with the Commission is tolled during the pendency of the appeal before the Committee. Once the Committee has issued a decision on the appeal, the person then has up to 30 days to appeal that decision to the Commission. In each case, an appeal is deemed filed on the date that it is received, not the date it is postmarked.

46. Appeals to the Commission are decided by the Common Carrier Bureau, unless they raise novel issues of fact, law, or policy, in which case, they are decided by the full Commission. Whether an appeal is before the Common Carrier Bureau or the full Commission, the standard of review is *de novo*. This review process applies equally to decisions made by the three divisions of the Administrator defined in our regulations, the Schools and Libraries Division, the Rural Healthcare Division, and the High Cost and Low Income Division.

47. Numerous parties have recommended that we increase the time limit for filing an appeal with the Committee of the Schools and Libraries Division and the time limit for filing an appeal with the Commission. As noted above, the time limit in both cases is 30 days, which commences on the date of the decision and runs until the filing of the appeal. The parties have proposed increasing this period to 60 days. In *the Eighth Order on Reconsideration*, the Commission established the 30 day period partly in response to commenters' requests for a streamlined approach. Experience suggests, however, that this time period may be inadequate for parties wishing to appeal an adverse decision. To date, we have dismissed appeals as untimely approximately 22 percent of the time. Parties have suggested that some extension of time for filing appeals will

provide aggrieved schools and libraries a greater opportunity to review the relevant decisions, and determine whether there are valid bases for appeal in light of the governing rules and Commission precedent. Moreover, they suggest, additional time would enable applicants to consult with the e-rate assistance offices that many States have now established to advise constituents who are seeking such funding. Nothing in this suggested change would prevent participants from filing appeals before the end of the appeals period.

48. The Commission therefore invites comment on whether this modification to our rules would improve program operation. In addition, we seek comment on the suggestion that we should treat appeals to the Administrator or to the Commission as having been received on the date they are post-marked rather than the date they are filed. This would depart from the Commission practice for filings in general. Such a change, however, would make the appeal procedure consistent with the Administrator's practice of treating FCC Form 471 applications as having been filed as of the post-mark date. Further, it could better ensure that rural and remote applicants will not be disadvantaged if it takes longer to mail an appeal to the Commission. We therefore seek comment on whether we should adopt this modification. Finally, we seek comment on any other changes to our rules or policies concerning the appeals procedure of the Administrator or the Commission that might further the goals of improving program operation, ensuring a fair and equitable distribution of benefits and preventing waste, fraud, and abuse consistent with the 1996 Act.

## 2. Funding of Successful Appeals

49. Each funding year, the Administrator sets aside a portion of the funds available that year for the schools and libraries universal service mechanism to ensure that sufficient funds will be available for any appeals that may be granted by the Administrator or the Commission. The Administrator calculates this amount in part by generating a prediction of the percentage of its decisions that will be reversed based on historical experience. Because the prediction may underestimate the actual number of reversed decisions, it is possible that the appeal reserve fund in a particular year will ultimately be inadequate to fund all successful appeals in that year.

50. In the *Eleventh Reconsideration Order and Further Notice*, the Commission proposed certain rules establishing funding priorities for the

Administrator to apply when distributing funds from the appeal reserve to schools and libraries that successfully appeal decisions of the Administrator. Specifically, the Commission proposed that the Administrator should first fund all Priority One appeals, and then allocate any remaining funds in the appeal reserve to Priority Two appeals in order of descending discount rate. The Commission further proposed that if funds were not available for all Priority One appeals, then all funding should be allocated to Priority One appeals on a pro-rata basis. To ensure correct distribution of funds to Priority One appeals, the Commission proposed that the Administrator should wait until a final decision has been issued on all Priority One service appeals before allocating funds to such services on a pro-rata basis.

51. In response to these proposals, several commenters suggest that it is inappropriate to limit appellants to those funds in the appeal reserve fund because it might result in successful appellants being treated differently from applicants who were awarded funding initially. In some circumstances, two schools or libraries of similar eligibility that file simultaneous applications for identical support might receive different funding merely because one was subject to an erroneous initial funding decision that was subsequently reversed on appeal. To avoid such a result, the Commission now seeks comment on whether, to ensure a fair and equitable distribution of funds, we should instead fully fund successful appeals to the same extent that they would have been funded in the initial application process had they not been initially denied funding.

52. The Commission further seeks comment on what rules should govern if the new proposal were adopted, in the event that the funding year's appeal reserve is depleted. One option, for example, would be for the Administrator to rely on any other funds that remain from the current funding year first, including funds that had never been committed and funds that had been committed but were never used by the original recipients. If these sources are unavailable or insufficient, the Administrator could then use funds from the next funding year as soon as they become available, and reduce the level of discounts available in that next funding year by that amount. We seek comment on this and any other option consistent with our goals of improving program operation, ensuring a fair and equitable distribution of benefits, and

preventing waste, fraud, and abuse consistent with the 1996 Act.

53. Under such an option, it may be unnecessary to withhold funding until all appeals have been decided. Some delay in funding may be unavoidable, however, because if the Administrator must fund successful appeals in one year by drawing funds from the succeeding Funding Year, those funds would not be available until the beginning of that future funding year. The Commission believes that delays in funding of Priority Two internal connections will generally be less burdensome than delays in funding of Priority One services, because the latter services must be purchased by the applicant during the funding year regardless of whether funding for discounts is awarded at that time or not. We therefore seek comment on whether the Administrator should fund successful appellants in the order that decisions on appeal are issued, except that the Administrator should not commit funds to successful applicants requesting support for Priority Two services until the Administrator is certain that sufficient funds remain to fund all successful appellants requesting discounts for Priority One services. We seek comment on all of our current proposals regarding the funding of successful appellants.

#### *D. Enforcement Tools*

##### 1. Independent Audits

54. In its December 2000 report, the General Accounting Office proposed strengthening application and invoice review procedures in order to reduce the amount of funds inadvertently spent on ineligible services. The Administrator has implemented a number of procedural changes suggested by the report, and has undertaken numerous measures on its own initiative. Working closely with the Commission's Office of the Inspector General (OIG), the Administrator has significantly stepped up its efforts aimed at detecting and resolving instances of waste, fraud, and abuse. For example, it has increased the number of audits, withheld suspect payments, withdrawn posted FCC Forms 470 from its website and rejected FCC Form 471 applications, and has increasingly coordinated its efforts with federal, state, and local law enforcement to combat fraud and other potentially criminal activity. We, in turn, have examined our rules to consider whether our existing enforcement tools should be strengthened in any way.

55. We seek comment on whether, so as to improve our oversight capacity to

guard against waste, fraud, and abuse, our rules should explicitly authorize the Administrator to require independent audits of recipients and service providers, at recipients' and service providers' expense, where the Administrator has reason to believe that potentially serious problems exist, or is directed by the Commission. We specifically seek comment on the impact of such a rule on small entities. We further seek comment on alternatives that might provide other assurances of program integrity consistent with the goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

##### 2. Prohibitions on Participation

56. The Act and our rules permit the Commission to initiate forfeiture proceedings against those that willfully or repeatedly fail to comply with statutory and regulatory requirements. There are no provisions in our current rules, however, to bar entities from participating in the program for periods of time.

57. The Commission seeks comment on whether, so as to further improve our oversight, we can and should adopt rules barring applicants, service providers, and others (such as consultants) that engage in willful or repeated failure to comply with program rules from involvement with the program, for a period of years. Assuming we were to adopt such a rule, we seek input on what standards should apply for barring such entities, and on what an appropriate length of time would be for such a prohibition. We also seek comment on other questions regarding implementation of such a prohibition, including whether the prohibition might apply to individuals, so that those responsible for actions that led to the barring of a particular entity do not evade the purpose of the prohibition by joining or forming another eligible entity.

58. The Commission seeks comment generally on whether to adopt additional measures to reduce potential waste, fraud, and abuse in the schools and libraries support mechanism. Consistent with our intent to continue strengthening program integrity, we seek input on further rules and procedures to address these matters.

#### *E. Unused Funds*

##### 1. Overview

59. In each funding year, a portion of the \$2.25 billion available under the program cap has gone unused, largely because some applicants do not fully

use the funds committed to them in a given year. Under the Administrator's procedures in effect in the first three funding years of the program, the Administrator engaged in various ongoing analyses throughout each funding year to ensure that it did not commit more than the \$2.25 billion cap each year. Although this \$2.25 billion limit on commitments ensured that the level of funds actually disbursed remained under the \$2.25 billion cap, the result, given that applicants do not seek disbursement of all committed funds, has been that some of the \$2.25 billion has gone unused by applicants each year.

60. The Administrator issues funding commitment decision letters to applicants once their applications have been approved, but does not authorize payouts of committed funds until it receives valid invoices demonstrating that the applicants have obtained the requested products and services. The Administrator approves the disbursement of funds once it receives a certification from the recipient and invoices from the service provider or applicant, indicating that approved services have begun. In many cases, however, applicants and vendors do not submit the required documentation for all the funding, and therefore receive only partial funding, or none of the committed funds at all. As of June 30, 2001, approximately \$940 million of the \$3.7 billion in program funds committed to applicants during the first and second funding years was not disbursed because of the failure of applicants and providers to submit the required documentation. In the first funding year, the Administrator disbursed approximately 82 percent of committed funds. In the second funding year through June 30, 2001, the Administrator disbursed approximately 71 percent of committed funds. The Administrator projects that a similar proportion of committed funds will be disbursed in Funding Year 3.

61. The Commission seeks comment on whether there are any administrative modifications to the schools and libraries universal service support mechanism that we should implement to improve program operation, ensure a fair and equitable distribution of funds, or guard against waste, fraud, and abuse. We seek comment generally on whether there are modifications to the application and funding disbursement process that would serve our goals in this proceeding, that could be implemented immediately without need for a rule change.

62. In addition, the existence of unused funds each year raises two

issues that we address in this NPRM. The first issue is how to reduce the level of funds that go unused. The second issue is what to do with undisbursed funds, to the extent that they remain despite our reduction efforts. In the sections that follow, we seek comment on these issues.

## 2. Reduction of Unused Funds

63. The Commission anticipates that several recent administrative changes to the schools and libraries program should help to reduce the under-utilization of committed funds. Specifically, in May 2000, the Administrator released a new Form 500 that gives applicants a convenient tool to reduce or cancel commitments they will not use so that those funds can be made available for other applicants during the same funding year. Additionally, the Administrator developed new and more flexible procedures for service provider changes, consistent with governing precedent. The Administrator expects those procedures to permit approval of many pending service provider changes and the distribution of more funds each year. Furthermore, in order to address the under-utilization of program resources caused by this gap between committed and disbursed funds, the Administrator, in consultation with the Commission, will begin to base the overall amount of committed funds each year on a formula that takes into consideration past levels of disbursement. We believe that each of these changes will help prevent the likelihood of waste, fraud, and abuse by improving the disbursement of program funds.

64. It is the Commission's goal to reduce the gap between funds that have been committed and those that have been disbursed, in order to most effectively implement the goals of section 254(h) by providing for discounts as close as possible to the level of the annual \$2.25 billion cap. We seek to develop a record on the reasons why applicants and providers may fail to fully use committed funds under the program. We also seek comment on whether any other program changes would likely result in an increased percentage of committed funds being disbursed each funding year, which will help to reduce the overall amount of unused funds from the schools and libraries mechanism. In the event we adopt additional measures to reduce the existence of unused funds, we seek comment on whether it is necessary to adopt procedures to address a situation in which more funds are committed and

used than are available for disbursement.

## 3. Treatment of Unused Funds

65. Section 54.507(a) of the Commission's rules codifies the annual \$2.25 billion cap on the schools and libraries support mechanism. The rule also provides that "all *funding authority* for a given funding year that is unused in that funding year shall be carried forward into subsequent funding years for use in accordance with demand." Although § 54.507(a) addresses *funding authority*, it is silent as to the treatment of unused *funds*, *i.e.*, funds that the Administrator had available for disbursement, but that were not disbursed in that funding year. As discussed *infra*, unused funds from Funding Year 1 have been used to reduce the contribution factor for Funding Years 2 and 3, consistent with Commission rules and policies. We believe, however, that we should consider what should be done with unused funds that may occur in future years.

66. In accord with the Commission's efforts to reduce the amount of unused funds from the schools and libraries mechanism, we seek comment on revising the Commission's rules to clarify the appropriate treatment of such unused funds. As stated above, the Commission's rule adopted in accord with the *Universal Service Order* refers to unused *funding authority*, not unused *funds*. Thus, the Commission seeks comment on two options relating to the treatment of unused funds. The first option would be to modify the rule to require expressly that unused funds from the schools and libraries mechanism (beginning with Funding Year 2) should be credited back to contributors through reductions in the contribution factor. The second option would be to modify the rule to require expressly the distribution of the unused funds in subsequent years of the schools and libraries program, in excess of the annual cap. We seek comment on each of the alternatives. We believe that consumers may benefit from reducing the contribution factor with unused funds because it will decrease the contribution amounts that carriers recover from consumers. Alternatively, disbursing unused funds in subsequent funding years of the schools and libraries mechanism would provide additional resources for applicants, thereby assisting efforts to provide affordable telecommunications and information services to schools and libraries.

## II. Revising or Eliminating Outmoded Rules

67. The Commission seeks comment on any administrative or procedural rules or policies of the Commission or SLD, relating to the schools and libraries support mechanism, that should be revised or eliminated because they have become outmoded. In the four years since the implementation of the support mechanism, some such rules or policies may have become obsolete through changed circumstances or technologies, or may have been rendered unnecessary or redundant in light of changes made to the program. We therefore seek comment on such rules or policies in order to determine whether any are no longer necessary or in the public interest.

## IV. Procedural Matters

### A. Paperwork Reduction Act Analysis

68. As part of our continuing effort to reduce paperwork burdens, the Commission invites the general public to take this opportunity to comment on the additional certification collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

### B. Initial Regulatory Flexibility Analysis

69. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided below in section VI.C. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice and IRFA (or

summaries thereof) will be published in the **Federal Register**.

#### 1. Need for, and Objectives of, the Proposed Rules

70. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this NPRM, we seek comment on several changes to the schools and libraries universal service support mechanism. With respect to the application process, we seek comment on (1) issues related to the process for determining eligible services, and the eligibility for schools and libraries universal service support of such services as voice mail, wireless, and Wide Area Networks; (2) permitting schools and libraries to receive discounts for Internet access that may in certain limited cases contain content, as long as it is the most cost-effective form of Internet access; (3) the 30 percent processing benchmark for reviewing funding requests that include both eligible and ineligible services; (4) whether to require a certification by schools and libraries acknowledging their compliance with the requirements of the Americans With Disabilities Act and related statutes; and (5) modifying our rule governing when members of a consortium may receive service from a tariffed service provider at below-tariff rates.

71. Also seek comment on several issues that arise once discounts have been committed to applicants: (1) Providing schools and libraries the flexibility either to make up-front payments for services and receive reimbursement via the Billed Entity Applicant Reimbursement (BEAR) form process, or be charged only the non-discounted cost by the service providers, and require that service providers remit BEAR reimbursements to applicants within twenty days; (2) limiting transferability of equipment obtained with universal service discounts; and (3) allowing members of rural remote communities to use excess capacity from services obtained through the universal service support mechanism in certain limited situations.

72. With respect to the appeals process, the Commission seeks comment on increasing time limits for filing appeals to 60 days, and considering appeals filed as of the day they are post-marked; and procedures for funding successful appeals. Fourth, we seek comment on measures to

strengthen our existing enforcement tools, including adopting a rule explicitly authorizing independent audits; and barring from the program certain applicants, service providers, and others that engage in willful or repeated failure to comply with program rules. On the issue of unused program funds, we seek comment on the reasons for unused funds, and on how the Commission should treat unused funds. We also deny certain petitions for reconsideration relating to unused funds, and seek comment on revising or eliminating outmoded administrative or procedural rules or policies relating to the schools and libraries universal service support mechanism.

#### 2. Legal Basis

73. The legal basis for this NPRM is contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, and § 1.411 of the Commission's rules, 47 CFR 1.411.

#### 3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

74. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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 SBA. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate

for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities.

75. 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 internal connections.

#### a. Schools and Libraries

76. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law." 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. For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined as small entities elementary and secondary schools and libraries having \$5 million or less in annual receipts. In funding year 2 (July 1, 1999 to June 30, 2000) approximately 83,700 schools and 9,000 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's definition, we estimate that fewer than 83,700 schools and 9,000 libraries would be affected annually by the rules proposed in this NPRM, under current operation of the program.

#### b. Telecommunications Service Providers

77. The Commission has 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." 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. 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.

78. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the most recent *Trends in Telephone Service* report, 1,335 carriers classified themselves as incumbent local exchange carriers. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of local exchange carriers that would qualify as small business concerns under the SBA's definition. Of the 1,335 incumbent carriers, 13 entities are price cap carriers that are not subject to these rules. Consequently, we estimate that fewer than 1,322 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected.

79. *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. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the most recent *Trends Report*, 204 companies reported that they were engaged in the provision of interexchange services. As some of these carriers have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 204 small entity IXCs that may be affected by the proposals in this NPRM.

80. *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. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the most recent *Trends Report*, 496 competitive service providers reported that they were engaged in the provision of competitive local exchange services. We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 349 small entity CAPs and 60 other local exchange carriers that may be affected.

81. *Cellular and Wireless Telephony.* Neither the Commission nor the SBA has developed a definition of small entities specifically for wireless telephony. The closest definition is the SBA definition for cellular and other wireless telecommunications. Under this definition, a cellular licensee is a small entity if it employs no more than 1,500 employees. According to the most recent *Trends Report*, 806 providers classified themselves as providers of wireless telephony, including cellular telecommunications, Personal Communications Service, and Specialized Mobile Radio (SMR) Telephony Carriers. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 806 wireless telephony carriers that may be affected.

82. *Other Wireless Services.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to wireless services other than wireless telephony. The closest applicable definition under the SBA rules is again that of cellular and other wireless telecommunications, under which a service provider is a small entity if it employs no more than 1,500 employees. According to the most recent *Trends Report*, 477 providers classified themselves as paging services, wireless data carriers or other mobile service providers. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this

time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 477 wireless service providers that may be affected.

#### c. Internet Service Providers

83. Under the new NAICS codes, SBA has developed a small business size standard for "On-line Information Services," NAICS Code 514191. According to SBA regulations, a small business under this category is one having annual receipts of \$18 million or less. According to SBA's most recent data, there are a total of 2,829 firms with annual receipts of \$9,999,999 or less, and an additional 111 firms with annual receipts of \$10,000,000 or more. Thus, the number of On-line Information Services firms that are small under the SBA's \$18 million size standard is between 2,829 and 2,940. Further, some of these Internet Service Providers (ISPs) might not be independently owned and operated. Consequently, we estimate that there are fewer than 2,940 small entity ISPs that may be affected by the decisions and rules of the present action.

#### d. Vendors of Internal Connections

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

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

85. The NPRM seeks comment on the proposal that all recipients of discounts be required to certify that they are in compliance with the ADA, but does not specify the language or at what point in the process applicants should be required to make this certification. We already require applicants to make several certifications, both when they apply for discounted services and after approval of discounts when they file an FCC Form 486 indicating their receipt of those services. The new certification will merely require them to check one additional box prior to signing the relevant form. Regardless of the precise language of the certification, we estimate that it will take no more than one minute to review and check the appropriate certification box. Aside from this requirement, the specific proposals under consideration in this NPRM would, if adopted, result in no additional reporting or recordkeeping requirements.

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

86. 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.

87. The Commission finds that the following proposals will have no significant economic impact on small entities: allowing, under certain circumstances, full discounts on Internet service that includes content, the proposed modification to the appeals process, requiring certification of compliance with the ADA, a proposed alteration to the rules regarding application of tariff rates to consortia, the proposed rule establishing the right of funding for all successful appellants and the funding methodology, and possible rule changes affecting overcommitted funding requests.

88. Requiring that recipients be allowed to choose their payment

method could have a significant impact on service providers, including small entities, by depriving them of their full revenues for a period of time when the applicant chooses to pay only the discounted portion up-front. The Commission has considered the alternative of continuing to allow small service providers the discretion to mandate a particular payment method. However, as the Commission noted in *Universal Service Order*, "requiring schools and libraries to pay [service providers] in full could create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries." In order to comply with the goals of the Act, *i.e.*, to ensure the delivery of affordable telecommunications service to schools and libraries, including small entities, we conclude that we can justify any additional economic impact that might occur to small service providers.

89. However, in seeking to minimize the burdens imposed on small businesses where doing so does not compromise the goals of the universal service mechanism, the Commission has sought comment on whether to increase the current 10-day period for service providers to remit their payments to 20 days, and we invited comment on how the billing process might be made less burdensome for small entities. We further invited comment on whether, in the case of applicants that choose up-front payment of the full pre-discount cost followed by the provider's remittance of the discount fund through the BEAR process, some extension of the standard remittance period for small businesses may be appropriate. We again invite commenters to discuss the benefits of such changes on small businesses and whether these benefits are outweighed by resulting costs to schools and libraries that might also be small entities.

90. The Commission has sought comment on a proposed rule restricting transferability of equipment, which may have an economic impact on small entity schools and libraries. However, we expect that the impact on small entities will be minimal because the overall effect of the proposed rule is to restrict an entity's ability to purchase redundant systems. Thus, it should reduce rather than increase the entity's costs.

91. The Commission has sought comment on two options for the treatment of funds left unused at the end of a Funding Year. The first option, to use these funds to reduce the contribution factor used to calculate a carrier's contribution for universal

service support, would temporarily reduce the burden of universal service support on telecommunications service providers, including many small businesses. In the alternative, we have sought comment on a proposal to distribute unused funds to schools and libraries in subsequent funding years, which would improve the opportunities of small entity schools and libraries but conversely would impose a greater burden on small businesses. It is therefore not clear which of these two alternatives would be more appropriate to minimizing the economic impact on small entities. In seeking comment on these two options, we invite commenters to discuss this question.

92. The Commission has further sought comment on numerous other areas of the program, including the reduction of the percentage of unused funds, the eligibility determination process, the specific eligibility of WANs, wireless services, and voice mail, the use of excess capacity in rural areas for non-educational purposes, the rules governing consortia, and the appropriate method of enforcement of our rules in general. We do not seek comment on specific proposals on these issues at this time, and therefore, cannot at this time determine how changes in these areas will impact on small entities in relation to the current regime. We therefore request that commenters, in proposing possible alterations to our rules, discuss the economic impact that those changes will have on small entities.

#### 6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

93. None.

#### C. Comment Due Dates and Filing Procedures

94. We invite comment on the issues and questions set forth in the NPRM and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due April 5, 2002 and reply comments are due May 6, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

95. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking

numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

96. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in

the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Parties who choose to file by paper are hereby notified that effective December 18, 2001, the Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be

accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8:00 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method . . .	It should be addressed for delivery to . . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 to 7:00 p.m.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail .....	445 12th Street, SW, Washington, DC 20554.

All filings must be sent to the Commission's Acting Secretary: William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Suite TW-A325, Washington, DC 20554.

97. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5-B540, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read-only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 02-6), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ("Disk Copy Not an Original.") Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC,

20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com).

98. Written comments by the public on the proposed and/or modified information collections pursuant to the Paperwork Reduction Act of 1995, Public Law No. 104-13, are due on or before April 5, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before April 22, 2002. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov) and to Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW., Washington, DC 20503.

99. Accessible formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426, (202) 418-7365 TTY, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

#### VII. Ordering Clauses

100. Pursuant to the authority contained in sections 1-4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201-205, 254, 303(r), 403, and

§§ 0.91, 0.291, 1.3, and 1.411 of the Commission's rules, 47 CFR 0.91, 0.291, 1.3, and 1.411, this notice of proposed rule making is adopted, as described herein.

101. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

102. Pursuant to § 1.106(j) of the Commission's rules, 47 CFR 1.106(j), that the following Petitions for Reconsideration are denied: Petition for Reconsideration of Proposed First Quarter 2000 Universal Service Contribution Factor by Greg Weisiger, filed December 20, 1999; Petition for Reconsideration of Proposed Third Quarter 2000 Universal Service Contribution Factor by Greg Weisiger, filed June 12, 2000; Petition for Reconsideration of Proposed Fourth Quarter 2000 Universal Service Contribution Factor by Greg Weisiger, filed September 18, 2000.

#### List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

### Rule Change

For the reason set forth in the preamble, the Federal Communications Commission proposes to amend 47 CFR 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. Revise § 54.501 (d)(1) to read as follows:

#### § 54.501 Eligibility for services provided by telecommunications carriers.

\* \* \* \* \*

(d) \* \* \*

(1) For purposes of seeking competitive bids for telecommunications services, Internet access and internal connections, schools and libraries eligible for support under this subpart may form consortia with other customers. When ordering telecommunications and other supported services under this subpart, the consortium may even seek to negotiate for pre-discount prices below tariffed interstate rates on behalf of members that are eligible schools or libraries, health care providers eligible under subpart G, or public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties and municipalities. However, eligible schools and libraries may only receive support for their share of services as part of a consortium that includes ineligible private sector entities if the pre-discount prices of any interstate tariffed services that such ineligible private sector members of the consortium receive are at the tariffed rates.

\* \* \* \* \*

[FR Doc. 02-3883 Filed 2-15-02; 8:45 am]

BILLING CODE 6712-01-P

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA 02-244; MM Docket No. 01-308; RM-10308]

#### Radio Broadcasting Services; Wickett, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This document dismisses a petition for rule making filed by Katherine Pyeatt requesting the allotment of Channel 224A at Wickett, Texas. See 66 FR 56507, November 8, 2001. Neither Katherine Pyeatt nor any other party filed comments supporting an allotment at Wickett. As it is the Commission's policy to refrain from making an allotment absent supporting comments, we will dismiss the proposal for Wickett.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 01-308, adopted January 23, 2002, and released February 1, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-B402, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 02-4005 Filed 2-15-02; 8:45 am]

BILLING CODE 6712-01-P

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA 02-246; MM Docket No. 01-303; RM-10306]

#### Radio Broadcasting Services; Birch Tree, Missouri

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This document dismisses a petition for rule making filed by Charles Crawford requesting the allotment of Channel 241A at Birch Tree, Missouri. See 66 FR 54972, October 31, 2001. Neither Charles Crawford nor any other party filed comments supporting an allotment at Birch Tree. As it is the Commission's policy to refrain from making an allotment absent supporting comments, we will dismiss the proposal for Birch Tree.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 01-303, adopted January 23, 2002, and released February 1, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-B402, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 02-4004 Filed 2-15-02; 8:45 am]

BILLING CODE 6712-01-P

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

##### 50 CFR Part 600

[I.D. 012902C]

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Atlantic Coastal Fisheries Cooperative Management; Application for Exempted Fishing Permits (EFPs)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator has made a