

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 to read as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

Subpart F—Universal Service Support for Schools and Libraries

2. Section 54.502 is revised to read as follows:

§ 54.502 Supported services.

(a) *Telecommunications services.* For purposes of this subpart, supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms. All supported telecommunications services are defined and listed in the Eligible Services List as updated annually in accordance with § 54.503 of the Commission's rules.

(b) *Internet access and information services.* For purposes of this subpart, supported Internet access and information services include basic conduit access to the Internet and all the services defined in § 54.5 of the Commission's rules as Internet access. All supported Internet access and information services are defined and listed in the Eligible Services List as updated annually in accordance with § 54.503 of the Commission's rules.

(c) *Internal connections.*

(1) For purposes of this subpart, a service is eligible for support as a component of an institution's internal connections if such service is necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch. Discounts are not available for internal connections in non-instructional buildings of a school or school district, or in administrative buildings of a library, to the extent that a library

system has separate administrative buildings, unless those internal connections are essential for the effective transport of information to an instructional building of a school or to a non-administrative building of a library. Internal connections do not include connections that extend beyond a single school campus or single library branch. There is a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way. All supported internal connections are defined and listed in the Eligible Services List as updated annually in accordance with § 54.503 of the Commission's rules.

(2) *Basic maintenance services.* For purposes of this subpart, basic maintenance services shall be eligible as an internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services. Basic maintenance services do not include services that maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information. All supported basic maintenance is defined and listed in the Eligible Services List as updated annually in accordance with § 54.503 of the Commission's rules.

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

(d) Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing the supported services described in paragraph (b) and (c) of this section for eligible schools, libraries, and consortia including those entities. Such services provided by non-telecommunications carriers shall be subject to all the

provisions of this subpart, except §§ 54.501(a), 54.502(a), and 54.515.

3. Section 54.503 is revised to read as follows:

§ 54.503 Eligible services list.

(a) The Administrator shall submit by March 30 of each year a draft list of services eligible for support, based on the Commission's rules, in the following funding year. The Wireline Competition Bureau will issue a Public Notice seeking comment on the Administrator's proposed eligible services list. At least 60 days prior to the opening of the window for the following funding year, the final list of services eligible for support will be released.

(b) All supported services are defined and listed in the Eligible Services List as updated annually in accordance with paragraph (a) of this section.

§ 54.506 [Removed and Reserved]

4. Remove and reserve § 54.506.

§§ 54.517 and 54.518 [Removed and Reserved]

5. Remove and reserve §§ 54.517 and 54.518.

§ 54.522 [Removed and Reserved]

6. Remove and reserve § 54.522.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 02-6; GN Docket No. 09-51; FCC 10-83]

Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on several potential reforms that would cut red tape by eliminating rules that have not effectively served their intended purpose, while continuing to protect against waste, fraud, and abuse. In addition, the Commission seeks comment on how to provide stability and certainty for the funding of internal connections that are necessary to deliver higher bandwidth services to the classroom and how to expand access to funding for internal connections for schools and libraries serving impoverished populations. Finally, the

Commission seeks comment on indexing the funding cap to inflation, which would make additional funding available to support current and new services to deliver the full benefits of the Internet to all.

DATES: Comments on the proposed rules are due on or before July 9, 2010 and reply comments are due on or before July 26, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before August 9, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by CC Docket No. 02-6 and GN Docket No. 09-51, 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://fjallfoss.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

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

- In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to PRA@fcc.gov and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to Nicholas_A_Fraser@omb.eop.gov or via fax at 202-395-5167.

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: Regina Brown at (202) 418-0792 or James Bachtell at (202) 418-2694, Wireline Competition Bureau, Telecommunications Access Policy Division or TTY: (202) 418-0484. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to PRA@fcc.gov and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to

Nicholas_A_Fraser@omb.eop.gov or via fax at 202-395-5167.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in CC Docket No. 02-6, GN Docket No. 09-51, FCC 10-83, adopted May 20, 2010, and released May 20, 2010. 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 the Internet at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. 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, 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 should 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 or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: fcc504@fcc.gov; phone: (202) 418-0530 or (202) 418-0432 (TTY).

In addition, one copy of each pleading must be sent to each of the following:

- The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554; *Web site:* <http://www.bcpweb.com>; *phone:* 1-800-378-3160; and

- Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5-A452, Washington, DC 20554; *e-mail:* Charles.Tyler@fcc.gov or telephone number (202) 418-7400.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Copies may also be purchased from the

Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its Web site: <http://www.bcpiweb.com>, by e-mail at fcc@bcpiweb.com, by telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562 (TTY), or by facsimile at (202) 488-5563.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

Initial Paperwork Reduction Act of 1995 Analysis: This document contains proposed information collection requirements. 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 collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due August 9, 2010.

Comments on the proposed information collection requirements 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060-0853.

Title: FCC Form 479, Certification by Administrative Authority to Billed Entity of Compliance with Children's

Internet Protection Act; FCC Form 486, Receipt of Service Confirmation Form, FCC Form 500, Funding Commitment Change Request Form.

Form Number(s): FCC Forms 479, 486, 500.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents and responses: 45,300 respondents and 45,300 responses.

Estimated Time per Response: .25-1.5 hours (average time per response).

Obligation to Respond: Required to obtain or retain benefits.

Frequency of Response: Annual and on occasion reporting requirements, recordkeeping and third party disclosure requirements.

Total Annual Burden: 63,720 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: No impact.

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The existing information collection requires schools and libraries to report on the FCC Form 500 to the Universal Service Administrative Company (USAC) the disposal of equipment purchased with an E-rate discount for payment or other consideration. *This revision has no effect on FCC Forms 479 and 486 (and Internet policy statement), which are also part of this information collection. This revision specifically pertains to the FCC Form 500. This revision also adds or corrects the burden for the provision of Internet safety policy to the FCC.* The Internet safety policy requirement was proposed in a Notice of Proposed Rulemaking, FCC 09-96, CC Docket 02-6 (75 FR 2826, dated January 19, 2010 and approved by OMB on March 25, 2010). At this time of submission to the OMB, it is uncertain which proposed rule will be finalized to account for the Internet safety policy burden. Therefore, we have included it in this submission.

Specifically, the revised FCC Form 500 would require a school or library disposing of equipment to report the following information to USAC: (1) The applicant's name, entity number, address, and telephone number; (2) the name, address, telephone number, and e-mail address of the applicant's authorized point of contact; (3) the date of the disposal of obsolete equipment; (4) the name of each piece of equipment

disposed of, including the date of purchase and the funding request number(s) associated with the disposed equipment; (5) any payment, trade-in value, or other consideration received for such disposal of equipment; (6) the name of the entity that paid or otherwise gave the applicant valuable consideration for the equipment; (7) formal declaration by the school board or other authorized body or individual that the equipment subject to disposal is surplus; and (8) certification that the information provided on the form is true and accurate to the best of the applicant's knowledge, evidenced by the signature of someone authorized to so certify by the applicant and the date.

Requiring schools and libraries to submit this information as part of the FCC Form 500 could facilitate our ongoing efforts to mitigate waste, fraud and abuse. Additionally, it would allow USAC and the Commission to better assess how long program participants are using equipment purchased with E-rate discounts prior to disposal of any obsolete equipment, and to track what E-rate program participants do with equipment they no longer use. Moreover, such revision would require limited information, all of which is easy to obtain whenever a school or library seeks to dispose of obsolete equipment.

I. Introduction

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

- Streamlining the application and competitive bidding processes for telecommunications and Internet access in an effort to further reduce the administrative burden on applicants, while at the same time maintaining appropriate safeguards to mitigate potential waste, fraud, and abuse;

- Codifying the requirement developed in Commission precedent that competitive bidding processes be "fair and open" to enhance the Commission's ability to enforce its rules in cases involving waste, fraud and abuse;

- Simplifying the way schools calculate their discounts and conforming the E-rate definition of "rural" to the Department of Education's definition;

- Supporting 24/7 online learning by eliminating the current rule that requires schools to allocate the cost of wireless Internet access service between funded, in-school use and non-funded uses away from school premises;

- Providing greater flexibility to recipients to choose the most cost-effective bandwidth solutions for their connectivity needs by allowing the leasing of low-cost fiber from municipalities and other entities that are not telecommunications carriers;
- Expanding the reach of broadband in residential schools that serve populations facing unique challenges, such as Tribal schools or schools for children with physical, cognitive, or behavioral disabilities;
- Creating a new, predictable funding mechanism for internal connections so that more schools and libraries have the ability to use the most technologically advanced applications, including video streaming to the classroom, to provide superior learning opportunities;
- Indexing the current \$2.25 billion cap on E-rate disbursements to inflation to maintain the purchasing power of the current program and enable continued support for high speed broadband and internal connections in the future; and
- Creating a process for schools and libraries to dispose of obsolete equipment without running afoul of the prohibition on reselling equipment and services purchased using E-rate funds.

II. Streamlining the Application Process

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

3. Specifically, we propose to eliminate technology plan requirements for priority one applicants that otherwise are subject to State and local technology planning requirements. We also propose to eliminate the FCC Form 470 posting and the 28-day waiting period before applicants can enter into contracts for those priority one applicants that are subject to public procurement requirements. We propose to retain our current technology planning and competitive bidding requirements for applicants seeking

priority two services. In order to provide greater clarity regarding our competitive bidding requirements for priority one and priority two services, we propose to codify a rule requiring all applicants to conduct competitive bidding processes that are fair and open. We also seek comment on other proposals that streamline the application process. For instance, we propose to significantly streamline the FCC Form 470 and 471 online application process and require that those forms be completed and submitted electronically. We also propose to revise our discount rules so that schools will calculate discounts on supported services by using the average discount rate for the entire school district rather than the weighted average for each school building. Finally, we propose to adopt a new definition of "rural area" for the purpose of determining whether an E-rate applicant qualifies for the rural discount.

1. Technology Plans

4. We propose to amend § 54.508 of our rules to eliminate E-rate technology plan requirements for priority one applicants that otherwise are subject to State and local technology planning requirements. We seek comment on this proposal. The provision of priority one services (*i.e.*, telecommunications services and Internet access) is fairly straightforward for many applicants and, therefore, a technology plan for these services may represent an unnecessarily complex and burdensome program requirement. According to one commenter, the U.S. Department of Education and most, if not all, States already require technology planning, and therefore our requirement is largely duplicative.

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

6. We propose to retain the FCC technology plan requirement for all priority two service requests and seek comment on this proposal. Priority two

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

2. Competitive Bidding Process

7. *FCC Form 470.* We propose to simplify significantly the application process for priority one services, *e.g.*, telecommunications services and Internet access services by adding § 54.510 to our rules. Specifically, we propose to eliminate the requirement that applicants for priority one services file an FCC Form 470 and wait 28 days before signing a contract with their selected service provider, as long as those applicants are subject to public procurement requirements. That is, for priority one services, an applicant that is subject to public procurement requirements would no longer be required to comply with § 54.504(b) of the Commission's rules. Instead, the applicant would initiate the application process for priority one services by filing an FCC Form 471. Applicants for priority one funding would still comply with their State and local procurement laws and processes when entering into E-rate eligible service contracts and with the Commission's requirement that the competitive bidding process be fair and open. We emphasize that compliance with local and State procurement requirements would remain a condition of receiving E-rate funding.

8. The elimination of the FCC Form 470 process and the 28-day waiting period for most priority one applicants could streamline the application process and make it easier for eligible institutions to receive support for essential priority one services such as telecommunications and Internet access services. The complexity of the FCC Form 470 and its associated deadlines, category selections, multi-year contract and contract extension requirements, in and of themselves, have been the basis

for a multitude of funding request denials by USAC. Eliminating these requirements for priority one services could reduce the number of unnecessary application funding denials and reduce the administrative burden on program participants and USAC during the application process. Fewer unnecessary reviews should also result in faster processing of applications for priority one services.

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

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

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

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

13. We therefore propose to amend § 54.510 of our rules to codify the requirement that an applicant must conduct a fair and open bidding process when seeking bids for services eligible for E-rate support. This rule will apply to all applicants for both priority one and priority two services—including applicants not filing FCC Forms 470—and will apply in addition to State and local procurement requirements. In addition, all applicants for both priority one and priority two must still comply with the Commission's rule requiring the careful consideration of all bids submitted, the selection of the most cost-effective bid for services or equipment, with price as the primary factor considered, and the selection of the service that is the most cost-effective means of meeting educational needs and technology plan goals. Because we are proposing merely to codify an existing requirement, this should not increase the burden on E-rate applicants that are already following our competitive bidding rules. We propose to codify this requirement to emphasize that, even without a Commission-established competitive bidding process in some instances, the Commission still requires any and all competitive bidding processes in which E-rate applicants participate to be conducted in a fair and

open manner. We seek comment on this proposal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Application Process Streamlining

18. We note that the Commission is currently seeking comment on significantly streamlined FCC Forms 470 and 471 for funding year 2011. Additionally, we are working with

USAC in developing an improved online system that provides applicants with the tools and access to data necessary to participate more effectively and efficiently in the program. All forms should be available for online submission, and applicants should be able to upload requested information electronically. Applicants also should be able to save, retrieve, and edit previously filed applications and use these forms as the basis for future funding requests, thereby improving the efficiency of submission and processing of applications. We seek feedback from all interested parties on these planned user enhancements.

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

4. Discount Matrix Streamlining

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

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

22. This proposed discount percentage rate calculation could streamline the application process by simplifying the way in which schools compute their discount percentage rate and reduce the administrative burden on USAC by no longer requiring USAC to verify each individual school's discount percentage rate. Additionally, it could significantly reduce the amount of information necessary for block 4 of the FCC Form 471 application. This proposal could also eliminate applicants' submission of multiple FCC Form 471 applications at different discount levels. Moreover, it could reduce the incentive for districts to purchase priority two equipment at a 90 percent discount rate and transfer it after three years to a school with a lower discount rate. We also seek comment on other ways to accomplish these goals. We also seek comment on how to determine if a school district can receive the additional discount available for some applicants located in rural areas. Currently, the urban/rural designation is based on the physical address of each individual school or library. Some applicants have a mixture of urban and rural entities on the same application. Should these districts be considered urban? Should their urban/rural status depend on the number of entities within the district that fall within each category?

23. *Rural Definition.* We propose to adopt a new definition of "rural area" for the purpose of determining whether an E-rate applicant qualifies for the rural discount. A school's E-rate discount level is determined in part by whether

it is classified as urban or rural. In some discount bands, schools and libraries in rural areas receive 5 percent to 10 percent more in discounts than those schools and libraries in urban areas. We look at this proposed change with the recognition that the reason certain discounts are provided to schools and libraries located in rural areas is because those schools and libraries sometimes face significant challenges due to their remote location. As we seek comment on this proposed change in definition, it is not with the intent to reduce discounts to certain rural schools but rather to ensure that the funds are targeted appropriately.

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

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

26. First, it is reasonable for the E-rate program, which benefits schools and libraries, to use the Department of Education's definition because it is specifically targeted to schools. By contrast, the current ORHP definition defines rural areas for rural health grant purposes only. Second, commenters have noted that the urban-centric locale codes pinpoint more precisely whether a school is located in a rural area. Rather than determining whether the school's county or census tract is located in a rural area under the ORHP definition,

the urban-centric locale codes determine whether a particular address is rural based on its proximity to metropolitan areas and on population size and density. The locale codes can be more specific because they are based solely on settlement patterns and are not constrained by political or geographic boundaries such as census tracts. Third, one of the reasons proffered by the Commission for selecting its original definition of "rural area"—that it was less burdensome to schools and libraries and that the information was readily available to the public—applies to the new definition as well. In particular, it should be administratively straightforward for a school to discover its categorization, because the Department of Education's Web site has the coding system broken down by State, and the information is readily available. We seek comment on this proposal.

III. Providing Greater Flexibility To Select Broadband Services

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

1. Wireless Services Outside of School

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

29. Advances in technology have enabled students to continue to learn

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

30. Recent data demonstrates that the widespread availability of wireless laptop computing for students is linked to improved educational outcomes. For example, the Maine Learning and Technology Initiative (MLTI) provided a laptop to every seventh- and eighth-grade student in the State as part of its mission to transform teaching and learning in Maine's public schools. A study of the MLTI conducted by the Maine Education Policy Research Institute at the University of Southern Maine found that eighth-grade student writing, as measured by the Maine Educational Assessment (MEA), the State's standardized assessment, improved significantly after laptop implementation in middle schools. Laptop initiatives have been deployed at the regional and district level as well. In Henrico County in Richmond, Virginia, a three-year study released in 2008, revealed that 1-to-1 laptop use was associated with higher test scores in biology, history, chemistry, reading and Earth science. Both of these laptop programs have incorporated student connectivity to the Internet in home and school environments.

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

32. We note that that the requirements of the Children's Internet Protection Act and the Protecting Children in the 21st Century Act still would apply to services being used off-premises. In addition, consistent with the Act, the Commission requires schools and libraries to certify, among other things, that services obtained through discounts

from the E-rate program will be used solely for educational purposes. We recognize that usage in the school or library typically occurs under the supervision of school or library personnel. We seek comment on what other safeguards, if any, we should consider imposing to mitigate against the risk of non-educational use at home that is not directly supervised by the recipient of funding.

33. We seek comment on whether recipients of funding should be required to have policies and procedures in place to mitigate the risk that E-rate funded wireless connectivity is not used for educational uses off-premises. For instance, should recipients be required to have policies relating to acceptable use off-premises? We seek comment on whether the residents of the households of students may use E-rate funded connectivity (so long as it is for educational purposes) because, for example, such use may be fundamental to promoting digital literacy skills for both the students and the other household members who support the child's educational experience, and whether such use is consistent with the educational purposes requirement of the statute. In our recent decision to permit schools to make E-rate funded connections available to the community, in order to reduce the likelihood of waste, fraud, and abuse, and to guard against potential additional costs being imposed on the E-rate program, we set forth certain conditions regarding other uses of school facilities that choose to allow the community to use their E-rate funded services. Among other things, the Commission required that: (1) Schools participating in the E-rate program not be permitted to request funding for more services than are necessary for educational purposes; and (2) consistent with the Act, a school's discounted services or network capacity may not be "sold, resold, or transferred by such user in consideration for money or any other thing of value." Should similar or other requirements be imposed if we expand support for wireless connectivity off-premises to guard against waste, fraud, and abuse?

34. We seek comment on whether providing E-rate funds for wireless Internet access to portable devices in offsite locations would result in increased demand for wireless connectivity in the E-rate program, and if so, how that would affect other requests for E-rate funding, given the overall annual funding cap. According to one 2008 survey, more than 27 percent of school districts were implementing in at least one grade or on pilot basis some form of one-on-one

computing program with Internet connected wireless devices for use in the classroom and at home. We seek comment on how funding for wireless connectivity might increase over the next several years if we were to adopt this rule. If commenters believe that this rule change would limit the ability of eligible users to obtain other services, we seek comment on whether the Commission should limit wireless Internet access for mobile devices on a trial basis by, for example, capping the number of monthly service contracts per school district or some other method of allocating funding. We seek comment on whether we should implement this proposal on an interim basis for funding year 2011 and subsequently evaluate how to implement a permanent rule based on that experience.

2. Expanded Access to Low-Cost Fiber

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

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

37. We propose to add leased dark fiber to the ESL, pursuant to section 254(h)(2)(A) of the Act. We propose to add leased fiber with the same conditions as when it was on the ESL previously. That is, applicants would be able to lease fiber capacity that does not include modulating electronics, as long as they provide the electronics. In addition, the leased fiber must be used

immediately. Under such an approach, applicants would, for instance, be able to lease dark fiber that may be owned by State, regional or local governmental entities, when that is the most cost-effective solution to their connectivity needs. We also seek comment on any other operational issues that may arise with the addition of leased fiber, such as dark fiber, to the ESL.

3. Expanding Access for Residential Schools That Serve Unique Populations

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

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

been found to be ineligible for support under the E-rate program.

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

services and to minimize the potential for waste, fraud, and abuse.

4. Targeting Support for Broadband Services

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

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

rate program. We seek comment on these and any other proposals commenters might suggest to meet the goal of generating the most return for each E-rate dollar.

IV. Expanding the Reach of Broadband to the Classroom

43. Internal connections, such as routers or hubs, are essential to the effective use of broadband within schools and libraries because they enable students and library patrons to utilize higher bandwidth applications in multiple locations within a school or library. As schools and libraries are increasingly utilizing higher bandwidth services to meet educational and community needs, they need to upgrade and replace their existing internal connections as well in order to fully utilize the broadband services they are purchasing. Without upgraded Internet access and the internal connections necessary to bring the connection all the way to the classroom or library patron, many users simply will be unable to utilize the many applications available in today's marketplace, such as high-definition video streaming, that support online learning. Demand for priority one services has grown from \$800 million in 1998 to approximately \$2 billion in 2009. As noted above, only schools and libraries with the highest discount levels are receiving priority two subsidies, and the availability of priority two funding gets smaller as applicants apply for more funding for priority one services. The net result is the E-rate program is funding high-capacity pipes to a single point of entry at the school (or library) but not providing any support for the equipment that enables the computer terminals or laptops across the school or library to access that high-capacity pipe. Further, without changes to the way in which we allocate funding for internal connections, it is quite possible that in funding year 2011, E-rate support for telecommunications services and Internet access could eliminate the availability of any funding for internal connections.

44. In this NPRM, we seek comment on how to ensure that schools and libraries receive funding for internal connections (priority two services). We have two important goals in mind: (1) Providing funding for internal connections to more schools and libraries than in the past; and (2) ensuring a predictable amount of funding available to schools and libraries for internal connections each year.

1. Predictable Internal Connections Funding for More Schools and Libraries

45. One option would be to allocate funding for internal connections based on a per student cap per school district, to which the applicant's discount rate would be applied. Under this option, libraries would be eligible to receive the same amount of funding as the public school districts within which they are located. To ensure that a predictable amount of funding is available for internal connections, we could set aside a defined amount of funding before funding is allocated to telecommunications and Internet access, current priority one services. If we choose this option, we also could eliminate the 2-in-5 rule. Another option would be to eliminate support for basic maintenance for internal connections, or, in the alternative, to cap the amount available for basic maintenance. We seek comment on whether and, if so, how we could phase in any of these proposals on a trial basis to examine the distributional impacts of such rule changes. In what funding year should any of these options be implemented? Commenters should provide specific proposals on the timing and staging of specific reforms. We further describe these options below and seek comment.

46. We believe that these options for reforming how we fund internal connections could have several advantages over our current rules. First, the current discount matrix and rules of priority have the effect of providing funding to a limited number of school districts that have the very highest percentage of students eligible for free or reduced price school lunch, while providing nothing to other districts that are significantly impoverished. Second, many stakeholders have expressed a desire for a more predictable funding mechanism whereby schools and libraries would know on a yearly basis how much funding they will receive for internal connections. This predictability is essential so that schools and libraries can better plan for their future technological needs. If, for instance, a certain amount of total funding would be designated for internal connections, USAC would be able to issue funding commitment decision letters earlier for priority two projects, enabling schools and libraries to begin projects more quickly.

47. *Capped Amount.* To create a more predictable funding mechanism for priority two services, we seek comment on establishing a flat per student cap per school district for each funding year, with the applicant's discount rate

applied after the cap is determined. For example, if the cap were set at \$15 per student, a school district that has 100,000 students would have a cap of \$1.5 million in internal connections funding. If the district were eligible for an 75 percent discount (that is, a school with 50 percent to 74 percent of its students eligible for free or reduced price lunch), it would be eligible to receive up to \$1.125 million for internal connections each year. If that same school district was eligible for a 30 percent discount (that is, a school with 20 percent to 34 percent of its students eligible for free or reduced price lunch), it could receive up to \$450,000. Under this option, libraries would receive the same discount as the public school districts in which they are located. We seek comment on this option and any alternatives that would increase predictability of priority two funding while meeting the goal of ensuring internal connections funding to more schools and libraries.

48. We also seek comment on whether there should be a minimum amount for which a school, library, or school district is eligible, not tied to the number of students. For instance, should we establish a baseline amount of support that would be provided to an eligible facility, and then a variable amount of support depending on the number of students? If a minimum amount is established, what should it be? We note that smaller applicants might receive less funding because of their smaller number of students; however, some types of equipment are not necessarily usage-sensitive. Should there be additional funding provided to rural applicants, either by establishing a higher dollar amount for rural applicants or a higher discount level?

49. We recognize that schools and libraries at the highest discount levels could receive significantly less funding if we were to establish a capped amount than they receive under the current rules. However, in the near future, as demand for priority one services grows, it is likely that, absent changes to the current funding structure, there will be no funding available for internal connections for even the highest-discount applicants. In addition, those same schools and libraries may be able to realize savings on their purchase of priority one services if they have greater freedom to use lower-cost fiber, as proposed above, which could free up additional money in their budget to pay for internal connections. And in any event, we are concerned that the same few schools continue to receive all of the available funding, year after year, while many schools that have nearly as

many students in poverty receive no funding for internal connections.

50. *Set Aside for Internal Connections.* We seek comment on revising § 54.507 of our rules to set aside a defined amount of funding from the \$2.25 billion fund for internal connections before priority one funding is allocated. We seek comment on an appropriate amount to set aside for internal connections. For instance, would \$500 million be an appropriate amount to set aside for internal connections? Depending on the amount set aside, it is possible that all of the requests for priority one would not be funded. If so, our rules of priority would operate to fund requests from the highest-discount schools first, and it is possible that recipients with the lowest discounts (namely, schools that serve very few students eligible for free or reduced price school lunch) would no longer receive any funding from the E-rate program. We seek comment on whether we should change our rules of priority to effectuate an alternative result.

51. *Threshold for Priority Two Funding.* We seek comment on the appropriate threshold for any revised methodology for internal connections funding. Today, the money effectively is channeled to school districts that have 75 percent or more students eligible for free or reduced-price school lunch. We seek comment on how to focus funding on improving internal connections to a broader group of needy schools, school districts, and libraries. For instance, should we adopt rule changes that would enable school districts where 35 percent or 50 percent of students are eligible for NSLP to obtain predictable funding for internal connections. We encourage parties to submit factual analyses of the distributional impact of alternative thresholds into the record.

52. *Revised Discount Matrix.* Many commenters have suggested that the Commission should revise the priority two discount matrix to enable more school districts to obtain funding for internal connections. SECA and other commenters argue that altering the discount rate is an effective way to increase the availability of priority two funds and more evenly distribute priority funds to a greater number of entities. Additionally, we note that other governmental programs that award funding for similar purposes require recipients to pay 15 or 20 percent of the total cost. An approach that strengthens incentives for applicants to find the most cost-effective services to meet their needs is an important tool to maximize the public benefits of a finite amount of governmental funding, and could

further our efforts to curb waste, fraud, and abuse by applicants and service providers. We seek comment on a revised discount matrix for internal connections and ask whether we should adjust the current level of additional discount provided to rural schools and libraries. Commenters should set forth with specificity an alternative proposed discount matrix.

53. *Eliminate the 2-in-5 Rule.* We seek comment, in conjunction with the options detailed above, on eliminating § 54.506(c), the 2-in-5 rule, which limits an eligible entity's receipt of discounts on internal connections to twice every five funding years. In the *Schools and Libraries Third Report and Order*, the Commission sought to make funds for internal connections available to more eligible schools and libraries on a regular basis by limiting the frequency with which applicants may receive priority two discounts. Further, the Commission concluded that, by precluding a particular entity from receiving support for priority two discounts every year, the rule would strengthen incentives for applicants not to waste program resources by replacing or upgrading equipment on an annual basis but rather to fully use equipment purchased with universal service funds.

54. However, the 2-in-5 rule has not served its intended purposes. Today, funding for maintenance represents roughly 15 percent of all priority two funding, with the very largest school districts receiving most of that funding. The rule has not increased the availability of priority two funding to more eligible schools and libraries on a regular basis. In addition, because the availability of funding is dependent, in part, on the amount of funding sought by higher-discount eligible entities, the 2-in-5 rule actually has increased the unpredictability of priority two funding. Additionally, commenters argue that, instead of increasing the incentive for applicants to not waste program resources, the rule has encouraged schools to undertake large projects that might not be necessary and discriminates against schools that undertake smaller, more long-term projects. We seek comment on any potential implications the elimination of the 2-in-5 rule may have upon current recipients of funding for maintenance and how to address such implications.

55. *Application by School District.* We seek comment on requiring schools and libraries to submit applications for internal connections by school district, not by individual school. Schools that operate independently from a school district, however, such as private schools and some charter schools,

should still apply for discounts individually. We propose, therefore, that any school that is part of an organized school district must apply as part of that district, with libraries receiving the same discount as the public school districts in which they are located. Requiring schools to apply by school district could help streamline the process and will simplify the discount calculation for schools. Additionally, it would ensure that libraries receive funding for internal connections and at the same discount level as schools located within their school district.

56. *Eliminate Funding for Basic Maintenance for Internal Connections.* We seek comment on options for modifying the funding of basic maintenance of internal connections. Currently, the ESL lists basic maintenance as a supported priority two service. In the *Universal Service First Report and Order*, the Commission determined that support for internal connections includes "basic maintenance services" that are "necessary to the operation of the internal connections network." Subsequently, in the *Schools and Libraries Third Report and Order*, the Commission provided further detail on which maintenance services are "necessary" under the terms of the *Universal Service First Report and Order*. The Commission found that basic maintenance services are eligible for universal service support as an internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services. At that time, the Commission sought to identify maintenance as a separate category for priority two funding in part to provide greater transparency regarding the use of internal connections funding. It appears, however, some recipients of funding for maintenance may be using such funding to pay for ongoing information technology support functions, which siphons funding away from other critical uses.

57. One option would be to eliminate E-rate funding for basic maintenance of internal connections. We seek comment on whether funding of basic maintenance for internal connections should remain on the ESL. First, given that funding for the E-rate program is finite and there is a consistent level of unmet demand, we have concerns that our current rules inadvertently result in basic maintenance effectively taking precedence over funding the internal connections that are necessary to deliver

higher bandwidth applications like high definition video streaming to schools and libraries. We believe it may be preferable to spread funding more broadly across needy schools and libraries for internal connections than to provide funding for maintenance of networks for a limited number of school districts. Second, it may be the case that funding for basic maintenance is used to pay for "warranties" on equipment or to support significant information technology departments. Given the limited funding available for internal connections, we question whether the E-rate should be supporting ongoing tech support to address potential problems when there is such unmet demand for actual equipment that will enable services *definitely* to be used. We recognize that maintenance in some form is important for services to be available, but are concerned that our current rules fail to impose appropriate limitations. Third, under our current allocation method, the same schools and school districts receive large amounts of funding year after year for basic maintenance, while others receive nothing. In order to achieve our inclusion objectives, the limited funding available could be better utilized to pay for facilities for schools and libraries serving high poverty populations that have never received funding for internal connections. At least until priority two funding has been distributed more broadly, we ask whether the funding should be used to support initial installation of internal connections rather than pay for maintenance for entities that have already had their internal connections funded through the E-rate program. Finally, eliminating funding for basic maintenance could provide additional incentives for schools and libraries to evaluate carefully the reliability of different solutions from various providers and think seriously about maintenance costs when constructing their internal networks.

58. Another option would be to cap basic maintenance payments and reimburse requests that are based on actual repair and maintenance costs only. Specifically, consistent with the internal connections approach, we seek comment on establishing a per student cap per school district for each funding year, with the applicant's discount rate applied after the cap is determined. For example, if the per student cap were \$2, a school district with 100,000 students would have a total of up to \$200,000 in E-rate funding for basic maintenance for internal connections. If the district were eligible for a 75 percent discount, it

could be eligible to receive up to \$150,000 for maintenance each year. Under this option, libraries would be eligible for up to the same discount as the public school district in which they are located. We believe that this approach would help to ensure that funding for basic maintenance for internal connections is allocated more equitably among the schools and libraries that most need funding support for maintenance. To address the potential waste that occurs by funding maintenance based on estimated costs, we also propose to limit funding for maintenance to actual expenses for repair and maintenance. In order to make this change, we propose to change E-rate program rules to allow applicants to seek E-rate funds for basic maintenance for internal connections in the funding year following the funding year in which they sought and received repairs on internal connections. We seek comment, therefore, on revising § 54.507(d) of the Commission's rules to allow applicants to request funding for basic maintenance that was received in the prior funding year.

59. For either option (eliminating funding for basic maintenance of internal connections or capping such funding), we seek comment on whether such a change should be phased in over some number of funding years, and, if so, how. In either case, the requirement that applicants seek funding for only basic maintenance would remain unchanged. Specifically, we would continue to find ineligible any services that include maintenance of equipment that is not supported by E-rate or that enhances the utility of equipment beyond the transport of information, as well as diagnostic services in excess of those necessary to maintain the equipment's ability to transport information. Additionally, we seek comment on any other methods we could use to ensure support for basic maintenance is distributed equitably and in a way that is based on actual repair costs. For example, one alternative method could be that funding for basic maintenance could be distributed in the next funding year after the costs were incurred based on the actual amount for labor and parts or equipment.

2. Indexing the Annual Funding Cap to Inflation

60. We propose to amend § 54.507 of our rules to index the E-rate program funding cap to the rate of inflation, on a prospective basis, so that the program maintains its current purchasing power in 2010 dollars. Many commenters responding to the *NBP Public Notice*

#15 support adjusting the annual E-rate funding cap to take into account inflation, suggesting that increasing the cap will allow schools and libraries to continue to benefit from upgraded connections that deliver faster and more efficient broadband service as demand for greater capacity increases. In order to maintain predictability, however, we propose that during periods of deflation, the funding cap will remain at the level from the previous funding year. We seek comment on these proposals.

61. We propose using the gross domestic product chain-type price index (GDP-CPI), which is released quarterly. This is the same index used by the Commission to inflation-adjust revenue thresholds used for classifying carrier categories for various accounting and reporting purposes. It also is used to calculate adjustments to the annual funding cap for the high cost loop support mechanism, which subsidizes service provided by rural telephone companies. The Commission has noted that the Bureau of Economic Analysis of the Department of Commerce, which produces the index, considers the GDP-CPI a more accurate measure of price changes than other indices for the Commission's purposes. The GDP-CPI is used by the Commission since it reflects price changes in all sectors of the economy. While inflation is currently very low, implementation of such a proposal could result in the E-rate cap growing from \$2.25 billion to approximately \$2.55 billion over the next five years if inflation were to occur similar to the historical rate for the last five years. We seek comment on this proposal and on whether there are better ways to index the E-rate funding cap to inflation.

V. Creating a Process for Disposal of Obsolete Equipment

62. We propose to amend § 54.513 of our rules establishing how participants in the E-rate program may dispose of obsolete equipment purchased with E-rate discounts. We also propose revising an FCC form to report such equipment disposals to USAC. The changes we propose seek to balance the competing concerns of providing schools and libraries the flexibility to dispose of obsolete equipment and the need to guard against waste, fraud, and abuse within the E-rate program. We seek comment on our proposed changes provided below.

63. *Process for Disposal of Obsolete Equipment.* We seek comment on permitting the disposal of E-rate equipment for payment or other consideration, subject to four of E-Rate Central's proposed five principles. We

propose to revise § 54.513 of our rules to provide for the disposal of equipment for payment or other consideration where such equipment has exhausted its useful life. We clarify that, to the extent a school or library chooses to dispose of equipment purchased using E-rate funds and does not receive monetary payment or other consideration, it may do so without complying with these proposed rules. As BellSouth suggests, the Commission encourages schools and libraries to recycle the equipment when feasible. We do not believe, however, that it is necessary to adopt a requirement that applicants return any non-*de minimis* value, as discussed below. Specifically, we believe that the Act's prohibition on the sale, resale, or transfer of telecommunications services and network capacity was intended to prevent applicants from profiting from supported services during the time that the applicant is supposed to be using them. We do not believe this prohibition extends to when the applicant is no longer utilizing equipment purchased with the assistance of E-rate funds because the equipment is past its useful life. Thus, we propose to allow schools and libraries to dispose of equipment for payment or other consideration under the following conditions: (1) The equipment has exhausted its useful life but no sooner than five years after the equipment is installed; (2) the equipment is formally declared to be surplus by the school board, information technology officer, or other authorized body or individual; (3) the school or library notifies USAC within 90 days of disposal and keeps a record of the disposal for a period of five years following the disposal; and (4) the disposal process fully complies with State and local laws, where applicable. We discuss these conditions separately below.

64. First, we propose that schools and libraries be permitted to sell or trade in equipment after the equipment has exhausted its useful life. We agree with commenters that there should be a rebuttable presumption of no less than five years from the installation date for the useful life of any equipment purchased using E-rate funds. Commenters note that the absence of rules specifically addressing the disposal of equipment purchased under the E-rate program when it has reached the end of its useful life has led some schools and libraries to place obsolete, out-of-service equipment in school basements or other on-campus storage locations. Such indefinite storage imposes additional needless costs on schools and libraries. Additionally, our

silence may have encouraged some schools or libraries to simply throw away unused equipment, even though that same equipment could be put to use by others. We seek comment on permitting the disposal of E-rate equipment for payment or other consideration, subject to certain conditions. Specifically, we seek comment on whether five years is a reasonable minimum time period for retaining equipment components purchased using an E-rate discount. Further, this proposal would count five years from the date of installation. We seek comment on whether that is the appropriate date from which to count five years or whether some other date, such as purchase date, is more appropriate. We note that our proposal would not require schools and libraries to continue using the equipment for five years, but they could not resell or trade it in before five years had passed.

65. Second, we seek comment on the proposal suggested by commenters to require applicants to formally declare that the equipment is surplus. We propose to require that the school board or other authorized body make the formal declaration. We note that E-rate Central proposed that an internal auditor may make the formal declaration. While we do not believe that is typically the function of an internal auditor, we do not preclude schools or libraries from having such a person make the declaration at their discretion. We believe this formal process will prevent applicants from disposing of equipment prematurely. We also propose that the formal declaration be subject to the Commission's document retention rules, as detailed in § 54.516.

66. Third, we propose that schools and libraries notify USAC of the resale or trade of equipment funded via the E-rate program within 90 days of its disposal. We also propose that applicants be required to keep a record of the disposal for a period of five years following the disposal. To implement this requirement, we propose to revise the FCC Form 500 (Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation), as discussed below, to require applicants to submit certain information to USAC documenting the resale or trade of their equipment. We seek comment on these proposals.

67. In setting forth these proposed conditions, we do not propose to require the return of any funds that are related to the resale or trade of E-rate equipment. Thus, we do not propose the adoption of E-Rate Central's suggestion that program participants must refund

any non-*de minimis* consideration received due to the disposal of any obsolete equipment to the E-rate program. The value of equipment after five years of purchase in all likelihood would be so small that it would not justify requiring schools to return a portion of the proceeds to USAC. As SECA notes, the administrative and financial burden on USAC and applicants of documenting and processing any such refunds would far outweigh the value of the funds being returned since such refunds would be minimal. Further, requiring applicants to return any funds related to the disposal of E-rate equipment could deter them from disposing unneeded equipment. We seek comment on these proposals.

68. *Revised FCC Form 500.* Currently, to help the Commission track the use of equipment components purchased with E-rate discounts, schools and libraries are required to "maintain asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase." Similarly, if a school or library closes and transfers services or equipment components thereof to another school or library, the transferor "must notify [USAC] of the transfer, and both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years." Consistent with the Commission's recordkeeping and reporting requirements, we propose to revise the FCC Form 500 to require schools and libraries to report to USAC the disposal of equipment purchased with an E-rate discount for payment or other consideration. Specifically, the revised FCC Form 500 would require a school or library disposing of equipment to report the following information to USAC:

(A) The applicant's name, entity number, address, and telephone number;

(B) The name, address, telephone number, and e-mail address of the applicant's authorized point of contact;

(C) The date of the disposal of obsolete equipment;

(D) The name of each piece of equipment disposed of, including the date of purchase and the funding request number(s) associated with the disposed equipment;

(E) Any payment, trade-in value, or other consideration received for such disposal of equipment;

(F) The name of the entity that paid or otherwise gave the applicant valuable consideration for the equipment;

(G) Formal declaration by the school board or other authorized body or individual that the equipment subject to disposal is surplus; and

(H) Certification that the information provided on the form is true and accurate to the best of the applicant's knowledge, evidenced by the signature of someone authorized to so certify by the applicant and the date.

69. Requiring schools and libraries to submit this information as part of the FCC Form 500 could facilitate our ongoing efforts to mitigate waste, fraud and abuse. Collecting this information would allow USAC and the Commission to better assess how long program participants are using equipment purchased with E-rate discounts prior to disposal of any obsolete equipment, and to track what E-rate program participants do with equipment they no longer use. Moreover, such revision would require limited information, all of which is easy to obtain whenever a school or library seeks to dispose of obsolete equipment. We seek comment on revising the FCC Form 500 and ways in which to further minimize any potential burdens on applicants while guarding against waste, fraud, and abuse in the E-rate program. We also seek comment on the information that we propose to obtain from applicants and whether less or more information would be appropriate.

VI. Procedural Matters

A. Initial Regulatory Flexibility Analysis

70. As required by the Regulatory Flexibility Act ("RFA"), *see* 5 U.S.C. 603, the Commission prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (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 the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. 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

71. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate

rules to implement the universal service provisions of section 254. 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.

72. This NPRM is one in a series of rulemaking proceedings designed to implement the National Broadband Plan's (NBP) vision of improving and modernizing the universal service programs. The Joint Statement on Broadband, released with the National Broadband Plan, identifies comprehensive universal service fund (USF) reform as an essential goal for the Federal Communications Commission (Commission). In meeting the objectives set forth in these documents, this NPRM seeks comment on reforms to focus spending on more productive uses that will better serve the current educational needs of schools and libraries, while maintaining the overall size of the E-rate program in relation to the rate of inflation. This NPRM also seeks comment on potential reforms that would eliminate rules that have not effectively served their intended purpose, while continuing to protect against waste, fraud, and abuse.

2. Legal Basis

73. The legal basis for the NPRM is contained in sections 1 through 4, 201–205, 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.

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. Nationwide, there are a total of approximately 29.6 million small businesses, according to 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 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." 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.

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 the services and equipment used for internal connections.

a. Schools

76. As noted, "small entity" includes non-profit and small governmental entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under State law." 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 schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program. Certain other restrictive definitions apply as well. The SBA has also defined for-profit, elementary and secondary schools having \$7 million or less in annual receipts as small entities. In funding year 2007, approximately 105,500 schools received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these additional entities that would qualify as small entities under SBA's size standard, we estimate that fewer

than 105,500 such schools might be affected annually by our action, under current operation of the program.

b. Telecommunications Service Providers

77. *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, 1,311 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Thus, under this category and associated small business size standard, we estimate that the majority of entities are small.

78. 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.

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 Commission's *2008 Trends Report*, 300 companies reported that they were engaged in the provision of interexchange services. Of these 300 IXCs, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that most providers of interexchange services are small businesses.

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 2008 *Trends Report*, 1,005 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,005 CAPs and competitive LECs, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

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

82. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the 2008 *Trends Report*, 434 carriers reported that they were

engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

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

84. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. 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. The SBA has approved this definition. An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.

85. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 281 carriers reported that they were engaged in the provision of "paging and messaging" services. Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees. We estimate that the majority of common carrier paging

providers would qualify as small entities under the SBA definition.

c. Internet Service Providers

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

d. Vendors of Internal Connections

87. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways." The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: All such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year. Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499. Thus,

under this size standard, the majority of firms can be considered small.

88. Radio and Television Broadcasting and Wireless Communications Equipment

Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for firms in this category, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

89. Other Communications Equipment Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)." The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

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

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

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

91. 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.

92. In this NPRM, we seek comment on a package of potential reforms to the E-rate program that can be implemented in funding year 2011 (July 1, 2011–June 30, 2012). We seek to improve and modernize the program by streamlining the E-rate application process, providing greater flexibility to choose the most cost-effective and educationally useful broadband services, and expanding the reach of broadband to the classroom. More particularly, these proposed reforms include: improving and simplifying the current E-rate application process; codifying the requirement that competitive bidding processes be "fair and open"; simplifying the way schools calculate their discounts; conforming the E-rate definition of "rural" to the Department of Education's definition; allowing greater flexibility in the use of wireless Internet access for educational purposes away from school grounds; allowing recipients the option of leasing low-cost fiber; expanding the reach of broadband in residential schools that serve populations facing unique challenges; creating a predictable funding mechanism that would provide a per student amount for internal connections each year, while eliminating support for basic maintenance of internal connections; indexing the current \$2.25 billion cap on E-rate disbursements to inflation; and creating a process for schools and libraries to dispose of obsolete equipment.

93. As note, we believe the proposals and options being put out for comment will not have a significant economic impact on small entities under the E-rate program. Indeed the proposals and options will benefit small entities by simplifying the application process, eliminating burdensome restrictions on the purchase of certain broadband technologies, creating a more stable and predictable funding pool, and allowing more applicants to receive program funding, while ensuring that the amount of funding available keeps pace with the rate of inflation. Because this NPRM does not propose additional regulation for service providers and equipment

vendors, these small entities will experience no significant additional burden. We nonetheless 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, and possible alternatives.

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

94. None.

B. Paperwork Reduction Act Analysis

95. This document contains proposed modified information collection requirements. 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 collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the "information collection burden for small business concerns with fewer than 25 employees."

C. Ex Parte Presentations

96. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 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. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

2. Section 54.5 is amended by revising the definition for “Rural area” to read as follows:

§ 54.5 Terms and definitions.

* * * * *

Rural area. For purposes of the rural health care universal service support mechanism, a “rural area” is an area that is entirely outside of a Core Based Statistical Area; is within a Core Based Statistical Area that does not have any Urban Area with a population of 25,000 or greater; or is in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but is within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000. “Core Based Statistical Area” and “Urban Area” are as defined by the Census Bureau and “Place” is as identified by the Census Bureau.

* * * * *

3. Section 54.500 is revised to read as follows:

§ 54.500 Terms and definitions.

(a) *Applicant.* For purposes of this subpart, an “applicant” is an eligible school or library, or a consortium that includes an eligible school or library.

(b) *Billed entity.* A “billed entity” is the entity that remits payment to service providers for services rendered to eligible schools and libraries.

(c) *Educational purposes.* For purposes of this subpart, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate and proximate to the provision of library services to library patrons, qualify as “educational purposes.” Activities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services to library patrons.

(d) *Elementary school.* An “elementary school” is a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(e) *Internal connections.* For purposes of this subpart, a service is eligible for support as a component of an

institution’s “internal connections” if such service is necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch.

(f) *Library.* A “library” includes:

- (1) A public library;
- (2) A public elementary school or secondary school library;
- (3) An academic library;
- (4) A research library, which for the purpose of this section means a library that:

(i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(ii) Is not an integral part of an institution of higher education; and

(5) A private library, but only if the State in which such private library is located determines that the library should be considered a library for the purposes of this definition.

(g) *Library consortium.* A “library consortium” is any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries. For the purposes of these rules, references to library will also refer to library consortium.

(h) *Lowest corresponding price.* “Lowest corresponding price” is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services.

(i) *Master contract.* A “master contract” is a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider.

(j) *Minor contract modification.* A “minor contract modification” is a change to a universal service contract that is within the scope of the original contract and has no effect or merely a negligible effect on price, quantity, quality, or delivery under the original contract.

(k) *National school lunch program.* The “national school lunch program” is a program administered by the U.S. Department of Agriculture and State agencies that provides free or reduced price lunches to economically disadvantaged children. A child whose family income is between 130 percent

and 185 percent of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced price lunch. A child whose family income is 130 percent or less of applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

(l) *Pre-discount price.* The “pre-discount price” means, in this subpart, the price the service provider agrees to accept as total payment for its telecommunications or information services. This amount is the sum of the amount the service provider expects to receive from the eligible school or library and the amount it expects to receive as reimbursement from the universal service support mechanisms for the discounts provided under this subpart.

(m) *Priority one services.* For purposes of this subpart, “priority one services” are telecommunications services, Internet access, and information services as designated annually by the Commission in the Eligible Services List.

(n) *Priority two services.* For purposes of this subpart, “priority two services” are internal connections, as designated annually by the Commission in the Eligible Services List.

(o) *Rural area.* For purposes of this subpart, a “rural area” is within a territory whose locale code is classified as either rural-fringe, rural-distant, or rural-remote by the U.S. Department of Education’s National Center for Education Statistics.

(p) *Secondary school.* A “secondary school” is a non-profit institutional day or residential school that provides secondary education, as determined under State law. A secondary school does not offer education beyond grade 12.

(q) *State telecommunications network.* A “State telecommunications network” is a State government entity that procures, among other things, telecommunications offerings from multiple service providers and bundles such offerings into packages available to schools, libraries, or rural health care providers that are eligible for universal service support, or a State government entity that provides, using its own facilities, such telecommunications offerings to such schools, libraries, and rural health care providers.

4. Section 54.501 is amended by revising paragraph (a) to read as follows:

§ 54.501 Eligibility for service provided by telecommunications carriers.

(a) Telecommunications carriers shall be eligible for universal service support under this subpart for providing supported services to eligible applicants.

* * * * *

5. Revise § 54.502 is to read as follows:

§ 54.502 Supported services.

(a) *Telecommunications services.* For purposes of this subpart, supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services in addition to all reasonable charges that are incurred by taking such services, such as State and Federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms. Supported telecommunications services are designated annually in the Eligible Services List by the Commission in accordance with § 54.503 of the Commission's rules.

(b) *Internet access and information services.* For purposes of this subpart, supported Internet access and information services include basic conduit access to the Internet and the services defined in § 54.5 of the Commission's rules as Internet access. Supported Internet access and information services are designated annually by the Commission in the Eligible Services List in accordance with § 54.503 of the Commission's rules.

(c) *Internal connections.* For purposes of this subpart, supported internal connections are defined in § 54.500(e) as eligible services. Discounts are not available for internal connections in non-instructional buildings of a school or school district, or in administrative buildings of a library, to the extent that a library system has separate administrative buildings, unless those internal connections are essential for the effective transport of information to an instructional building of a school or to a non-administrative building of a library. Internal connections do not include connections that extend beyond a single school campus or single library branch. There is a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way. Supported internal connections are defined and listed in the Eligible Services List as updated annually in accordance with § 54.503 of the Commission's rules.

(d) Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing the supported services described in paragraph (b) and (c) of this section for eligible schools, libraries, and consortia including those entities. Such services provided by non-telecommunications carriers shall be subject to all the provisions of this subpart, except § 54.501(a), 54.502(a), and 54.515.

6. § 54.504 [Amended]

- a. Remove paragraphs (a) and (b);
- b. Redesignate paragraph (c) as paragraph (a);
- c. Redesignate paragraphs (d), (e), (f), (g), and (h) as paragraphs (b), (c), (d), (e), and (f);
- d. Revise newly designated paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(iv), (a)(1)(v), (a)(1)(vii), (a)(1)(xi), (e) introductory text, (e)(1), and (e)(2).

The revisions read as follows:

§ 54.504 Requests for services.

(a) *Filing of FCC Form 471.* An applicant seeking to receive discounts for eligible services as designated by the Commission on the eligible services list under this subpart shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator. A commitment of support is contingent upon the filing of FCC Form 471.

(1) The FCC Form 471 shall be signed by the person authorized to order telecommunications services for the applicant and shall include that person's certification under oath that:

* * * * *

(iv) All of the schools and libraries listed on the FCC Form 471 application are:

(A) Covered by an individual or higher-level technology plan for using the services requested in the application that meets the requirements of § 54.508 of the Commission's rules;

(B) Are not covered by a technology plan because the application requests only eligible priority one services as defined in § 54.500(1) and the applicant is subject to State or local technology planning requirements; or

(C) Are not covered by a technology plan because the application requests only basic telecommunications services.

(v) The applicant's technology plan(s) has/have been/will be approved by a State or other authorized body consistent with § 54.508 of this subpart.

* * * * *

(vii) The services the applicant purchases at discounts will be used solely for educational purposes and will not be sold, resold, or transferred in

consideration for money or any other thing of value. Services that the applicant purchases at discounts are not deemed sold, resold, or transferred in consideration for money or any other thing of value if disposed pursuant to § 54.513.

* * * * *

(xi) All bids submitted to an applicant seeking eligible services were carefully considered and the most cost-effective bid was selected in accordance with § 54.510 of this subpart, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology plan goals.

* * * * *

(e) Rate disputes. If they reasonably believe that the lowest corresponding price is unfairly high or low, applicants may have recourse to the Commission, regarding interstate rates, and to State commissions, regarding intrastate rates.

(1) Applicants may request lower rates if the rate offered by the carrier does not represent the lowest corresponding price.

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

* * * * *

7. Section 54.505 is amended by revising paragraph (b) introductory text, (b)(3)(i), (b)(3)(ii), and (b)(4) to read as follows:

§ 54.505 Discounts.

* * * * *

(b) *Discount percentages.* The discounts available to eligible schools and libraries shall range from 20 percent to 90 percent of the pre-discount price for eligible services as designated by the Commission. The discounts available to a particular applicant shall be determined by indicators of poverty and high cost.

* * * * *

(3) * * *

(i) Schools and libraries whose locale code is city, suburb, town-fringe, or rural-fringe, as measured by the U.S. Department of Education's National Center for Education Statistics, shall be designated as urban.

(ii) Schools and libraries whose locale code is town-distant, town-remote, rural-distant, or rural-remote, as measured by the U.S. Department of Education's National Center for Education Statistics, shall be designated as rural.

(4) Applicants shall calculate discounts on supported services described in § 54.502 or other supported special services described in § 54.503 by first calculating a single discount percentage rate for the entire school district by dividing the total number of students eligible for the National School Lunch Program or other alternative eligible mechanism by the total number of students in the district. Applicants shall then compare that single figure against the discount matrix to determine the school district's discount for priority one and priority two services. All schools and libraries within that school district shall receive the same discount rate.

* * * * *

8. Section 54.507 is amended by revising paragraphs (a), (c), and (d) introductory text, to read as follows:

§ 54.507 Cap.

(a) *Amount of the annual cap.* The annual funding cap on Federal universal service support for schools and libraries shall be \$2.25 billion in funding year 2010. In funding year 2011 and subsequent funding years, the funding cap shall be automatically increased annually to take into account increases in the rate of inflation as calculated in (a)(1) of this section. All funds collected that are unused shall be carried forward into subsequent funding years for use in the schools and libraries support mechanism in accordance with the public interest and notwithstanding the annual cap.

(1) *Increase Calculation.* To measure increases in the rate of inflation for annual automatic increase purposes, the Commission shall use the Gross Domestic Product Chain-type Price Index (GDP-CPI). To compute the annual increase, the average of the GDP-CPI for four quarters shall be calculated by adding the four GDP-CPI quarters and dividing the sum by 4. The increase shall be rounded to the nearest 0.1 percent by rounding 0.05 percent and above to the next higher 0.1 percent and otherwise rounding to the next lower 0.1 percent. This percentage increase shall be applied to the amount of the annual funding cap from the previous funding year. If the yearly average GDP-CPI decreases or stays the same, the annual funding cap shall remain the same as the previous year.

(2) *Public Notice.* When the calculation of the yearly average GDP-CPI is determined, the Commission shall publish a Public Notice in the **Federal Register** within 60 days announcing any increase of the annual

funding cap based on the rate of inflation.

* * * * *

(c) *Requests.* Funds shall be available to fund discounts for applicants on a first-come-first-served basis, with requests accepted beginning on the first of July prior to each funding year. The Administrator shall maintain on the Administrator's Web site a running tally of the funds already committed for the existing funding year. The Administrator shall implement an initial filing period that treats all applicants filing within that period as if their applications were simultaneously received. The initial filing period shall begin on the date that the Administrator begins to receive applications for support, and shall conclude on a date to be determined by the Administrator. The Administrator may implement such additional filing periods as it deems necessary.

(d) *Annual filing requirement.* Applicants shall file new funding requests for each funding year no sooner than the July 1 prior to the start of that funding year. Applicants must use recurring services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought. The deadline for implementation of non-recurring services will be September 30 following the close of the funding year. An applicant may request and receive from the Administrator an extension of the implementation deadline for non-recurring services if it satisfies one of the following criteria:

* * * * *

9. Revise § 54.508 to read as follows:

§ 54.508 Technology plans.

(a) *When plan is necessary and content.* Applicants seeking only basic telecommunications services do not need to develop a technology plan when requesting schools and libraries universal service support. Applicants must develop a technology plan when requesting schools and libraries universal service support;

(1) For eligible priority one services if they are not subject to State or local technology planning requirements and;

(2) For eligible priority two services. Applicants must document the date on which the technology plan was created. The technology plan must comply with State and local technology planning requirements or meet the standards established by the U.S. Department of Education's Enhancing Education through Technology, 20 U.S.C. 6764, or the U.S. Institute for Museum and Library Services. The technology plan must include the following elements:

(b) *Approval.* Applicants required to prepare technology plans under this subpart must have such plan(s) approved. An applicant that has developed a technology plan approved by the State, the U.S. Department of Education's Enhancing Education through Technology, or the U.S. Institute for Museum and Library Services has an approved plan for purposes of the universal service program. Other applicants must obtain approval from either the Administrator or an independent entity approved by the Commission or certified by the Administrator as qualified to provide such approval. All parties who will provide such approval must apply the standards set forth in paragraph (a) of this section.

(c) *Timing of certification.* Applicants must certify on the FCC Form 471 that they have prepared a technology plan, if required. Applicants must also confirm in FCC Form 486 that their technology plan was approved before they began receiving services pursuant to it.

10. Add § 54.510 to read as follows:

§ 54.510 Competitive bidding requirements.

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

(b) *Competitive bid requirements.* An applicant shall:

(1) Seek competitive bids for all eligible priority one services in accordance with State or local procurement requirements. If requested by the Administrator, each applicant bears the burden of demonstrating compliance with State or local procurement requirements. Unless there is an existing contract signed on or before July 10, 1997, pursuant to § 54.511(c), an applicant that is not subject to State or local procurement requirements shall follow the FCC Form 470 posting requirements as set forth in paragraph (c) of this section to meet the competitive bidding requirements.

(2) Seek competitive bids for all eligible priority two services pursuant to the requirements established in this subpart, except as provided in § 54.511(c). These competitive bid requirements apply in addition to State and local competitive bid requirements and are not intended to preempt such State and local requirements.

(c) *Posting of FCC Form 470.* (1) An applicant seeking to receive discounts for eligible internal connections products and services under this subpart shall post an FCC Form 470 to

initiate the competitive bidding process. An eligible applicant that is not subject to State or local procurement requirements and that is seeking to receive for eligible priority one service shall post an FCC Form 470 to initiate the competitive bidding process. The FCC Form 470 and any request for proposal cited in the FCC Form 470 should include:

(i) A list of specified services for which the applicant anticipates they are likely to seek discounts; and

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

(2) The FCC Form 470 shall be signed by the person authorized to order eligible services for the eligible applicant and shall include that person's certification under oath that:

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

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

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

(A) Individual technology plans for using the internal connections products or services requested in the application that meets the requirements of § 54.508; or

(B) No technology plan is required by the Commission's rules.

(iv) The technology plan(s) has/have been/will be approved consistent with § 54.508 or no technology plan is required.

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

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

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

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

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

11. Section 54.511 is amended by revising paragraphs (a), (b), (c)(1) introductory text, (c)(1)(ii), (c)(2), (d)(1), removing paragraph (c)(3), and adding paragraph (e) to read as follows:

§ 54.511 Ordering services.

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

(b) *Lowest corresponding price.* Providers of eligible services shall not charge applicants a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the State commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory. Promotional rates offered by a service provider for a period of more than 90 days must be included among the comparable rates upon which the lowest corresponding price is determined.

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

in § 54.510(b), (c)(3), and (c)(4) as follows:

* * * * *

(ii) A contract signed after July 10, 1997, but before the date on which the universal service competitive bid system described in § 54.510 is operational, is exempt from the competitive bid requirements only with respect to services that are provided under such contract between January 1, 1998 and December 31, 1998.

(2) For an applicant that takes service under or pursuant to a master contract, the date of execution of that master contract represents the applicable date for purposes of determining whether and to what extent the applicant is exempt from the competitive bid requirements.

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

* * * * *

(e) *Contract requirements.* All contracts for eligible products and services must comply with State and local contract laws. Applicants must have a contract or legally binding agreement in place when filing the FCC Form 486. Applicants bear the burden of demonstrating compliance with State and local contract laws and should be prepared to provide the necessary documentation of such compliance at any time during the application review process.

12. Section 54.513 is amended by revising the section heading and adding paragraph (d) to read as follows:

§ 54.513 Resale and transfer of services and disposal of surplus equipment.

* * * * *

(d) *Disposal of Surplus Equipment That Has Exhausted Its Useful Life.* At least five years after its installation date, surplus equipment may be resold for payment or other consideration if:

(1) The equipment has exhausted its useful life;

(2) The school board or other authorized body formally declares the equipment to be surplus;

(3) The school or library notifies USAC within 90 days of reselling or trading the equipment using FCC Form 500 and keeps a record of such disposal for a period of five years following the disposal; and

(4) The disposal process substantially complies with State and local laws, where applicable.

13. Section 54.519 is amended by revising paragraphs (a), (a)(6), and (b) to read as follows:

§ 54.519 State telecommunications networks.

(a) *Telecommunications services.* State telecommunications networks may secure discounts under the universal service support mechanisms on supported telecommunications services (as described in § 54.502) on behalf of applicants. Such State telecommunications networks shall pass on such discounts to applicants and shall:

* * * * *

(6) Comply with the competitive bid requirements set forth in § 54.510(b).

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

[FR Doc. 2010-12930 Filed 6-8-10; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF ENERGY**48 CFR Part 970**

RIN 1991-AB91

Acquisition Regulation: Agency Supplementary Regulations

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) on DOE Management and Operating Contracts to make changes to conform to the Federal Acquisition Regulation (FAR), remove out-of-date coverage, and update references. Today's proposed rule does not alter substantive rights or obligations under current law.

DATES: Written comments on the proposed rulemaking must be received on or before close of business July 9, 2010.

ADDRESSES: You may submit comments, identified by DEAR: Subchapter I and RIN 1991-AB91, by any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *E-mail to:* DEARrulemaking@hq.doe.gov. Include DEAR: Subchapter I and RIN 1991-AB91 in the subject line of the message.

• *Mail to:* U.S. Department of Energy, Office of Procurement and Assistance Management, MA-611, 1000 Independence Avenue, SW., Washington, DC 20585. Comments by e-mail are encouraged.

FOR FURTHER INFORMATION CONTACT:

Barbara Binney at (202) 287-1340 or by e-mail barbara.binney@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background

II. Section-by-Section Analysis

III. Procedural Requirements

- A. Review Under Executive Order 12866
- B. Review Under Executive Order 12988
- C. Review Under the Regulatory Flexibility Act
- D. Review Under the Paperwork Reduction Act
- E. Review Under the National Environmental Policy Act
- F. Review Under Executive Order 13132
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Review Under the Treasury and General Government Appropriations Act, 1999
- I. Review Under Executive Order 13211
- J. Review Under the Treasury and General Government Appropriations Act, 2001
- K. Approval by the Office of the Secretary of Energy

I. Background

The Department of Energy Acquisition Regulation (DEAR) Subchapter I has sections that need to be updated to conform with the FAR. The objective of this action is to update the existing DEAR Subchapter I—Agency Supplementary Regulations, Part 970—DOE Management and Operating Contracts to conform it to the FAR. None of these changes are substantive or of a nature to cause any significant expense for DOE or its contractors.

II. Section-by-Section Analysis

DOE proposes to amend the DEAR as follows:

1. Section 970.0100 is amended to add the references for the Code of Federal Regulation (CFR) chapters 1 and 9.
2. Section 970.103 is revised to remove “DEAR” before 970.0309 and remove “FAR” before 3.9 and add in its place “48 CFR subpart” in paragraph (a)(3).
3. Section 970.0404-2 is amended to update the DOE Order to 475.1, Counterintelligence Program.
4. Section 970.19 is amended to revise the subpart heading and the 970.1907 section heading to conform to the FAR.
5. Section 970.1907-1 is redesignated as 970.1907-4 to conform to the FAR.
6. Part 970 is revised by adding a new subpart “970.25 Foreign Acquisition” and section “970.2570 Contract clauses”

which provides instructions on when to insert and how to modify the clauses at FAR 52.225-1, Buy American Act—Supplies, and FAR 52.225-9, Buy American Act—Construction Materials, in management and operating contracts.

7. Section 970.3102-05-6 paragraphs (a)(7)(i) and (ii) are amended to clarify that the contract will set forth the reimbursable costs for compensation for personal services, it removes the reference to the personnel appendix. Paragraph (p)(1) revises the reference to the FAR from the “Federal Acquisition Regulation” to “48 CFR.”

8. Subpart 970.34 is amended by redesignating 970.3400 as 970.3405 and 970.3400-1 as 970.3405-2 to conform with the FAR.

9. Subpart 970.37 is revised to add the new section “970.3706 Performance-based acquisition” and “970.3706-1 General” which references 970.1100 for policy and guidance on performance-based contracting for management and operating (M&O) contracts.

10. Section 970.3770-1 is amended by adding that the use of DOE directives is prescribed in 970.0470.

11. Section 970.5204-1 is amended by revising the date of the clause and removing “DOE Order 5670.3, Counterintelligence Program” in paragraph (a) of the clause and adding in its place “DOE Order 475.1, Counterintelligence Program, or its successor”.

12. Section 970.5223-3 is amended by revising the date of the provision and adding that DOE may grant an extension to the notification or implementation period if necessary as per 10 CFR 707.5 (g) in paragraph (b). This change will provide the contracting officer the authority to extend the time needed for the contractor to submit the workplace substance abuse program plan.

13. Section 970.5223-4 is amended by revising the date of the clause and revising the clause to permit the contracting officer to agree to different date beyond the 30-day notice by the contractor for the submission of the workplace substance abuse program plan. This change will provide the Contracting Officer the authority to extend the time needed for the Contractor to submit the workplace substance abuse program plan.

14. Section 970.5226-1 is amended by revising the punctuation in the last sentence of the clause.

15. Section 970.5232-3 is amended at paragraph (h)(1) to add “or subcontractor’s” after “contractor’s” and to add “and to interview any current employee regarding such transactions” after “hereunder.” Section 871 of the Duncan Hunter National Defense