

use for Soda Creek, which changed from “NONE” to undesignated. As described in the undesignated surface waters provision of Idaho’s Water Quality Standards (IDAPA 58.01.02.101.01a), the Idaho Department of Environmental Quality (IDEQ) applies cold water aquatic life criteria to undesignated waters because it is presumed that most waters in the State will support cold water aquatic life. Thus, cold water aquatic life criteria now apply to Soda Creek and the segment of the Blackfoot River. EPA approved Idaho’s revised water quality standards for segments of Canyon Creek and South Fork Coeur d’Alene River on June 24, 2005, and for Soda Creek on August 15, 2006. EPA approved Idaho’s revised water quality standards for the segment of the Blackfoot River, except for any portion in Indian country, on August 22, 2006. Thus, the Federal water quality standards designating Soda Creek and portions of Canyon Creek, South Fork Coeur d’Alene River, and Blackfoot River for cold water biota use (40 CFR 131.33(b)) is no longer necessary, and EPA is withdrawing it with this action. EPA is also withdrawing the water quality standards variance provision applicable to these uses (40 CFR 131.33(d)), because this provision is no longer necessary with the withdrawal of the Federal water quality standards designating these uses.

For further information, including the regulatory text and various statutes and executive orders that require findings for rulemakings, please see the information provided in the direct final rule titled, “Withdrawal of the Federal Water Quality Standards Use Designations for Soda Creek and Portions of Canyon Creek, South Fork Coeur d’Alene River, and Blackfoot River in Idaho” located in the “Rules and Regulations” section of this **Federal Register** publication.

**I. Why EPA Is Issuing This Proposed Rule**

This document proposes to withdraw the Federal water quality standards designating cold water biota uses for Soda Creek and portions of Canyon Creek, Blackfoot River, and South Fork Coeur d’Alene River in Idaho. We have published a direct final rule withdrawing the Federal water quality standards designating the cold water biota uses in the “Rules and Regulations” section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in

any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

**II. What Entities May Be Affected by This Action?**

Citizens concerned with water quality in Idaho may be interested in this rulemaking. Entities discharging pollutants to Soda Creek, Canyon Creek, South Fork Coeur d’Alene, and Blackfoot River in Idaho could be indirectly affected by this rulemaking because water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Because this action withdraws the Federal water quality standards designating cold water biota uses that are no longer necessary since EPA approved Idaho’s adopted uses that result in protection for cold water biota, the effect of this rulemaking may only occur when entities seek variances to water quality standards. Entities seeking variances from use designations on these waters will now apply to the state, and EPA will act on the state’s decision to grant the variance.

Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry .....	Industries discharging pollutants to Soda Creek, Canyon Creek, South Fork Coeur d’Alene River, and Blackfoot River in Idaho.
Municipalities .....	Publicly owned treatment works discharging pollutants to Soda Creek, Canyon Creek, South Fork Coeur d’Alene River, and Blackfoot River in Idaho.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action.

**List of Subjects in 40 CFR Part 131**

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control, Water quality standards.

Dated: August 13, 2008.

**Stephen L. Johnson,**  
*Administrator.*

[FR Doc. E8–19199 Filed 8–18–08; 8:45 am]

**BILLING CODE 6560–50–P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

[CC Docket No. 02–6; FCC 08–173]

**Schools and Libraries Universal Service Support Mechanism**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission seeks comment on whether certain services should be designated as eligible for funding under the schools and libraries universal service support mechanism, also known as the E-rate program. The Commission also seeks comment on whether to retain interconnected Voice over Internet

Protocol (interconnected VoIP) as an eligible service for future funding years.

**DATES:** Comments are due on or before September 18, 2008. Reply comments are due on or before October 3, 2008.

**ADDRESSES:** You may submit comments, identified by CC Docket No. 02–6, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission’s Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response. Include the docket number in the subject line of the message.

• *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** James Bachtell or Cara Voth, Wireline Competition Bureau, Telecommunications Access Policy Division, 202-418-7400 or TTY 202-418-0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking in CC Docket No. 02-6, FCC 08-173, adopted July 25, 2008, and released July 31, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 800-378-3160 or 202-863-2893, facsimile 202-863-2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

### **Initial Paperwork Reduction Act of 1995 Analysis**

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

### **Synopsis of the Notice of Proposed Rulemaking**

#### *Introduction*

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on whether certain services should be designated as eligible for funding under the schools and libraries universal service support mechanism, also known as the E-rate program. We seek comment

on whether, beginning in Funding Year 2009, the Eligible Services List (ESL) should include filtering software, a broader classification of basic telephone service, dark fiber, text messaging, firewall service, anti-virus/anti-spam software, scheduling services, telephone broadcast messaging, and certain wireless Internet access applications. In addition, we seek comment on whether to retain interconnected Voice over Internet Protocol (interconnected VoIP) as an eligible service for future funding years. During the pleading cycles established for the Funding Years 2007 and 2008 ESLs, numerous parties commented on the need to make these services eligible for E-rate program discounts. We now seek comment on whether these services may be supported and whether support for these services will encourage access to advanced telecommunications and information services for public and non-profit elementary and secondary school classrooms and libraries.

#### **Background**

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections. Section 254 of the Communications Act of 1934, as amended (the Act), gives the Commission the authority to designate "telecommunications services" and certain additional services eligible for support under the E-rate program. The Commission has also determined that it has the authority to designate services eligible for schools and libraries support as part of its authority to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms and libraries.

3. Since the initial implementation of the E-rate program in 1998, the Universal Service Administrative Company (USAC) has developed various procedures and guidelines, consistent with the Commission's rules and requirements, for applicants to ensure that funding is provided only for eligible services. The ESL indicates whether specific products or services are eligible to receive discounts under the E-rate program. The ESL is divided into several categories—telecommunications service, Internet access, internal connections, basic maintenance of internal connections, and miscellaneous.

4. On December 23, 2003, the Commission adopted § 54.522 of its

rules, formalizing the process for updating the ESL for the E-rate program. Specifically, § 54.522 requires the Commission to seek comment on USAC's proposed ESL and to issue a Public Notice attaching the final ESL for the upcoming funding year at least 60 days prior to the opening of the funding window for the E-rate program.

5. Pursuant to the Commission's rules, the Commission released Public Notices seeking comment on USAC's proposed ESL for Funding Years 2007 and 2008. In revising the 2007 and 2008 ESLs, we noted that the proceedings were limited to determining what services are eligible under the Commission's current rules and were not intended to be a vehicle for changing eligibility rules. Therefore, we indicated that those comments not addressed in the ESLs may be more appropriately filed for the Commission's consideration in the general docket for the E-rate program.

#### **Discussion**

6. In this NPRM, we seek comment on a number of issues raised by the commenters that may not have been addressed as part of the ESL process for Funding Year 2008 or prior years. Specifically, we seek comment on whether to include interconnected VoIP service, filtering, dark fiber, and other services in the ESL, in future funding years. We also seek comment on which rules, if any, would need to be amended to effectuate any changes made as a result of this NPRM. For instance, §§ 54.502 and 54.503 describe services that can be provided by telecommunications carriers while § 54.517 describes what services can be provided by non-telecommunications carriers. Should we reorganize or restructure the rules relating to the eligible services and the ESL to better inform applicants of which services are supported?

#### **Interconnected VoIP Service**

7. Interconnected VoIP service is defined as a service that: (1) Enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

8. The Commission has addressed interconnected VoIP services in various contexts other than E-rate eligible services in recent years. In June 2006, the Commission established universal service obligations for providers of

interconnected VoIP service. The Commission required providers of interconnected VoIP services to contribute to the Universal Service Fund (USF) on an interim basis in order to sustain the USF, but the Commission did not classify interconnected VoIP service as either a telecommunications service or an information service. It did, however, for purposes of finding permissive authority under section 254(d) of the Act, find that interconnected VoIP providers are providers of interstate telecommunications. In 2007, the Commission also extended local number portability obligations to interconnected VoIP providers and extended the disability access requirements that currently apply to telecommunications service providers and equipment manufacturers to interconnected VoIP providers.

9. Consistent with these recent Commission actions, interconnected VoIP service was included as an eligible service in the 2007 and 2008 ESLs. The Commission has not yet determined if interconnected VoIP services are telecommunications services or information services. Consequently, the 2007 and 2008 ESLs listed interconnected VoIP services under the "Miscellaneous" category.

10. As established by section 254(c)(3) of the Act, the Commission may designate additional services for universal service support. Furthermore, the Act also authorizes the Commission to establish competitively neutral rules to enhance access to advanced telecommunications and information services. We tentatively conclude that interconnected VoIP service should be designated as a supported service for the E-rate program in future funding years. Because the Commission required interconnected VoIP service providers to contribute to the USF, the policy of competitive neutrality would support a finding that providers of interconnected VoIP services should also be able to participate in the universal service E-rate program and, consequently, that interconnected VoIP service be included in the ESL. We also agree with commenters that the inclusion of interconnected VoIP service as an eligible service enhances the options available to schools and libraries to effectuate meaningful communications among parents, teachers, and school and library administrators.

11. We tentatively conclude that it is administratively and operationally appropriate for interconnected VoIP service requests to be processed as a Priority 1 service. We seek comment on this tentative conclusion. If

interconnected VoIP service is deemed an eligible service, we also seek comment on how USAC would implement this tentative conclusion. For example, is it appropriate for applicants to label interconnected VoIP service as an Internet access service when applying for E-rate program funding? If so, should we require applicants requesting funding for interconnected VoIP services to certify to Children's Internet Protection Act (CIPA) requirements? All schools and libraries seeking funding for Internet access or internal connections under the E-rate program must have technology that blocks or filters Internet access to obscenity, pornography, and material deemed harmful to minors under the CIPA. Applicants seeking funding only for telecommunications services do not have to comply with CIPA. Should we require applicants requesting funding for interconnected VoIP services to comply with CIPA if the applicant does not also receive E-rate funds for Internet access, Internet service, or internal connections? As noted earlier, the 2008 ESL identifies interconnected VoIP service under the miscellaneous category. As the Commission explained in the *VoIP 911 Order*, customers who purchase interconnected VoIP service receive a service that "enables a customer to do everything (or nearly everything) the customer could do using an analog telephone." We therefore seek comment on whether "Miscellaneous" is the appropriate category for interconnected VoIP services or if another category would be more appropriate. If a commenter believes that another category is more appropriate, we ask that the commenter identify the appropriate category and explain why such category is more appropriate. Finally, we seek comment on the effect, if any, that the removal of interconnected VoIP service from the 2009 ESL would have on the E-rate program or upon applicants that rely on this service.

#### Filtering Software

12. We seek comment on whether stand-alone filtering software should be funded under the E-rate program. Filtering software protects users from inappropriate content by selectively blocking certain words or Internet sites. In 2001, the Commission determined that CIPA prohibited the use of E-rate funding for filtering software. Section 1721(g) of CIPA states that funds from the Elementary and Secondary Education Act of 1965 or the Library Services and Technology Act may be used to purchase filtering technology necessary to meet the requirements of

CIPA, but "[n]o other sources of funds for the purchase or acquisition of such measures are authorized by this title, or the amendments made by this title." The Commission interpreted this passage to mean that no sources of funds other than those explicitly listed in CIPA, which did not include E-rate program funds, could be used for the purchase of filtering software to comply with CIPA.

13. We seek comment on the Commission's prior interpretation of section 1721(g) of CIPA and whether it should be reconsidered. Specifically, parties are asked to comment on whether this provision explicitly prohibits E-rate program funding from being used for filtering software or whether the statute can be interpreted so that the Commission is not precluded from funding filtering software through the E-rate program. We also seek comment on whether schools and libraries have an additional need for subsidized filtering services because Congress requires content filtering for the receipt of E-rate funding. We further seek comment on whether making filtering eligible may help streamline the application review process by reducing the administrative effort and costs associated with determining whether a school or library is seeking E-rate funding for costs associated with stand-alone filtering services. We also seek comment on whether classifying stand-alone filtering services as eligible for E-rate support would also reduce confusion for applicants.

#### Basic Telephone Service

14. We seek comment on whether the definition of "basic" telephone service should be expanded to include additional services under the E-rate program. The Commission requires participating schools and libraries to base their requests for discounts on an approved technology plan, unless they are seeking discounts on "basic local, cellular, PCS, and/or long distance telephone service and/or voicemail only." We seek comment on whether the classification of basic telephone service should include services such as a Private Branch eXchange (PBX), key systems, T1 lines, and interconnected VoIP and Primary Rate Interface (PRI) trunk lines connecting a PBX to the Public Switched Telephone Network (PSTN), for the purpose of also exempting these services from the technology plan requirement. We seek comment on whether applicants will continue to sufficiently align their funding requests with their service needs if we classify these services as "basic" telephone service for purposes

of eliminating the technology plan requirement. We seek comment on whether it is appropriate to expand the definition to classify certain Priority 2 services as “basic” telephone service, a Priority 1 service. Commenters should discuss how any changes to the definition of “basic” telephone service to include certain Priority 2 services affect the Commission’s determination that facilities located on an applicant’s premises are presumed to be Priority 2 internal connections.

#### Dark Fiber

15. We seek comment on whether unlit (dark) fiber should be eligible for discounts under the E-rate program. Dark fiber was conditionally eligible for E-rate discounts prior to Funding Year 2004. In the *Schools and Libraries Third Report and Order*, FCC 03–323, released in 2003, however, the Commission found that dark fiber was not eligible for discounts and sought comment on whether dark fiber should be funded under the E-rate program. We now incorporate that record into this proceeding and ask commenters to refresh the record on whether dark fiber should be included as an eligible service. While the statutory classification of dark fiber remains an open issue, we note that if dark fiber were eligible for E-rate discounts, the service could be supported under the Act as an “additional” service, rather than as a “telecommunications service.” As such, we seek comment on whether dark fiber should be classified under the miscellaneous category or some other category of service. We also seek comment on technological or other changes that have occurred since we last sought comment on this issue in 2003. Commenters should address whether these changes alter the Commission’s prior conclusion that only a functioning (lit) fiber optic service provided by a telecommunications service provider or Internet access provider should be eligible for E-rate support.

#### Other Services

16. We seek comment on whether several individual services—text messaging, firewall, anti-virus/anti-spam software, scheduling services and telephone broadcast messaging—should be eligible for the E-rate program under section 254(c)(3) of the Act. We seek comment on whether funding these services through E-rate will encourage access to advanced telecommunications and information services for public and non-profit elementary and secondary school classrooms and libraries. We also seek comment on how schools and libraries would use these services and

whether the use would be for “educational purposes,” as required by our rules. For the services discussed in this section, we seek comment on how each service, if it is added to the ESL, should be categorized. Specifically, commenters should indicate whether the service should be categorized as a telecommunications service, Internet access service, and/or listed in the miscellaneous category. Should we require applicants requesting funding for the services discussed in this section to certify to CIPA requirements? As discussed above, we note that all schools and libraries seeking funding for Internet access or internal connections under the E-rate program must have technology that blocks or filters Internet access to obscenity, pornography, and material deemed harmful to minors under the CIPA. Applicants seeking funding only for telecommunications services do not have to comply with CIPA. Should we require applicants requesting funding for the services discussed in this section to comply with CIPA if the applicant does not also receive E-rate funds for Internet access, Internet service, or internal connections?

17. *Text Messaging.* We seek comment on whether text messaging should be an eligible service. Text messaging, known as short message service or SMS, is a service that allows short messages, typically up to 160 characters, to be sent to and from handheld wireless devices. We specifically seek comment on the extent to which SMS is functionally equivalent to e-mail and paging and how the current eligibility of these two messaging services should affect our treatment of text messaging as an eligible service. Because text messaging is often bundled with other eligible telecommunications services, we seek comment on whether including text messaging as an eligible service would reduce the burden and administrative costs for applicants, service providers and USAC.

18. *Firewall.* We seek comment on whether separately priced firewall services should be eligible under the E-rate program, as recommended by a number of commenters. Firewall service is described as “a hardware and software combination that sits at the boundary between an organization’s network and the outside world, and protects the network against unauthorized access or intrusions.” In the 2007 ESL, the Commission clarified that only basic firewall services that are provided as a standard component of a vendor’s Internet access service are eligible for E-rate program discounts. We seek comment on whether a new

definition of eligible firewall services should be adopted and whether it should include such technology as intrusion prevention devices, network access control, firewall traversal, and deep packet inspection devices. Commenters should also identify any technologies other than these that should be considered for funding. We ask commenters to provide a proposed definition and to explain why such definition is appropriate.

19. *Anti-Virus/Anti-Spam Software.* We seek comment on whether we should extend E-rate program eligibility to anti-virus and anti-spam software. Currently, only network operating system software and server-based e-mail and voice mail software are eligible for E-rate funds. Software that protects computer components from viruses and spam e-mails is ineligible for E-rate support. Thus, we seek comment on whether the increased prevalence of viruses and spam justifies including as an eligible service software that protects equipment at schools and libraries from these threats.

20. *Scheduling Services.* We seek comment on whether to allow scheduling services to be eligible for E-rate support. Scheduling software allows schools and libraries more efficiently to use video conferencing for distance learning by controlling the video linkage between the classrooms and the originating video feed, sometimes coordinating between hundreds of locations. Scheduling services were explicitly made ineligible in Funding Year 2006. Many commenters, however, have noted that scheduling software is a necessary component of distance learning, which is eligible as a digital transmission service in the telecommunications services category. Thus, we seek comment on whether video and voice conferencing services, which are eligible services, require scheduling software as an essential component of the services. We seek comment on how scheduling software is similar or different from other telecommunications components that are eligible.

21. *Telephone Broadcast Messaging.* We seek comment on whether telephone broadcast messaging should be eligible for E-rate support. Telephone broadcast messaging allows pre-recorded messages to be sent over phone lines to individuals concerning school delays or closures, reported absences, upcoming activities and events, and emergencies.

22. *Wireless Internet Access Applications.* We seek comment on whether certain wireless Internet access applications should be eligible for E-rate support. Currently, wireless Internet

access service that is used for an educational purpose is eligible in the same manner that wired Internet access is eligible. The Commission has determined that, to qualify as an educational purpose under the E-rate program, an activity must be integral, immediate, and proximate to the education of students in the case of schools, or integral, immediate, and proximate to the provision of library services to library patrons in the case of libraries. Activities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services to patrons. Although the Commission has previously found that wireless services used on library or classroom property are presumed to be eligible, we seek comment on various technologies that are used away from the library or school property. Commenters should discuss how other wireless Internet access applications are similar or different from other currently eligible services which are used off-site for educational purposes.

#### Procedural Matters

23. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 18, 2008 and reply comments are due on or before October 20, 2008. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the

message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

#### Ex Parte Requirements

24. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 through 1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

#### Initial Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, 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 the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before September 18, 2008. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a).

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

26. 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 its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections. Since the initial implementation of the E-rate program, USAC has developed various procedures and guidelines, consistent with the Commission's rules and requirements, for applicants to ensure that funding is provided only for eligible services.

27. Pursuant to the Commission's rules, the Commission released Public Notices seeking comment on USAC's proposed ESL for Funding Years 2007 and 2008. The ESL indicates whether specific products or services may be able to receive discounts under the E-rate program. The final 2007 and 2008 ESLs and accompanying Public Notices were released on October 19, 2006 and October 19, 2007, respectively. In revising the 2007 and 2008 ESLs, we noted that the proceedings were limited to determining what services are eligible under the Commission's current rules and were not intended to be a vehicle for changing eligibility rules. Therefore, we indicated that those comments not addressed in the ESLs may be more appropriately filed for the Commission's consideration in the general docket for the E-rate program. In this NPRM, we seek comment on the eligibility of

certain services under the E-rate program raised by the commenters that may not have been addressed as part of the 2008 or prior ESLs. Specifically, we seek comment on whether to include filtering software, an expanded classification of basic telephone service, dark fiber, text messaging, firewall service, anti-virus/anti-spam software, scheduling services, telephone broadcast messaging, and certain wireless Internet access applications in the ESL beginning in Funding Year 2009. We also seek comment on whether to retain interconnected Voice over Internet Protocol (interconnected VoIP) as an eligible service for future funding years.

#### Legal Basis

28. 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.

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

29. 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. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. 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 2002, there were approximately 1.6 million 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." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small

governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

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

#### Schools and Libraries

31. Under the E-rate program, which provides universal service support for elementary and secondary schools and libraries, an elementary school is "a non-profit institutional day or residential school that provides elementary education, as determined under state law." A secondary school is 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 million 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 \$6.5 million or less in annual receipts. In funding year 2005 (July 1, 2005 to June 30, 2006) approximately 15,050 school districts, 6,547 individual schools, 3,641 library and library consortiums, and 449 school and library consortiums received funding under the E-rate program. 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 15,050 school districts, 6,547 individual schools, 3,641 library and library consortiums, and 449 school and library consortiums would be affected annually by the rules proposed in this NPRM, under current operation of the program.

#### Telecommunications Service Providers

32. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 incumbent carriers reported that they were engaged in the provision of local

exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

33. We have included small incumbent local exchange carriers in this RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 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.

34. *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 Commission's 2005 Trends Report, 316 companies reported that they were engaged in the provision of interexchange services. Of these 316 IXCs, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that most providers of interexchange services are small businesses that may be affected by the rules and policies adopted herein.

35. *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 2005 Trends Report, 769 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of

competitive local exchange services. Of these 769 CAPs and competitive LECs, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses that may be affected by the rules and policies adopted herein.

36. *Cellular and Wireless Providers.* 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 *2005 Trends Report*, 437 providers classified themselves as providers of wireless telephony, including cellular telecommunications, Personal Communications Service, and Specialized Mobile Radio (SMR) Telephony Carriers. Of these 437 wireless telephony providers, an estimated 260 have 1,500 or fewer employees and 177 have more than 1,500 employees. Consequently, the Commission estimates that more than half of the providers of wireless telephony services are small businesses that may be affected by the rules and policies adopted herein.

37. *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 *2005 Trends Report*, 33 providers classified themselves as wireless data carriers or other mobile service providers. Of these 33 providers, an estimated 32 have 1,500 or fewer employees and 1 has more than 1,500 employees. Consequently, the Commission estimates that most providers of wireless services other than wireless telephony are small businesses that may be affected by the rules and policies adopted herein.

38. *Private and Common Carrier Paging.* In the *Paging Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals,

has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to Commission data, 408 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 402 are small, under the SBA approved small business size standard.

39. *Internet Service Providers.* Under the category of Internet service provider, a small business is one having annual receipts of \$23 million or less. According to SBA's most recent data, there are a total of 2,829 firms with annual receipts of less than \$10 million, and an additional 111 firms with annual receipts of \$10 million or more. 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.

#### Vendors of Internal Connections

40. *Communications Equipment Manufacturers.* The Commission has not developed a definition of small entities applicable to the manufacturers of internal network connections. The most applicable definitions of a small entity are the definitions under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing" and "Other Communications Equipment Manufacturing." According to the SBA's regulations, manufacturers of these types of communications equipment must have 750 or fewer employees in order to qualify as a small business. 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.

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

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

42. The specific proposals under consideration in the NPRM would not, if adopted, result in additional recordkeeping requirements for small businesses.

#### Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

43. 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.

44. In this NPRM, we seek comment on a number of issues raised by the commenters that may not have been addressed as part of the ESL proceedings. Specifically, we seek comment on whether to include interconnected VoIP service, filtering software, dark fiber, and other services in future funding years. We tentatively conclude that interconnected VoIP service should be eligible for discounts under the E-rate program. We tentatively conclude that it is administratively and operationally appropriate for interconnected VoIP service requests to be processed as a Priority 1 service. We seek comment on this tentative conclusion. If interconnected VoIP service is deemed an eligible service, we also seek comment on how USAC would implement this tentative conclusion. We believe that the inclusion of interconnected VoIP service will not have an adverse impact on small entities. We welcome, however, comments from parties that have opinions different from those reached in this analysis.

45. We also seek comment on whether several individual services—filtering software, an expanded classification of basic telephone service, dark fiber, text messaging, firewall service, anti-virus/anti-spam software, scheduling services, telephone broadcast messaging, and certain wireless Internet access applications—should be eligible for E-rate program eligibility. We believe that, if eligible, the benefits conferred by making these services eligible will not have an adverse impact on small entities. We welcome, however, comments from parties that have opinions different from those reached in this analysis.

46. We believe our proposals and tentative conclusions will have a similar impact on both small and large schools and libraries, because both small and large schools and libraries will benefit equally from the possible addition of eligible services available under the E-rate program. Because this NPRM does not propose additional regulation for service providers and equipment vendors, these small entities will also experience no additional burden. We believe that small schools and libraries, as well as small service providers and equipment vendors, will benefit if we add more services to the eligible services list because it will open up more opportunities for small businesses to participate in the E-rate program. Therefore, we do not discuss any alternatives to the proposals contained in this NPRM. We invite commenters, in responding to the questions posed and

tentative conclusions in the NPRM, to discuss any economic impact that such changes may have on small entities.

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

47. None.

#### **Ordering Clauses**

48. Accordingly, *it is ordered* that, pursuant to the authority 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, this Notice of Proposed Rulemaking *is adopted*.

49. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch**,  
*Secretary*.

[FR Doc. E8-19178 Filed 8-18-08; 8:45 am]

**BILLING CODE 6712-01-P**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**[FWS-R9-IA-2008-0092; 96100-1671-0000-B6]**

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Northern Snakehead Fish (*Channa argus*) Under the Endangered Species Act**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our 90-day finding on a petition to list the northern snakehead fish (*Channa argus*) as endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that listing this species under the Act may be warranted. We will not initiate a status review in response to this petition and, consequently, will not consider the

designation of critical habitat as petitioned.

**DATES:** The finding announced in this document was made on August 19, 2008. New information concerning this species may be submitted for our consideration at any time.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov>.

Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Scientific Authority, 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203; telephone, 703-358-1708; fax, 703-358-2276. Please submit any new information, materials, comments, or questions concerning this finding to the above address or via electronic mail (e-mail) at [Scientificauthority@fws.gov](mailto:Scientificauthority@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Marie T. Maltese, U.S. Fish and Wildlife Service, Division of Scientific Authority, 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203; telephone, 703-358-1708; fax, 703-358-2276; or by e-mail, [Scientificauthority@fws.gov](mailto:Scientificauthority@fws.gov). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 4 (b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**. Our standard for substantial scientific or commercial information with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

We base this finding on information provided by the petitioners that we