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

In the Matter of	)	
	)	
Modernizing the E-rate	)	WC Docket No. 13-184
Program for Schools and Libraries	)	

NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we initiate a thorough review and update of the E-rate program (more formally known as the schools and libraries universal service support mechanism), building on reforms adopted in 2010 as well as the Commission's reforms of each of the other universal service programs. During the past 15 years, the financial support provided by the E-rate program has helped revolutionize schools' and libraries' access to modern communications networks. E-rate-supported Internet connections are crucial for learning and for the operation of modern schools and libraries.[1] Increasingly, schools and libraries require high-capacity broadband[2] connections to take

[1] State Educational Technology Directors Association (SETDA), The Broadband Imperative: Recommendation to Address K-12 Educational Infrastructure Needs, at 10 (rel. May 21, 2012), *available at* http://www.setda.org/web/guest/broadbandimperative (last visited July 15, 2013) (SETDA Recommendation). *See generally* Charles M. Davidson and Michael J. Santorelli, The Impact of Broadband on Education: A Study Commissioned by the U.S. Chamber of Commerce (December 2010) *available at* http://www.uschamber.com/sites/default/files/about/US_Chamber_Paper_on_Broadband_and_Education.pdf (last visited July 15, 2013).

advantage of digital learning technologies that hold the promise of substantially improving educational experiences and expanding opportunity for students, teachers, parents and whole communities.[3] As a result, there is a growing chorus of calls to build on the success of the E-rate program by modernizing the program and adopting clear forward-looking goals aimed at efficiently and effectively ensuring high-capacity connections to schools and libraries nationwide.

2. E-rate has been instrumental in ensuring our schools and libraries have the connectivity necessary to enable students and library patrons to participate in the digital world. When Congress passed the Telecommunications Act of 1996 authorizing the creation of the E-rate program, only 14 percent of classrooms had access to the Internet, and most schools with Internet access (74 percent) used dial-up Internet access.[4] By 2005, nearly all schools had access to the Internet, and 94 percent of all instructional classrooms had Internet access.[5] Similarly, by 2006, nearly all public libraries were connected to the Internet, and 98 percent of them offered public Internet access.[6] The challenge we now face is modernizing the program to ensure that our nation's students and communities have access to high-capacity broadband connections that support digital learning while making sure that the program remains fiscally responsible and fair to the consumers and businesses that pay into the universal service fund (USF or Fund).

3. In schools, high-capacity broadband connectivity, combined with cutting-edge educational tools and content, is transforming learning by providing customized teaching opportunities, giving students and teachers access to interactive content, and offering assessments and analytics that provide students, their teachers, and their parents, real-time information about student performance.[7] High-capacity broadband is also expanding the boundaries of our schools by allowing for interactive and collaborative distance learning applications, providing all students – from rural communities to inner cities – access to high-quality courses and expert instruction, no matter how small a school they attend or how far they live from experts in their field of study. High-capacity broadband platforms and the educational options they enable are particularly crucial for providing all students, in both rural and urban communities, customized and personalized education and access to cutting-edge learning tools in the areas of science, technology, engineering and math (STEM) education, thus preparing our students to compete in the global economy.

4. In libraries, high-capacity broadband access provides patrons the ability to search for and apply for jobs; learn new skills; interact with federal, state, local, and Tribal government agencies; search

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[2] We use the term "high-capacity broadband" in this NPRM to describe the evolving level of connectivity schools and libraries need as they increasingly adopt new, innovative digital learning strategies.

[3] SETDA, The Broadband Imperative: Recommendation to Address K-12 Educational Infrastructure Needs, at 10 (rel. May 21, 2012), *available at* http://www.setda.org/web/guest/broadbandimperative (last visited July 15, 2013) (SETDA Recommendation).

[4] *See* U.S. Department of Education, National Center for Education Statistics, Internet Access in U.S. Public Schools and Classrooms: 1994-2001 (2002), *available at* http://www.immagic.com/eLibrary/ARCHIVES/GENERAL/US_ED/NCES2018.pdf (last visited July 15, 2013); U.S. Department of Education, Institute of Education Sciences, Internet Access in U.S. Public Schools and Classrooms: 1994-2005, at 4-5, 16 (2006), *available at* http://nces.ed.gov/pubs2007/2007020.pdf (last visited July 15, 2013).

[5] *See id.* at 4-5.

[6] *See* Information Use Management and Policy Institute, College of Information, Florida State University, Public Libraries and the Internet 2006: Study Results and Findings, at 7 (2006), *available at* http://www.ii.fsu.edu/Solutions/Public-Libraries-The-Internet/Reports (last visited July 15, 2013).

[7] *See, e.g.,* Foundation for Excellence in Education, Digital Learning Now! at 11-12 (rel. Dec. 1, 2010), *available at* http://www.digitallearningnow.com/wp-content/uploads/2011/09/Digital-Learning-Now-Report-FINAL1.pdf) (last visited July 15, 2013).

for health-care and other crucial information; make well-informed purchasing decisions; engage in life-long learning; and stay in touch with friends and family. In Idaho, for example, the state agency's Libraries Linking Idaho database portal, available in all Idaho libraries, provides essential resources to library patrons such as an online video encyclopedia and a program to provide tools for test preparation and skill-building.[8] Additionally, the Chicago Public Library's YOUMedia and The Labs at the Carnegie Library of Pittsburgh offer young people an opportunity to produce rich, multi-media products using the latest technology tools while connecting these learning experiences directly back to school and careers.[9] Further, the Howard County Public Library in Maryland houses a Learning Lab to engage young adults in using new and emerging media and technology.[10] Libraries are uniquely important because they provide Internet access to all residents in communities they serve.[11] In addition, libraries support distance learning and continuing education for college and adult students.[12]

5. There is strong evidence and growing consensus that E-rate needs to sharpen its focus and provide schools and libraries with high-capacity broadband connections. In response to a 2010 Commission survey of E-rate funded schools and libraries, only 10 percent of survey respondents reported broadband speeds of 100 Mbps or greater, while 48 percent reported broadband speeds of less than 10 Mbps.[13] Approximately 39 percent of the respondents cited cost of service as a barrier in meeting their needs, and 27 percent cited cost of installation as a barrier.[14]

6. Likewise, although the speeds of library connections have been increasing over time, many libraries report that speeds are insufficient to meet their growing needs. An annual survey done by the American Library Association (ALA) shows that in 2011-2012, while 9 percent of libraries reported connection speeds of greater than 100 Mbps, 25 percent of libraries still have speeds of 1.5 Mbps or less, and approximately 62 percent of libraries reported connection speeds of 10 Mbps or less.[15] Thus, notwithstanding the trend towards faster speeds, 41 percent of libraries reported that their speeds fail to meet their patrons' needs some or most of the time.[16]

7. Last month, President Obama announced the ConnectED initiative aimed at connecting all schools to the digital age.[17] The ConnectED initiative seeks to connect schools and libraries serving 99 percent of our students to next-generation high-capacity broadband (with speeds of no less than 100 Mbps and a target speed of 1 Gbps) and to provide high-capacity wireless connectivity within those

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[8] *See* American Libraries Association, Libraries Connect Communities: Public Library Funding & Technology Access Study 2011-2012, *American Libraries Magazine*, at 41 (rel. summer 2012), *available at* http://viewer.zmags.com/publication/4673a369#/4673a369/1 (last visited July 15, 2013) (ALA Summer 2012 Report).

[9] Letter from Emily Sheketoff, Executive Director, American Library Association, to the Honorable Barack Obama, President of the United States, CC Docket 02-6, at 1 (dated July 8, 2013).

[10] *Id.*

[11] *Id*. at 2.

[12] *Id.* at 1.

[13] *See* Federal Communications Commission, 2010 E-rate Program and Broadband Usage Survey: Report, at 4-5 (Wireline Comp. Bur. 2011), 26 FCC Rcd 1, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-2414A1.pdf (last visited July 15, 2013) (E-rate Program and Broadband Survey).

[14] *Id.* at 2, 9.

[15] *See* ALA Summer 2012 Report at 23.

[16] *Id.* at 23-24.

[17] *See* The White House, Office of the Press Secretary, *ConnectED: President Obama's plan for Connecting All Schools to the Digital Age available at* http://www.whitehouse.gov/sites/default/files/docs/connected_fact_sheet.pdf (last visited July 15, 2013) (ConnectED Fact Sheet).

schools and libraries within five years.[18] President Obama has called on the Commission to modernize and leverage the E-rate program to help meet those targets. Teachers, local school officials, state education leaders, digital learning experts, and businesses from across the country endorsed President Obama's vision and have called for an update to the E-rate program to meet today's teaching and learning needs.[19]

8. In voicing his support for President Obama's ConnectED initiative, Senator John D. Rockefeller IV, one of the original supporters of the E-rate program, explained: "[I]n its almost two decades, the E-Rate program has fundamentally transformed education in this country – we have connected our most remote schools and libraries to the world. But as impressive and important as the E-Rate program has been, basic Internet connectivity is no longer sufficient to meet our 21st Century

[18] *Id.*

[19] *See, e.g.,* Press Release, Jay Rockefeller, Promises Made, Promises Kept: Rockefeller Program that Expands Internet Access for WV Schools, Libraries Gets Major Boost (June 6, 2013), *available at* http://www.rockefeller.senate.gov/public/index.cfm/press-releases?ID=2c487a72-7b98-456f-b723-278fc11a2202 (last visited July 15, 2013); Press Release, Statement of NCTA President & CEO Michael Powell Regarding the President's ConnectED Initiative (June 6, 2013), *available at* http://www.ncta.com/news-and-events/media-room/article/2774 (last visited July 15, 2013); Press Release, AT&T Chairman & CEO Randall Stephenson, AT&T Response to President Obama's ConnectED Plan (June 6, 2013), *available at* http://www.prnewswire.com/news-releases/att-response-to-president-obamas-connected-plan-210464851.html (last visited July 15, 2013); Press Release, Verizon Senior Vice President of Public Policy and Government Affairs, Verizon Response to President Obama's ConnectED Plan (June 6, 2013) (on file with Commission); Obama Pushes for Higher Speed Broadband in Schools, by Grant Gross, IDG News Service, (June 6, 2013) *available at* http://www.cio.com/article/734558/Obama_Pushes_for_Higher_Speed_Broadband_in_Schools (last visited July 15, 2013) (quoting Comcast's Sena Fitzmaurice, vice president of government communications); John Chambers, Cisco Statement on White House E-Rate Announcement, Cisco Blog (June 6, 2013, 2:44 PM) *available at* http://blogs.cisco.com/news/cisco-statement-on-white-house-e-rate-announcement (last visited July 15, 2013); Press Release, Statement of LEAD Commission, Lee Bollinger, Jim Coulter, Margaret Spellings, Jim Steyer, Lead Applauds ConnectED Intiative (June 6, 2013), *available at* http://www.leadcommission.org/news/statement-lead-applauds-connected-initiative (last visited July 15, 2013); Press Release, CEO of NTCA Shirley Bloomfield, NTCA CEO Comments on White House ConnectED Initiative (June 6, 2013), *available at* http://www.ntca.org/2013-press-releases/ntca-ceo-comments-on-white-house-connected-initiative.html (last visited July 15, 2013); Press Release, CEO of ISTE Brian Lewis, International Society for Technology in Education (ISTE) Applauds President Obama's ConnectED Initiative (June 6, 2013), *available at* http://www.iste.org/news/news-details/2013/06/06/international-society-for-technology-in-education-(iste)-applauds-president-obama-s-connected-initiative (last visited July 15, 2013); Press Release, CEO of Consortium for School Networking (CoSN) Keith Kruger, 'Giant Leap" Forward with ConnectED (June 6, 2013), *available at* http://www.cosn.org/Portals/7/docs/Press%20Releases/2013/CoSNStatementConnectED6June13FINAL.pdf (last visited July 15, 2013); Press Release, National School Boards Association, NSBA Welcomes President's Plan to Improve Schools' Internet Access, (June 6, 2013) *available at* http://www.nsba.org/newsroom/press-releases/nsba-welcomes-presidents-plan-to-improve-schools-internet-access.html.aspx (last visited July 15, 2013); Press Release, American Library Association, ALA welcomes White House call for increased E-rate funding for libraries and schools, (June 6, 2013) *available at* http://www.ala.org/news/press-releases/2013/06/ala-welcomes-white-house-call-increased-e-rate-funding-libraries-and-schools (last visited July 15, 2013); Press Release, Council of Chief State School Officers, CCSSO Statement on ConnectED Initiative Announcement (June 6, 2013), *available at* http://www.ccsso.org/News_and_Events/Press_Releases/CCSSO_Statement_on_ConnectED_Initiative_Announcement.html (last visited July 15, 2013); Press Release, President of Alliance for Excellent Education Gov. Bob Wise, Gov. Bob Wise Comments on President Obama's "ConnectED" Plan to Provide Schools with High-Speed Internet Access (June 6, 2013), *available at* http://www.all4ed.org/press_room/press_releases/06062013 (last visited July 15, 2013); Press Release, National Association of Secondary School Principals, Principals Believe Better Internet Access Will Open More Doors (June 6, 2013), *available at* http://www.nassp.org/Content.aspx?topic=Principals_Believe_Better_Internet_Access_Will_Open_More_Doors (last visited July 15, 2013).

educational needs."[20] Even more recently, the bipartisan Leading Education by Advancing Digital (LEAD) Commission has taken up the call and released a blue print for paving a path to digital learning in the United States which highlights "inadequate high-speed Internet connectivity in the classrooms" as "the most immediate and expensive barrier to implementing technology in education," and calls modernizing E-rate the "centerpiece of solving the infrastructure challenge."[21]

9. The need for E-rate reform is also clear given the extraordinary demand for existing E-rate support. For this funding year,[22] schools and libraries sought E-rate funding in excess of $4.9 billion, more than twice the annual cap of $2.25 billion.[23] The E-rate funding cap was set by the Commission when it created the E-rate program in 1997 and demand for funds has exceeded the cap every year since the inception of the program.[24] Moreover, technology is constantly evolving, so to be most effective, the E-rate program must evolve to meet the current and future needs of schools and libraries. Therefore, in this NPRM, we seek to modernize E-rate to ensure that it can most efficiently and effectively help schools and libraries meet their connectivity needs over the course of the rest of this decade and the next.

10. Three years ago, the Commission took important initial steps to modernize E-rate to improve efficiency and respond to the increasing technological needs of schools and libraries in response to recommendations made in the National Broadband Plan.[25] The reforms, adopted in the *Schools and Libraries Sixth Report and Order*, focused on: (1) providing greater flexibility to schools and libraries in their selection of the most cost-effective broadband services; (2) streamlining the E-rate application process; and (3) improving safeguards against fraud, waste, and abuse.[26] Among other things, the Commission allowed schools and libraries to lease dark fiber from any entity, including state, municipal or regional research networks and utility companies;[27] made permanent a rule to allow schools to open their facilities to the public when schools are not in session so that community members may use the school's E-rate supported services on the school's campus;[28] and established the Learning On-The-Go

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[20] *See* Press Release, U.S. Senate Committee on Commerce, Science, & Transportation, Rockefeller says E-rate Should Expand to Connect More Students to High Speed Broadband (June 6, 2013), *available at* http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=5cb24ad3-281e-4abd-acd0-afb699008e3e&ContentType_id=77eb43da-aa94-497d-a73f-5c951ff72372&Group_id=505cc3fa-a767-40f4-8ac2-4b8326b44e94 (last visited July 15, 2013).

[21] *See* LEAD Commission, *LEAD's National Educational Technology Initiative – a Five Point Plan available at* http://www.leadcommission.org/sites/default/files/LEAD%20Commission%20Blueprint.pdf (last visited July 15, 2013).

[22] Each funding year (FY) runs from July 1 of that year through June 30 of the following year.

[23] *See* Letter from Mel Blackwell, Vice President, USAC, to Julie Veach, Chief, Wireline Competition Bureau (April 22, 2013), *available at* http://www.usac.org/_res/documents/sl/pdf/tools/news/FY2013-Demand-Estimate.pdf (last visited July 15, 2013) (2013 USAC Demand Letter).

[24] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9054-55 at paras. 529-31 (*Universal Service First Report and Order*). As discussed below, the Commission began indexing the cap to inflation in 2010, and in 2003 the Commission provided for unused funds for previous years to be carried forward to subsequent funding years. *See infra* paras. 59, 62-63; *see also* E-rate Funding Requested vs. Available and Disbursed Chart (FY 1998-2011) (Appendix C).

[25] Federal Communications Commission, Connecting America: The National Broadband Plan, (National Broadband Plan), *available at* http://www.broadband.gov/download-plan (last visited July 15, 2013); *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762 (2010) (*Schools and Libraries Sixth Report and Order*).

[26] *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18764-65, para. 6.

[27] *Id.* at 18765-73, paras. 8-19.

[28] *Id.* at 18773-77, paras. 20-27.

(also known as E-rate Deployed Ubiquitously (EDU) 2011) pilot program to investigate the merits and challenges of wireless off-premises connectivity services for mobile learning devices.[29]

11. In this NPRM, we seek comment on ways to build on these steps and more comprehensively modernize E-rate, including improving the efficiency and administration of the program. We begin by proposing explicit program goals and seeking comment on specific ways to measure our progress towards meeting those goals. During the last two years, the Commission has established goals and measures as part of modernizing the three other universal service support programs.[30] Today, we propose to do the same for the E-rate program. We then seek comment on a number of possible approaches to achieving each of our proposed goals.

12. Thus, the balance of this NPRM is organized into the following six sections:

- In Section II, we propose three goals for the E-rate program:

  (1) Ensuring schools and libraries have affordable access to 21st Century broadband that supports digital learning;

  (2) Maximizing the cost-effectiveness of E-rate funds; and

  (3) Streamlining the administration of the E-rate program.

  We also propose to adopt measures for each of the proposed goals.

  In proposing to adopt specific goals and measures, we seek to focus available funds on the highest communications priorities for schools and libraries and, over time, to determine whether E-rate funds are effectively targeted to meet those goals.

- In Section III, we focus on the first proposed goal and seek comment on ways to modernize and reform the E-rate program to better ensure eligible schools and libraries have affordable access to high-capacity broadband. First, we propose to focus E-rate funds on supporting high-capacity broadband to and within schools and libraries, and we seek comment on updating the list of services eligible for E-rate support. Second, we seek comment on various options for ensuring equitable access to limited E-rate funding. Finally, we seek comment on what other measures we could take if these steps, combined with the other efficiency measures proposed elsewhere in this NPRM, appear insufficient to meet our program goals. In particular, we seek comment on potential options to focus additional state, local, and federal funding on school connectivity and to lower the costs of new high-capacity broadband deployment to schools and libraries.

- In Section IV, we focus on the second proposed goal and seek comment on maximizing the cost-effectiveness of E-rate purchases, including how we can encourage increased consortium purchasing; create bulk buying opportunities; increase transparency of spending and prices; amend the competitive bidding processes; and encouraging efficient use of funding. We also seek comment on a pilot program to incent and test more efficient purchasing practices.

[29] *Id.* at 18783-87, paras. 41-50.

[30] *See Connect America Fund et al.,* WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17681-17683, paras. 48-59 (2011) (*USF/ICC Transformation Order*); *Lifeline and Link Up Reform and Modernization et al*., WC Docket Nos. 12-23, 11-42, 03-109, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6671-77, paras. 27-43 (2012) (*Lifeline Reform Order*); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16696-99, paras. 34-43 (2012) (*Healthcare Connect Fund Order*).

- In Section V, we focus on the third proposed goal and seek comment on ways to streamline the administration of the E-rate program by, among other things, requiring electronic filing of all documents with the E-rate program Administrator, the Universal Service Administrative Company (USAC); increasing transparency of USAC's processes; speeding USAC's review of E-rate applications; simplifying the eligible services list; finding more efficient ways to disburse E-rate funds; addressing unused E-rate funding; and streamlining the E-rate appeals process.

- In Section VI, we seek comment on several additional issues relating to the E-rate program that have been raised by stakeholders, including issues related to school and library obligations under the Children's Internet Protection Act (CIPA); identifying rural schools and libraries; changes to the National School Lunch Program; fraud protection measures; use of E-rate supported services for community Wi-Fi hotspots; and procedures for dealing with national emergencies.

In seeking comment on our proposed goals and measures, and on options to modernize E-rate to better align it with these goals, in addition to specific questions posed throughout, we encourage input from Tribal governments and ask generally whether there are any unique circumstances on Tribal lands that would necessitate a different approach. Similarly, we request comment on whether there are any unique circumstances in insular areas that would necessitate a different approach.

II. GOALS AND MEASURES

A. Background

13. As the agency charged by Congress with enhancing access to advanced communications services to schools and libraries,[31] we seek ways to close the gap between the broadband needs of schools and libraries and their ability to purchase those services. We start by proposing concrete goals aimed at closing that gap. Specifically, we propose the following three goals: (1) ensuring that schools and libraries have affordable access to 21st Century broadband that supports digital learning; (2) maximizing the cost-effectiveness of E-rate funds; and (3) streamlining the administration of the E-rate program. We seek comment below on the three proposed goals for the E-rate program and on defined objective, measurable standards to track progress toward meeting those goals.

14. These proposed goals are consistent with Congressional directives in sections 254(b) and (h) of the Communications Act (the Act), which outline the principles upon which the Commission is to base policies for the "preservation and advancement of universal service."[32] These principles include the notion that quality services should be available at "just, reasonable and affordable" rates, and that schools and libraries in all regions of the nation should have access to advanced telecommunications and information services at rates less than the amounts charged for similar services to other parties.[33] The statute specifies that there should be specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service.[34] Indeed, in implementing these statutory mandates, in the 1997 *Universal Service First Report and Order*, the Commission recognized that Congress intended to ensure that eligible schools and libraries have affordable access to advanced telecommunications and information services that would enable them to provide educational services to all parts of the nation.[35]

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[31] 47 U.S.C. § 254(h)(2)(A).

[32] *See* 47 U.S.C. §§ 254(b), (h)(1)(B).

[33] *See* 47 U.S.C. §§ 254(b)(1), (b)(6), (h)(1)(B).

[34] *See* 47 U.S.C. § 254(b)(5).

[35] *See Universal Service First Report and Order*, 12 FCC Rcd at 9002, para. 424 (1997). To implement this goal, the Commission established funding priorities for the E-rate program, placing a higher priority on funding for

(continued…)

15. The goals we propose today also respond to recommendations made about the E-rate program by the U.S. Government Accountability Office (GAO). In a February 2005 report to Congress, for example, the GAO observed that the Commission was responsible, under the Government Performance and Results Act of 1993 (GPRA),[36] for establishing the E-rate program's long-term strategic goals and annual goals, despite the fact that the Act does not include specific goals for the universal service programs.[37] Partly in response to that GAO Report, in 2007, the Commission adopted measures to safeguard the USF from waste, fraud, and abuse as well as measures to improve the management, administration, and oversight of the USF.[38] Even so, the GAO subsequently found that the E-rate program lacks sufficient performance goals and measures.[39] Over the last several years, the Commission has adopted goals and measures for the other universal service programs in order to identify how best to focus the resources of those programs and to track our progress in meeting our defined goals.[40] Likewise, we believe that the clear performance goals and measures we propose in this NPRM will enable the Commission to determine whether the E-rate program is being used for its intended purpose and whether that funding is accomplishing the intended results.

16. To the extent our three proposed goals, or any others that commenters propose, may be in tension with each other, commenters should suggest how we should prioritize or balance them. We also seek comment on ways to collect, manage and share data to track our progress in meeting these goals. In establishing performance goals and measures, we recognize that the E-rate program's goals and measures will likely need to be sufficiently flexible to accommodate the evolving technological needs of schools and libraries. We invite commenters to propose additional or alternative goals and specific performance measures. We also invite comment on the extent to which certain fundamental terms (*i.e.,* "per-school," "per-student") need to be consistently defined and invite commenters to identify and offer proposed definitions for key terms. We also propose to periodically review whether we are making progress in addressing these goals by measuring the specific outcomes.

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telecommunications and Internet access (priority one services) than on internal connections (priority two services). *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14938, para. 36 (1998) (*Fourth Report and Order*); 47 C.F.R. § 54.507(g). The Commission also determined that schools with a higher poverty rate and schools located in rural areas would receive additional funding to assist them in meeting their telecommunications and information services needs. *Id.* at 9049-50, paras. 520-21.

[36] Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285 (1993) (GPRA). Under GPRA, federal agencies must develop strategic plans with long-term, outcome related goals and objectives, develop annual goals linked to the long-term goals, and measure progress toward the achievement of those goals in annual performance plans and report annually on their progress in program performance reports. *See* GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011) (GPRA Modernization Act).

[37] *See* U.S. Gov't Accountability Office, Telecommunications: Greater Involvement Needed by FCC in the Management and Oversight of the E-rate Program, GAO-05-151, at 19 (Feb. 2005).

[38] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Order, 22 FCC Rcd 16372 (2007) (*2007 USF Program Management Order*). In 2008, the Commission sought further comment, among other things, on ways to further strengthen management, administration, and oversight of the USF, how to define more clearly the short-term and long-term goals of the USF, and to identify any additional quantifiable performance measures that may be necessary or desirable. *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Inquiry, 23 FCC Rcd 13583 (2008) (*USF Program Management Notice of Inquiry*).

[39] *See* U.S. Gov't Accountability Office, GAO-09-253, Telecommunications: Long-term Strategic Vision Would Help Ensure Targeting of E-rate Funds to Highest-Priority Uses (2009).

[40] *See supra* n.30.

B. Ensuring Schools and Libraries Have Affordable Access to 21st Century Broadband that Supports Digital Learning

1. Proposed Goal

17. The first goal of the E-rate program we propose to adopt is to ensure that schools and libraries have affordable access to 21st Century broadband that supports digital learning. As discussed above, the communications priorities of schools and libraries have shifted as they seek access to higher-speed connectivity and to allow students and teachers to take advantage of the rapidly expanding opportunities for interactive digital learning.[41]

18. Section 254(h) of the Act, requires the Commission to enhance access to advanced telecommunications and information services to schools and libraries "to the extent technically feasible and economically reasonable,"[42] and determine a discount level for all E-rate funded services that is "appropriate and necessary to ensure affordable access to and use of such services."[43] Thus, in considering our statutory obligations and in light of the growing technological needs of schools and libraries, this proposed goal has two components. The first component of this proposed goal requires that all schools and libraries have access to high-capacity broadband connectivity necessary to support digital learning.[44] The second component of this goal is that schools and libraries be able to afford such services.

19. We also seek comment on whether we should adopt specific goals for other communications services, including voice services. If so, what should those goals be and how can we best harmonize those goals with our proposed goal of ensuring schools and libraries have access to 21st Century broadband that supports digital learning?

2. Proposed Measurements

20. We seek comment on what performance measure or measures we should adopt to support our proposed goal of ensuring eligible schools and libraries have affordable access to high-capacity broadband at speeds that will support digital learning. We also seek comment on how best to perform the relevant measurements.

21. One of the primary measures of progress towards meeting this goal would be benchmarking the performance of schools' and libraries' broadband connections against specific speed targets. We also seek comment on other measures of the availability and affordability of high-capacity broadband to schools and the educational impact of high-capacity broadband in the classroom. We seek comment on whether these are the areas on which we should focus in measuring progress towards this goal. We also seek comment on how other network performance measurement efforts, including the Commission's own Measuring Broadband America Program,[45] should inform our consideration of how to measure network performance. Commenters are encouraged to propose any additional or alternative measures.

22. *Connectivity metrics.* We seek comment on how to define "broadband that supports digital learning" for purposes of measuring progress toward our first goal. President Obama's ConnectED initiative set a target of at least 100 Mbps service with a target of 1 Gbps to most schools and

[41] *See supra* paras. 3-4.

[42] *See* 47 U.S.C. § 254 (h)(2)(A).

[43] *See* 47 U.S.C. § 254 (h)(1)(B).

[44] *See* 47 U.S.C. § 254 (h)(2)(A).

[45] Information on the Measuring Broadband America program is available from the Commission's website, *available at* http://www.fcc.gov/measuring-broadband-america (last visited on July 15, 2013) (Measuring Broadband America Program).

libraries within 5 years.[46] The ConnectED proposals are consistent with those made by the State Education Technology Directors Association (SETDA). According to SETDA, in order to have sufficient broadband access for enhanced teaching and learning, K-12 schools will need Internet connections of at least 100 Mbps per 1,000 students and staff (users) by the 2014-15 school year and at least 1 Gbps Internet access per 1,000 users by the 2017-18 school year.[47]

23. We seek comment on adopting the SETDA target of ensuring that schools have 100 Mbps per 1,000 users increasing to 1 Gbps per 1,000 users.[48] SETDA also recommends that a school within a district have Wide Area Network (WAN)[49] connectivity to other schools within their district of at least 10 Gbps per 1,000 students and staff by 2017-2018.[50] We also seek comment on adopting that target for WAN connectivity.

24. More specifically, we seek comment on whether the SETDA targets are appropriate for all schools, or whether we should set some other minimum levels of broadband speed necessary to meet our proposed goal, and what those levels should be. How much capacity do schools currently use? How are schools' bandwidth needs changing, particularly in those schools that have one-to-one device initiatives? We also seek comment on what our goals should be for schools or school districts with less than 1,000 students and staff if we do adopt the SETDA targets. Will schools with 500 students need 500 Mbps Internet capacity, and how much WAN connectivity will they need? How about schools with 100 students? We also seek comment on the timing of reaching these proposed bandwidth targets for schools. What percent of schools currently have 100 Mbps per 1,000 users? What percent of schools currently have 1 Gbps per 1,000 users? How quickly are schools already moving towards these targets? What percent of schools currently have fiber connectivity to the school? How much would it cost to reach these targets?[51] What are the challenges for schools and the E-rate program in meeting these targets?

25. We also seek comment on the appropriate bandwidth target for libraries. According to the Gates Foundation, the State Library of Kansas has developed a broadband capacity tool that recommends that all libraries have a minimum of 1 Gbps Internet connectivity by 2020 and recognizes that libraries with a large number of connected users will likely need even greater capacity.[52] We seek comment on whether a target of 1 Gbps for all libraries by 2020 is an appropriate measure or whether we should set some other minimum level of broadband speed for libraries necessary to meet our proposed measure and what that should be. We also seek comment on whether we should adopt a WAN connectivity target for libraries interconnected by WANs, and if so, what that target should be. We also seek comment on the target date of 2020 for libraries to have 1 Gbps Internet connectivity. What are the challenges to libraries and the E-rate program of meeting this goal? What percent of libraries currently have 100 Mbps connectivity? What percent of libraries currently have 1 Gbps connectivity?

26. Further, we seek comment on whether there are schools and libraries in some extremely remote parts of our country where the SETDA and the State Library of Kansas capacity targets may not

[46] *See* ConnectED Fact Sheet.

[47] *See* SETDA Recommendation at 2.

[48] *Id.*

[49] *Id*.

[50] *Id.*

[51] *See infra* paras. 72-75 for further discussion and requests for comments on the cost of deployment of fiber and other high-capacity platforms to schools and libraries and on the recurring costs of high-capacity services.

[52] *See* Letter from Karen Archer Perry, Senior Program Officer, U.S. Libraries Program, Bill & Melinda Gates Foundation, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., at 7-9 (filed Aug. 2, 2011) (Gates Ex Parte Letter).

be economically feasible. If so, why are the SETDA or the State Library of Kansas targets unfeasible and what are feasible connectivity targets or benchmarks for those extremely remote geographic areas?

27. As part of the ConnectED initiative, President Obama also called for high-capacity connectivity within schools, and others, including the bi-partisan LEAD Commission, have echoed that proposal.[53] We seek comment on adopting specific bandwidth targets for wireless connectivity within schools, similar to our targets for Internet and WAN bandwidth. Specifically, we seek comment on whether all schools should have internal wireless networks capable of supporting one-to-one device initiatives, and whether libraries should have comparable wireless connectivity. We seek comment on more quantitatively defining these standards. Should we define connectivity in Mbps of wireless capacity available per-student in classrooms, school libraries, and other areas of schools? Should these match the Internet or WAN connectivity recommendations of SETDA? For example, building off SETDA's 2017 recommendation of 100 Mbps Internet connectivity per 1000 students, should we aim for 1 Mbps of wireless capacity per 10 students in classrooms and other learning spaces? What would this standard generally require to implement? We seek comment on this proposal and on alternative bandwidth targets.

28. Many of the applications that enable digital learning require not just high-capacity connections, but also high-quality connections that have associated latency, jitter and packet loss requirements. For example, online viewing of a real-time science lecture and demonstration requires low latency (transmission delay), low jitter (variability in the timing of packets' arrival), and low packet loss. Should we adopt latency, jitter and packet loss performance requirements tailored to the specific uses of broadband connectivity by schools and libraries to ensure successful learning experiences? If so, what such requirements should be?[54] We also seek comment on how best to update network performance requirements as technology and network uses evolve.

29. *Using adoption to measure availability and affordability.* The simplest measure of broadband availability and affordability for schools and libraries may observe whether eligible schools and libraries are purchasing broadband services that meet our proposed speed benchmarks. We therefore seek comment on whether to measure school and library broadband speeds as one metric of broadband availability and affordability.

30. If we adopt this proposal, we seek comment on how best to collect data on the speed and quality of school and library connections. Currently, all schools and libraries must complete an FCC Form 471 application when applying for E-rate funding, and among other things, are requested to provide information about the level of broadband services requested on that form.[55] The Commission is currently seeking comment on modifying the FCC Form 471 to collect more detailed information from applicants on connection speeds and the types of technologies being used for connectivity.[56]

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[53] *See* ConnectED Fact Sheet at 2; *see also* Lead Commission, Paving a Path Forward for Digital Learning in the United States *available at* http://www.leadcommission.org/sites/default/files/LEAD%20Commission%20Blueprint_0.pdf (last visited July 18, 2013).

[54] We note that the *USF/ICC Transformation Order* required that ETCs offer sufficiently low latency to enable real time applications, such as Voice over Internet Protocol (VoIP). The Commission observed that broadband measurement tests showed that most terrestrial wireline technologies could reliably provide latency of l00 Mbps or less. *See USF/ICC Transformation Order*, 27 FCC Rcd. at 17702-3, para. 105.

[55] *See* Schools and Libraries Universal Service, Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form, OMB 3060-0806 (Oct. 2010), at 9-10, *available at* http://www.usac.org/_res/documents/sl/pdf/forms/471i_fy05.pdf (last visited July 15, 2013).

[56] *See Wireline Competition Bureau Seeks Comment on Revisions to FCC Forms 470 and 471,* CC Docket No. 02-6, Public Notice, DA 13-1590 (Wireline Comp. Bur. rel. July 17, 2013).

31. We seek comment on additional ways to update the FCC Form 471 to provide information necessary to monitor and measure our proposed goal.[57] Should we require that E-rate applicants provide specific information about the bandwidth or speed for which they seek funding? Should we make that information publicly available? Should there be specific, required mechanisms for making the information public? For example, should we require such information be published on data.gov?[58]

32. Should we adopt additional measures based on information we gather? For example, should we measure the difference in each school's or library's baseline capacity and speed for each workstation or device over a specified time period?

33. We seek comment on whether there are other methods we should consider adopting for measuring broadband performance, including not only bandwidth available but actual usage as well. We also seek comment on how measuring actual usage would take into account the different possible reasons for level of usage. For example, how would such a measurement account for schools that use broadband connections less because the speeds available are too slow for use of educational software or other reasons? In addition, how do we account for levels of usage that vary based on the availability of teacher technology training? In addition to collecting information on the FCC Form 471, should we conduct an annual or biennial survey to assess the broadband capability of schools and libraries? If so, should it be modeled on the survey of E-rate recipients that the Commission conducted in 2010?[59]

34. In the alternative, should we require some or all E-rate applicants to have dedicated equipment measuring performance to and within each of their buildings? If so, what would be the cost of such a requirement and what would be the benefits? Should we require applicants to pay for such equipment or provide E-rate support for such equipment and the related information collection? Should we make the collected information available to the public? We ask for recommendations on performance measurement systems that are low cost and of minimal burden; easy to implement; low-impact; that will produce uniform results and test a full range of performance metrics; and that include a proven design and are generally accepted as valid testing.

35. Are there other less burdensome methods that would still ensure we are able to examine and employ useful information in lieu of requiring all applicants to employ equipment to test broadband? For example, could we test a sample of schools? Are most schools and libraries or their service providers already measuring the speed of their broadband connections? Are there cost-efficient ways of collecting that information from schools and libraries? Several years ago, the Commission created the Measuring Broadband America Program to measure residential broadband performance.[60] Should we adopt a national performance measurement system for schools and libraries similar to our Measuring Broadband America Program? If so, how could we accommodate measuring not only average or peak performance but also actual usage? We recognize that some third parties are already attempting to collect some such information. For example, Education Superhighway is encouraging schools to participate in its national School Speed Test program.[61] Are there ways the Commission can use the information collected by Education Superhighway or other third-party groups to measure progress towards this goal?

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[57] On July 17, as part of seeking a renewal of our authority from the Office of Management and Budget (OMB) to collect the information on FCC Form 471 application, we sought comment on proposed revisions to the FCC Form 471 that would change the broadband information collection provisions of that form. *See id.* Here we invite comments on both the current form and the proposed one.

[58] www.data.gov.

[59] *See* E-rate Program and Broadband Survey.

[60] *See* Measuring Broadband America Program.

[61] *See* Education Superhighway: Upgrading America's K-12 Internet Infrastructure, *available at* http://www.schoolspeedtest.org/ (last visited July 15, 2013).

36. As part of measuring progress towards the goal of ensuring eligible schools and libraries have affordable access to high-capacity broadband at speeds that will support digital learning, we seek comment on how to measure high-capacity broadband availability and affordability and the metrics that should be used.

37. For example, to measure availability, should we use the National Broadband Map to estimate what fraction of schools and libraries have access to at least one broadband provider within the same census block offering broadband at speeds that meet our proposed performance metrics? If so, what geographic vicinity should we use? Should we use census blocks as the measure? Should we supplement National Broadband Map data with other information? Instead, or in addition, should we collect data on the number of zero-bid service requests as a measure of service availability?

38. Similarly, to measure affordability, we could benchmark the post-discount prices paid by schools for broadband connections against some objective measure. We seek comment on this approach, and on what measures we could use. Would there be benefit to conducting an annual or biennial survey to measure school and library perceptions about affordability? If so, what questions should we ask? Alternatively, should we survey just those schools that do not adopt broadband connections meeting our performance targets to find out why they have not done so?

39. We also seek comment on whether the Commission should measure compliance with its "lowest corresponding price" rule as a measure of affordability to ensure that service providers are providing schools and libraries with the lowest corresponding price for E-rate supported services that a provider charges to a similarly situated non-residential customer.[62] The rule mandates that service providers cannot charge schools, school districts, libraries, library consortia, or consortia including any of these entities 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.[63]

40. *Educational Impact Measurements*. Is there a way to measure how success in the classroom is affected by access to E-rate funding or services supported by E-rate? Stakeholders have, in the past, raised concerns with attempts to correlate E-rate funding with educational outcomes. Critics claim that because classroom performance is affected by many factors, there are no reliable conclusions to be drawn. However, proponents believe that assessing the contribution of digital learning and E-rate funded connectivity towards student outcomes may guide schools in determining the bandwidth and usage of broadband that are most effective as well as provide us guidance in ensuring that universal service dollars are efficiently spent. Is there a way to measure how success in the classroom is affected by access to E-rate funding or access to Internet access services? If so, what should such measures look like, and should they be tied specifically to E-rate funding or more generally to the deployment or use of broadband and next-generation infrastructure? A 2006 study by Austan Goolsbee and Jonathan Guryan found that E-rate support substantially increased the investment of some public schools in Internet and

[62] 47 C.F.R. § 54.511(b). The "lowest corresponding price" is defined as "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." 47 C.F.R. § 54.500(f). In 2010, the Commission sought comment on a petition filed by the United States Telecom Association and CTIA – The Wireless Association® requesting the Commission to issue a declaratory ruling clarifying the scope and meaning of the Commission's "lowest corresponding price" rule. *See Wireline Competition Bureau Seeks Comment on Petition of United States Telecom Association and CTIA – The Wireless Association® for Declaratory Ruling Clarifying Certain Aspects of the "Lowest Corresponding Price" Requirement of the Schools and Libraries Universal Service Program*, CC Docket No. 02-6, Public Notice, 25 FCC Rcd 3662 (Wireline Comp. Bur. 2010) (*USTelecom/CTIA Petition Public Notice*); Petition by United States Telecom Association and CTIA – The Wireless Association® for Declaratory Ruling Clarifying Certain Aspects of the "Lowest Corresponding Price" Obligation of the Schools and Libraries Universal Service Program, WC Docket No. 02-6 (filed Mar. 19, 2010) (USTelecom/CTIA Petition).

[63] 47 C.F.R. § 54.511(b).

communications technologies, but did not find a statistically significant effect on student test scores.[64] Have more recent studies suggested otherwise? We also seek comment on whether the Commission should adopt educational-outcome measurements. Is it appropriate for the Commission to do so, given that educational outcomes are outside the agency's core competence? Are there any legal or jurisdictional issues with doing so?

C. Maximizing the Cost-Effectiveness of E-rate Funds

1. Proposed Goal

41. We propose to adopt, as the second goal of the E-rate program, to maximize the cost-effectiveness of E-rate funds.[65] Ensuring that schools and libraries spend E-rate money in the most cost-effective ways possible maximizes the impact of limited E-rate funds and helps ensure that all eligible schools and libraries are able to receive all the support they need. Funds available through the E-rate program come from contributions made by consumers and businesses to the USF, and the Commission has a responsibility to ensure they are spent effectively.

42. This proposed goal is consistent with section 254(h)(2)(A) of the Communications Act, which requires that support to schools and libraries be "economically reasonable."[66] As the Commission has previously observed, we have a "responsibility to be a prudent guardian of the public's resources."[67] We seek comment on this proposed goal.

2. Proposed Measurements

43. We seek comment on what performance measure or measures we should adopt to support the goal of maximizing the cost-effectiveness of purchases made using E-rate funds. Should we measure the value delivered to schools and libraries with support from the E-rate program by tracking the prices and speed of the broadband connections supported by the program? Should we measure an applicant's costs per-student and costs of products and services in comparison with other costs for products and services available in the marketplace? Are there additional data we would need to require from applicants to track relevant measures, or are there existing data repositories we could use for this purpose? Above, we seek comment on a number of possible affordability measures. Should we use any of these to measure cost-effectiveness instead of, or in addition to, affordability?

44. What data will best allow us to track these metrics? Should we encourage studies on the impact of E-rate support on prices paid for services? We currently report on the results of USAC's audits, and progress in reducing improper payments and waste, fraud and abuse. Should we use this information as part of this measurement?

D. Streamlining the Administration of the E-rate Program

1. Proposed Goal

45. We propose to adopt, as the third goal of the E-rate program, to streamline the administration of the E-rate program. The number of applications the Administrator, USAC, receives from schools and libraries seeking E-rate support is daunting. For example, in funding year 2013, at the close of the application filing window, USAC received 46,189 applications seeking an estimated $4.986

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[64] Austan Goolsbee & Jonathan Guryan, The Impact of Internet Subsidies in Public Schools, 88 Review of Economics and Statistics 336 (May 2006), *draft available at* http://faculty.chicagobooth.edu/austan.goolsbee/research/erate.pdf (last visited July 15, 2013).

[65] *See* 47 C.F.R. § 54.511(a) (requiring eligible schools and libraries select the most cost-effective service offering).

[66] 47 U.S.C. § 254(h)(2)(A) (enhancing access to advanced services for schools and libraries).

[67] *See High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4088, para. 29; *Vermont Pub. Serv. Bd. et al. v. FCC & USA*, No. 10-1184 (D.C. Cir. 2011).

billion in support.[68] In some cases applicants request more in funding commitments than they actually use, and there is no requirement or incentive for applicants to notify USAC in a timely fashion that they have received funding commitments that they will not use. Moreover, the application and disbursement processes are complicated, so that many schools and libraries now feel compelled to spend money on E-rate consultants just to navigate the E-rate processes. Thus, it is essential that we continue to improve the E-rate program procedures and continue to simplify and streamline the program's application review and disbursement processes.

46. This goal therefore includes further streamlining and simplification of the application, review, commitment and disbursement processes, in order to make the most of E-rate funding and accelerate the delivery of support for high-capacity broadband at speeds that will support digital learning, while maintaining appropriate safeguards against waste and abuse.[69] We seek comment on this proposed goal. We are mindful that the Commission and USAC have a duty to protect against waste, fraud and abuse in the program and that the procedures intended to protect against waste, fraud and abuse can complicate and slow down program administration. Therefore, we also seek comment on ways to reconcile the need to simplify the program with the need to protect against waste, fraud and abuse.

2. Proposed Measurements

47. We seek comment on what performance measure or measures we should adopt to support the proposed goal of streamlining the administration of the E-rate program. In 2007, the Commission adopted certain output measurements for evaluating the effectiveness of the E-rate program related to the application and invoicing processes and the resolution of appeals submitted to USAC.[70] Specifically, the Commission required USAC to provide data, on a funding year basis by reporting the number of applications and funding request numbers (FRNs) submitted, rejected, and granted, and the processing time for applications and FRNs.[71] The Commission also required USAC to document the amount of time it takes to make a billed entity applicant reimbursement payment to the service provider, and the number of paid and rejected invoices.[72] Additionally, the Commission required USAC to determine the percentage of appeals resolved by USAC within 90 days from the date of appeal, and how long it takes to process 50 percent, 75 percent, and 100 percent of the pending appeals from the schools and libraries division.[73]

48. What additional measurements should we adopt? The State E-rate Coordinators Alliance (SECA) previously suggested establishing deadlines for making priority one funding commitments and the payment of invoices.[74] As noted above, the Commission currently requires USAC to report data measures for commitments, disbursements and appeals. Should specific targets be established for each of those categories? If so, how should we establish those targets? Should we require USAC to improve on those targets each year or to maintain a certain level of performance?

49. Should we set goals for funding commitments by USAC to applicants as compared to actual disbursements by funding year? In addition, how should we ensure the administrative budget is

[68] 2013 USAC Demand Letter.

[69] *See infra* Section V.A

[70] *See 2007 USF Program Management Order*, 22 FCC Rcd at 16392-94, paras. 44-49.

[71] *Id.* at 16392-93, paras. 44-45.

[72] *Id.* at 16393, paras. 46-48.

[73] *Id.* at 16393-94, para. 49. By "pending appeal" we mean an appeal or request for review filed by an applicant that has not yet been decided by USAC.

[74] *See* Letter from the State E-rate Coordinators Alliance, to Gina Spade, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 02-6, GN Docket No. 09-51, at 3 (filed Sept. 23, 2011) (concerning E-rate goals and performance measures) (SECA September 2011 White Paper).

appropriate for the program? Should we establish targets for the cost of administering the program compared to the program funds disbursed to recipients?[75] Should we measure the number of students and patrons served with E-rate funding over a specified period of time? If so, what should we compare the results to? For example, should we compare it to other federal programs that administer the disbursement of subsidies, such as other USF programs, the Broadband Technology Opportunities Program (BTOP) or educational grant programs?

50. We also seek comment on whether we should adopt a proposal by SECA that USAC be required to retain an independent third party to perform an annual analysis of the barriers to schools and libraries participating in the E-rate program.[76] If such an analysis is warranted, should it be performed annually, as proposed, or on some other time period, such as every three years?

51. We are also mindful of the cost to applicants associated with participating in this program and we seek ways to reduce and measure these costs. Should we collect data regarding administrative costs E-rate applicants incur throughout the application process? If so, what are the best methods to obtain that data? Should applicants be required to disclose on an FCC form the amount of time and cost spent preparing an application? Should we instead consider a survey or sample of participants to obtain this and other information relevant to determine the financial impact including, for example, the cost of hiring an E-rate consultant?

E. Data Collection

52. Finally, we seek comment on a number of cross-cutting issues regarding the collection of accurate, relevant and timely data to track our progress in meeting these goals. We seek comment on the benefits and burdens of requiring E-rate recipients and service providers to provide data to USAC in open, machine-readable formats in order to enhance the accessibility and usefulness of the data. We also seek general comment on what data we collect during the application and disbursement process that should make public. Are there any barriers to making public any data we collect that helps measure our progress towards meeting our proposed goals?[77] Will making such data public encourage the public to develop new and innovative methods to analyze E-rate data? If there are concerns about protecting the confidentiality of some of the data, are there ways to protect sensitive information while still making public the most relevant data or are there ways to aggregate the data to obviate confidentiality concerns? Finally, we seek comment on the extent to which we should apply the principles of the Office of Management and Budget's (OMB's) Open Data Policy to our efforts to collect and share E-rate data?[78]

53. In addition to the specific revisions suggested above, should we revise any of the Commission's E-rate forms, such as the FCC Form 471 application, Item 21,[79] or the FCC Form 500,[80] to

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[75] *See, e.g.,*, *2007 USF Program Management Order*, 22 FCC Rcd at 16398, para. 57.

[76] *See* SECA September 2011 White Paper at 3.

[77] *See infra* paras. 20-40, 43-44, 47-51.

[78] *See* Office of Management and Budget, Office of Management and Budget: Open Government, *available at* http://www.whitehouse.gov/omb/open (last visited July 15, 2013).

[79] Each FCC Form 471 (Description of Services Ordered and Certification Form) application must include a description of the products and services for which discounts are sought. This description is known as an Item 21 Attachment. Beginning with funding year 2011, Item 21 Attachments must be submitted no later than the close of the FCC Form 471 application filing window. *See* USAC website, Schools and Libraries, Item 21 Attachments, *available at* http://www.usac.org/sl/applicants/step04/item-21.aspx (last visited July 15, 2013).

[80] The FCC Form 500 (Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form) is used by the billed entity who filed an FCC Form 471 application and who received a commitment of funds to inform USAC that it wishes to reduce the funding commitment amount on the FRN level, or about a modification in the beginning or ending date for services received during the funding year. *See* USAC, Schools and Libraries, Forms, *available at* http://www.usac.org/sl/tools/forms/default.aspx (last visited July 15, 2013).

collect new data, or to change the formats in which we collect data? For example, should we revise the Item 21 attachment to the FCC Form 471 to collect data more consistently from all applicants? Are there ways we can change the format of the Item 21 to collect more granular data in a way that will allow us to more easily identify what products and services applicants are purchasing and at what prices? Commenters who advocate changes in data collection should indicate which form(s) and what specific revisions we would need to make on those forms in order to ensure that we receive useful information.

54. We also seek comment on essential definitions for purposes of measurement. When considering different policy outcomes, what are the key concepts that require a formal common definition upfront to enable more desirable measurements *(e.g.*, "per school," "per-student," "per patron")? Unique persistent identifiers are important because they designate which entity is being dealt with and also are used to model relationships. Are there unique persistent identifiers for schools, school districts and libraries? For example, are locale codes used by the U.S. Department of Education's National Center for Education Statistics (NCES), also known as urban-centric locale codes,[81] good identifiers to use for schools and school districts? To the extent existing identifiers are missing or have problems, would there be value in creating persistent identifiers or supplementing existing identifiers for some or all such entities, or for other types of applicants? What would be the requirements of such persistent identifiers?

55. Finally, are there goals and measures that we should adopt that we have not already discussed? Commenters should be as specific as possible about their proposed goals and measures.

III. ENSURING SCHOOLS AND LIBRARIES HAVE AFFORDABLE ACCESS TO 21ST CENTURY BROADBAND THAT SUPPORTS DIGITAL LEARNING

56. In this section, we seek ways to further our proposed first goal for the E-rate program: ensuring schools and libraries have affordable access to high-capacity broadband services that support digital learning. We explore methods to focus E-rate funds on supporting high-capacity broadband to and within schools and libraries, to ensure equitable access to limited E-rate funds, and to lower new build costs and tap into other funding sources.

A. Background

57. The E-rate program currently provides eligible schools and libraries support for telecommunications services, telecommunications, Internet access, internal connections, and basic maintenance of internal connections.[82] Within those broad categories, there are specific types of services and products including, but not limited to, digital transmission services, Internet access services, e-mail services, paging services and web hosting services that the Commission has found to be eligible for E-rate support. The Commission publishes an eligible services list (ESL) for each funding year for applicants to use as a tool in determining what services and products are eligible for E-rate support.[83]

58. In 1997, the Commission established an annual funding cap for the E-rate program of $2.25 billion at the recommendation of the Federal-State Joint Board on Universal Service.[84] In adopting this cap at the start of the E-rate program, the Commission recognized that $2.25 billion was a projected amount of the cost of the needs of schools and libraries for eligible services, and that it might be necessary to adjust the cap to address changes in the program, technologies or the needs of the schools and libraries.[85]

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[81] *See* U.S. Dept. of Education website, National Center for Education Statistics, *available at* http://nces.ed.gov/ccd/rural_locales.asp (last visited May 20, 2010) (Identification or Rural Locales).

[82] *See generally* 47 C.F.R. §§ 54.501 *et seq*.

[83] A copy of the ESL for FY2013 is attached hereto as Appendix B (FY 2013 ESL).

[84] *Universal Service First Report and Order*, 12 FCC Rcd at 9054, para. 529.

[85] *Id.* at 9054, para. 530.

59. Over the years, the Commission has made some minor adjustments to the cap. As discussed in more detail below, starting in 2003, the Commission directed USAC to identify unused funds from previous years and to carry forward those funds in order to issue funding commitment decision letters (FCDLs) in excess of the annual cap.[86] Most recently, in the *Schools and Libraries Sixth Report and Order*, the Commission directed that the cap be indexed to inflation beginning in 2010.[87] For funding year 2013 the E-rate fund is capped at just over $2.38 billion.[88]

60. Under the Commission's rules, eligible schools and libraries may receive discounts ranging from 20 percent to 90 percent of the pre-discount price of eligible services, based on indicators of need.[89] Schools and libraries in areas with higher percentages of students eligible for free or reduced price lunch through the National School Lunch Program (NSLP) or an alternative mechanism qualify for higher discounts for eligible services than applicants with low levels of eligibility for such programs.[90] For example, the most disadvantaged schools and libraries, where at least 75 percent of students are eligible for free or reduced price school lunch, receive a 90 percent discount on eligible services, and thus pay only 10 percent of the cost of those services. At the other end of the spectrum, schools and libraries where less than 1 percent of students are eligible to receive free or reduced price school lunch receive a 20 percent discount and must pay 80 percent of the cost.[91] Schools and libraries located in rural areas also may receive an additional 5 to 10 percent discount compared to urban areas.[92]

Figure 1

School and Library Discount Matrix

Percentage of Students Eligible for Lunch Program	Urban Discount	Rural Discount
< 1 %	20 %	25 %
1-19 %	40 %	50 %
20-34 %	50 %	60 %
35-49 %	60 %	70 %
50-74 %	80 %	80 %
75-100 %	90 %	90 %

61. The Commission's current rules provide that requests for all telecommunications, telecommunications services and Internet connections (priority one services) receive first priority for

[86] *See infra* paras. 62-63.

[87] *See Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18780-83, paras. 35-40.

[88] The cap for FY 2013 is $2,380,314,485. *See Wireline Competition Bureau Announces E-rate Inflation-Based Cap for Funding Year 2013*, CC Docket No. 02-6, 28 FCC Rcd 2318 (Wireline Comp. Bur. 2013).

[89] 47 C.F.R. §§ 54.505(a)-(b); *see also* Figure 1 (School and Library Discount Matrix).

[90] 47 C.F.R. § 54.505(b).

[91] 47 C.F.R. § 54.505(c). As discussed in more detail below, the Department of Agriculture's new Community Eligibility Option (CEO) permits schools to serve free breakfasts and lunches to all students without collecting applications from student households. *See supra* paras. 283-286.

[92] 47 C.F.R. § 54.505(b)(3).

funding.[93] The remaining funds are allocated to requests for support for internal connections and basic maintenance of internal connections (priority two services), beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.[94] Funding for all priority one services is committed first and all remaining funding is committed to priority two requests, beginning with schools and libraries eligible for a 90 percent discount. The remaining funds for priority two services are allocated to eligible applicants at each descending single discount percentage, *e.g.*, 89 percent, 88 percent, and so on until the cap has been reached.

62. The E-rate program has traditionally been able to fund all priority one requests, but the total demand including priority two requests has exceeded the E-rate program's almost every year since the program's inception.[95] In the early years, the E-rate program was able to fund a substantial percentage of the priority two requests that it received, but more recently, the vast majority of requests for priority two services have gone unfunded. Even with the Commission allowing USAC to carry forward unused funds from previous years in order to issue FCDLs in excess of the annual cap,[96] since funding year 2000, with one exception,[97] priority two funding has been available only for recipients where at least 50 percent of the students are eligible for free or reduced price school lunch.[98] As a consequence, many schools and libraries do not know from one year to the next whether they will be eligible for priority two funds. In addition, this restriction on funding has also led to a disparity in commitments, with some of the largest urban school districts receiving as much as $190 per-student in any given funding year for priority two services, while smaller school districts across the country rarely receive such support.

63. Unlike the limited amount of funding that has been available for priority two requests, E-rate funding has always been sufficient to meet priority one requests at every discount level. However, for the first time in E-rate program history, in funding year 2012, estimated demand for priority one funding alone exceeded the funding cap.[99] Trending upward, estimated demand for priority one funding

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[93] 47 C.F.R. § 54.507(g)(1)(i).

[94] 47 C.F.R. § 54.507(g)(1)(ii); 47 C.F.R. § 54.505(c).

[95] *See* USAC, Schools and Libraries, USAC Automated Search of Commitments, *available at* http://www.usac.org/sl/tools/commitments-search/Default.aspx (last visited July 15, 2013).

[96] *See infra* para. 255.

[97] For funding year 2010, the Bureau directed USAC to make funding available at all priority two discount levels. It made this determination in light of USAC's announcement that there was additional funding available in the schools and libraries reserve accounts to fund all the applicants. *See Funds For Learning, LLC Petition to Reject the Administrator's Discount Threshold Recommendation for Funding Year 2010*, *Schools and Libraries Universal Service Support Program*, CC Docket No. 02-6, Order, 26 FCC Rcd 11145, 11148-49, para. 9 (Wireline Comp. Bur. 2011); *see also* USAC Fund Size Projections for 4Q 2011 at 41 (Aug. 2, 2011), *available at* http://www.usac.org/about/tools/fcc/filings/2011/Q4/4Q2011%20Quarterly%20Demand%20Filing.pdf (last visited July 15, 2013) (USAC Fourth Quarter 2011 Fund Size Projection).

[98] *See, e.g.*, USAC Schools and Libraries News Brief (dated Apr. 11, 2008), *available at* http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=155 (last visited July 15, 2013) (setting the funding year 2007 denial threshold); USAC Schools and Libraries News Brief (dated July 6, 2007), *available at* http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=98 (last visited July 15, 2013) (setting the funding year 2006 priority two threshold). In funding year 2003, priority two funding was available at the 70% discount level due to a $420 million rollover of unused E-rate funds. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order, 18 FCC Rcd 26912, 26935, para. 57 (carrying forward funds that were projected to be unused in the first quarter of 2004 for use through June 30, 2004) (*Schools and Libraries Third Report and Order*).

[99] *See* Funds for Learning, USF for Schools and Libraries, Funding Year 2013 and Beyond, Growing to Meet the Needs of Students and Library Patrons at 12 (Feb. 2013), http://www.fundsforlearning.com/FFLProposal.php (last visited July 15, 2013) (FFL Feb. 2013 Rep.); E-rate Central, News for the Week, Dec. 17, 2012, http://www.e-

(continued…)

for funding year 2013 is also above the cap at $2.709 billion, an increase of 10.8 percent from last year's demand of $2.444 billion.[100] We believe that the continued and growing demand for priority one funding is driven primarily by the need for higher bandwidth connections in schools and libraries especially as schools across the country move towards online assessments,[101] and schools and libraries increasingly are purchasing mobile connectivity. On May 16, 2013, the Wireline Competition Bureau (Bureau) announced that according to USAC's projections of demand and administrative expenses, $450 million in unused funds from previous funding years is available to carry forward to increase disbursements to schools and libraries.[102] The Bureau determined that this amount will be carried forward to ensure funding is available for all eligible priority one funding requests received from schools and libraries in funding year 2013, in excess of the annual cap.[103] While carry-forward funds may serve as a stopgap measure,[104] the trend in priority one demand indicates that, absent reforms, perhaps as soon as funding year 2014,[105] the ability to fund priority one request at all discount levels will be threatened.

64. Given that requests for E-rate support substantially exceeds available funding,[106] in this section of the NPRM, we seek comment on various options for modernizing the E-rate program to achieve our proposed goal of ensuring that schools and libraries have affordable access to high-capacity broadband. To the extent stakeholders believe that these options, along with measures discussed in other sections of this NPRM to increase the efficiency of E-rate funding, are insufficient to meet connectivity needs of schools and libraries, we also seek comment on other options to achieve the proposed goal of ensuring that schools and libraries have affordable access to high-capacity broadband services.

(Continued from previous page) ratecentral.com/archive/News/News2012/weekly_news_2012_1217.asp#b2 (last visited July 15, 2013) (E-Rate Central Newsletter, Dec. 17, 2012).

[100] *See* 2013 USAC Demand Letter.

[101] *See* E-rate Central Newsletter, Dec. 17, 2012.

[102] *See* Wireline Competition Bureau Announces Carry Forward of Unused Schools and Libraries Universal Service Funds for Funding Year 2013, CC Docket No, 02-6, 28 FCC Rcd 7239 (Wireline Comp. Bur. 2013).

[103] *Id.*

[104] *See. e.g.,* E-rate Central, News for the Week, Apr. 29, 2013, http://www.e-ratecentral.com/archive/News/News2013/weekly_news_2013_0429.asp#b2 (last visited July 15, 2013) (indicating that over the past six years, actual commitments, as a percent of preliminary demand, have ranged from 80-90%, averaging 84% and this would mean that for funding year 2013, at the high 90% level, USAC would require $50 million in roll-over funding to fully fund priority one requests).

[105] *See,* FFL Feb. 2013 Rep. at 4, 11-13 (predicting that there will be a shortfall in funding for telecommunications services and Internet access by funding year 2014).

[106] *See infra* Appendix C which shows E-rate funding requests vs. disbursed and available funds. We retrieved the data for Appendix C by reviewing the committed funds reported in USAC's fund size projections filing. USAC, Federal Universal Service Support Mechanisms Fund Size Projections for Second Quarter 2013, CC Docket No. 02-6, at 31-35 (filed Jan. 31, 2013). For the requested funds, we retrieved data from USAC's demand estimates. USAC, Estimate of Demand for Schools and Libraries Universal Service Support Mechanism for Funding Year 2012, CC Docket No. 02-6 (filed April 20, 2012); Estimate of Demand for Schools and Libraries Universal Service Support Mechanism for Funding Year 2011, CC Docket No. 02-6 (filed April 12, 2011); Estimate of Demand for Schools and Libraries Universal Service Support Mechanism for Funding Year 2010, CC Docket No. 02-6 (filed March 10, 2010); Estimate of Demand for Schools and Libraries Universal Service Support Mechanism for Funding Year 2009, CC Docket No. 02-6 (filed March 10, 2009); Estimate of Demand for Schools and Libraries Universal Service Support Mechanism for Funding Year 2008, CC Docket No. 02-6 (filed February 29, 2008). For the available funds data, we added the amount of the annual cap to the carry-forward amount available each funding year and subtracted USAC's E-rate-related administrative expenses.

B. Focusing E-rate Funds on Supporting Broadband to and within Schools and Libraries

65. To support the goal of ensuring that schools and libraries have access to affordable high-capacity broadband, both to and within schools and libraries, we propose to update the E-rate program's funding priorities, and seek comment on how to do so. In particular, we seek comment on possible updates to the list of services eligible for E-rate support and the related rules to focus funding on those services that provide high-capacity broadband to school and library buildings and those services and equipment that disseminate the high-capacity broadband within those buildings, while deprioritizing or phasing out support for services associated with legacy technologies and services that have little direct educational application.

66. We recognize that E-rate has historically provided support for voice services, and voice services remain essential for communications and public safety at schools and libraries. However, we also recognize that voice services may increasingly be transitioning to a low-marginal-cost application delivered over broadband platforms. We seek comment on how to approach voice services within this framework.

1. Funding for Broadband Connections

67. *Technological architecture*. We begin by seeking general comment on the most efficient technological architectures that schools and libraries are likely to use for connectivity. Are fiber connections generally the most cost effective and future-proof way to deliver high-capacity broadband to community anchor institutions like schools and libraries? Are other technologies, such as point-to-point microwave or coaxial cable, which are widely used to provide high-capacity broadband to schools and libraries today, also efficient and cost-effective ways to provide service as bandwidth demands increase?

68. Smaller schools and libraries may not need the bandwidth provided by fiber connectivity and, particularly for small rural and Tribal schools and libraries, fiber connectivity to the school or library may not currently be available in some areas, or requires the payment of very high up-front construction charges. For these schools and libraries, what are the most cost-effective ways to meet high-capacity broadband needs? Are there fixed wireless solutions that are cost-effective for such schools? Are there some schools where satellite connectivity is the only viable option?

69. How do schools generally purchase connectivity? As an all-inclusive service? Or do schools purchase long-term indefeasible rights of use (IRUs) in physical infrastructure separately from managed services?[107] What approaches are most efficient?

70. Fiber deployment. In the *Schools and Libraries Sixth Report and Order*, subject to certain limitations, the Commission added dark fiber to the list of services eligible for E-rate support.[108] We seek comment on how schools and libraries have incorporated dark fiber into their broadband deployment plans as the result of this change.

71. To further improve applicants' flexibility in finding cost effective ways to deploy high-capacity broadband, we propose to make our treatment of lit and dark fiber more consistent. The E-rate program currently supports the recurring costs of leasing lit and dark fiber as priority one services. When

[107] An IRU is an agreement that provides the recipient with an indefeasible right to use facilities for a certain period of time that is commensurate with the remaining useful life of the asset (usually 20 years, although the parties may negotiate a different term). As a contract law matter, an IRU differs from a lease because it confers on the grantee the vestiges of ownership. *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Notice of Proposed Rulemaking, 25 FCC Rcd 9371, 9395-96, para. 56 (2010). For purposes of the E-rate program, however, the Commission has chosen to treat dark fiber IRUs as "leases." *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18772, para. 19, n.51. We similarly treat IRUs and leases as interchangeable for purposes of the Healthcare Connect Fund, especially with respect to upfront payments.

[108] *See Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18766-73, paras. 9-19.

a school or library leases lit fiber, the modulating electronics necessary to light that fiber are included in the recurring supported cost of the service and are therefore funded as part of the priority one service. By contrast, a school or library that leases dark fiber will not receive priority one support for the modulating electronics necessary to light the dark fiber.[109] To eliminate this disparity, we propose to provide priority one support for the modulating electronics necessary to light leased dark fiber.

72. Installation charges for lit and dark fiber are also treated somewhat differently under current rules. Currently, the E-rate program provides priority one support for the installation of lit or dark fiber up to the property line of eligible schools and libraries.[110] It also supports all "special construction charges" for leased lit fiber, but does not support "special construction charges" for leased dark fiber beyond an entity's property line.[111] Special construction charges include design and engineering costs, project management costs, digging trenches and laying fiber. In order to maximize the options available for schools and libraries seeking to deploy fiber to their premises, we propose to provide priority one support for special construction charges for leased dark fiber, as we do for leased lit fiber.

73. Additionally, although the E-rate program currently provides support for some installation and special construction charges, it requires the cost of large projects to be spread over three years or more.[112] The Commission's intent in requiring the cost to be spread over multiple years was to reduce the demand on the fund, but it may have the unintended consequence of deterring efficient investments, including the deployment of fiber. Should we continue to require that large installation and construction costs be spread over multiple years? If so, what should the threshold be for requiring that costs be spread over multiple years?[113] Is three years the right period? Does the answer depend on how many sites are being connected?

74. We seek comment on the cost to deploy fiber or other technologies that would provide high-capacity broadband connectivity to schools. We also seek comment on other aspects of support for installation and construction charges. Is there a limit to the amount of funding we should provide to any

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[109] Modulating electronics necessary to light dark fiber that is leaving the school or library premises are unsupported by the E-rate program while the electronics needed to light dark fiber can be eligible if the equipment meets the definition of priority two internal connections. *See Wireline Competition Bureau Provides Guidance Following Schools and Libraries Universal Service Support Program Sixth Report and Order,* CC Docket No. 02-6, GN Docket No. 09-51, Public Notice, 25 FCC Rcd 17332, 17337 (Wireline Comp. Bur. 2010) (*Schools and Libraries Sixth Report and Order Guidance Public Notice*).

[110] *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18772-73, para. 19, n.52; *Schools and Libraries Sixth Report and Order Guidance Public Notice,* 25 FCC Rcd at 17337. *See also infra* FY 2013 ESL (Appendix B).

[111] *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18773, para. 19; *Schools and Libraries Sixth Report and Order Guidance Public Notice,* 25 FCC Rcd at 17337.

[112] The Commission determined in the *Brooklyn Order* that upfront non-recurring charges need to be amortized where they vastly exceed the monthly recurring charges. *Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*., File No. SLD-149423, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 18598, 18606-07, para. 20 (*Brooklyn Order*). In response to the Commission's general direction in the *Brooklyn Order*, USAC currently requires that upfront or non-recurring charges of $500,000 or more must be prorated evenly over a period of at least three years. *See* USAC, Schools and Libraries, Wide Area Networks, Capital Investment Costs, *available at* http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/wan.aspx (last visited July 15, 2013).

[113] The Commission previously sought comment on this question and we now seek to refresh the record in this proceeding. *See Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 1914, 1923, para. 19 (2002) (seeking comment on whether to require non-recurring capital costs of a WAN to be amortized over more than three years); and *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26943, paras. 74-75 (seeking comment on whether to limit the recovery of upfront charges for capital investments to no more than 25% of a funding request, and to require amortization of service provider charges for capital investment of more than $500,000 over at least five years).

one library, school or school district over a certain amount of time for construction and installation costs? Are there specific costs that we should or should not fund as part of installation and construction? Are there other approaches we should consider in dealing with high installation and construction costs? We seek comment on whether fiber deployment to schools and libraries being slowed because applicants cannot afford to pay the non-discounted portion of deployment costs. Are there any other conditions we should impose on applicants who seek prioritized support for lit or dark fiber and modulating electronics? Are there ways to cost effectively deploy fiber and minimize recurring costs to schools and libraries?

75. We also seek comment on whether prioritizing special construction charges to deploy fiber or other technologies from middle mile networks to schools and libraries (lateral fiber builds) by dedicating a specific amount of E-rate funding to support such deployment would help meet our connectivity goals.[114] Would some prioritization to support lateral fiber builds create long term cost efficiencies for schools and libraries and for the E-rate program? If so, what should that amount be? Should we encourage or require schools and libraries to enter into long-term IRUs or other long-term arrangements on such lateral builds to get the maximum value of initial investments in fiber?[115] How should we determine the rules of priority for such funding and how much funding should be allocated to each applicant? For example, should funding for fiber builds be distributed based on the poverty level of the students at a school, rurality, location on Tribal lands, lack of fiber or other high-capacity broadband connections to community anchor institutions, or some other objective, observable metric? How much support do we need to provide to make it possible for schools and libraries to apply for such funds, particularly in rural, tribal and other areas where deployment is likely to be expensive? Should we also consider allowing applicants to amortize the costs over a period of time longer than the three years currently required?

76. Is there a role for the states or Tribal governments to play in determining priority for such funds? For example, should we seek state and Tribal government recommendations for the neediest communities (*e.g.*, low income or schools or libraries without broadband), allowing the Commission to make the final determinations based on the amount of funding set aside for particular schools and libraries for fiber lateral builds? We specifically seek comment on any other factors to determine priority of funding for fiber lateral builds. We also seek comment on any potential requirements for receipt of specific support for fiber lateral builds. Should we, for example, require community access to high-capacity broadband facilities in exchange for such funding? We ask commenters to be as specific as possible in response to these questions.

77. If we prioritize some funding for new high-capacity broadband deployment should we be technology neutral or should we prioritize fiber connectivity over other types of broadband connectivity? Should we give schools flexibility to select the best technology that meets their needs? As discussed above there may be some schools and libraries, particularly small rural schools and libraries, where fiber deployment is either not necessary or simply cost-prohibitive.[116] How should we address the needs of schools and libraries in areas where fiber is far less likely to be offered or available, such as Tribal lands? Are there other solutions such as fixed wireless or cable solutions that would be sufficient today or in the future for meeting such schools' and libraries' high-capacity broadband needs? Are there deployment costs associated with any of those technologies that should be supported by the E-rate program?

78. If we seek to spur fiber or other broadband deployments through dedicated funding, are there associated changes we should make in how we fund the recurring costs for telecommunications and Internet access services, which are also priority one services today? For example, should we fund broadband deployment upgrades before recurring costs, creating a further prioritization within existing

[114] AT&T, for example, has suggested such an approach. *See* Letter from Ernie Bond, Director, Federal Regulatory, AT&T, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed July 1, 2013).

[115] *See infra* para. 81.

[116] *See supra* paras. 74-75.

priority one services? Should we consider providing a different discount rate for ongoing services than for initial fiber upgrades? Would this approach encourage schools and libraries to enter more efficient long-term service arrangements as part of new infrastructure investments?

79. *Wide Area Networks (WANS)*.[117] Many schools and libraries use WANs to provide broadband connectivity to and among their buildings. WANs are useful for participants in the E-rate program, particularly school districts and consortia, because they provide dedicated connections between the schools within a school district or the schools and libraries within a consortium allowing them to easily share information and resources. For example, last August, Red Lion School District in Pennsylvania finished deploying a fiber-based WAN network that was supported by the E-rate program. Prior to deploying the new WAN, the district, which has nine schools, had an assortment of technologies but no school had bandwidth greater than 50 Mbps. The new WAN, which incorporates both microwave and fiber technology, provides many of the schools with 1 Gbps in bandwidth to support distance learning, social media, Web 2.0, and cloud-based services.[118] Under the current E-rate rules, however, applicants are allowed to seek support for leased access to WANs but are not permitted to seek support for WANs that they build or purchase.[119]

80. We seek comment on whether there are circumstances under which it will be more cost-effective for schools and libraries to build or purchase their own WAN rather than to lease a WAN. We also seek comment on whether there might be occasions where building or purchasing their own WAN is the only way for schools and libraries to get broadband access. If so, we seek comment on whether we should lift our prohibition on schools and libraries building or purchasing their own WANs by removing section 54.518 of our rules, or amend that section of our rules to allow schools and libraries to build or purchase their own WANs under certain circumstances.[120] If the latter, we seek comment on the criteria we should use in determining whether to provide E-rate support to schools and libraries that purchase or build their own WANs.

81. In the *Healthcare Connect Fund Order*, the Commission allowed consortia to seek rural health care fund support to build and own their own network facilities if construction was determined to be the most cost-effective option after competitive bidding.[121] However, the *Healthcare Connect Fund Order* also imposed several safeguards on the program to ensure that consortia only exercised their option to self-construct when it was absolutely necessary.[122] Should we impose similar safeguards on schools

[117] A WAN is a voice, data, or video network that provides connections from one or more computers or networks within an eligible school or library to one or more computers or networks that are external to such eligible school or library. Excluded from this definition is a network that provides connections between or among buildings of a single school campus or between or among buildings of a single library outlet or branch, when those connections do not cross a public right of way. *See* USAC, Schools and Libraries, Wide Area Network (WAN), *available at* http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/wan.aspx (last visited July 15, 2013).

[118] *See* Red Lion Area School District Adds Gigabit Fiber WAN, the Journal, Dian Schaffhauser (Aug. 15, 2012), *available at* http://thejournal.com/articles/2012/08/15/red-lion-area-school-district-adds-gigabit-fiber-wan.aspx (last visited July 15, 2013).

[119] *See* USAC, Schools and Libraries, Wide Area Network (WAN), *available at* http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/wan.aspx (last visited July 15, 2013).

[120] *See* 47 C.F.R. § 54.518.

[121] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16712-13, paras. 73-75.

[122] *Id.* Safeguards the Commission adopted include: requiring consortia to solicit bids for both services and construction in the same posted requests for proposals; maintaining the same discount rate regardless of whether health care providers choose to purchase broadband services from a provider or construct their own facilities; and imposing an annual cap on the amount that can be allocated to up-front, non-recurring costs; and requiring non-recurring costs that exceed an average of $50,000 per health care provider in a consortium be prorated over at least a three year period. *Id.* The Commission also limited consortia from using revenues from excess capacity as a source of participant contribution. *Id.* at 16726-27, paras. 103-104.

and libraries' option to self-construct WANs in the E-rate program? Are there other E-rate supported services that we should allow applicants to self-provision? If so, what services and under what conditions?

82. More generally, are there any other rule changes needed to ensure schools and libraries can access high-capacity connections to their premises? What other steps can we take to spur efficient new broadband deployments, particularly those deployments, like new fiber builds, that will dramatically increase speeds while bringing down long-term per Mbps prices?

83. Broadband connectivity within schools and libraries. We also seek comment on options to support connectivity within schools and libraries. In recent years, the E-rate program has been unable to fund billions of dollars in requests from applicants seeking support for internal connections. For example, in funding year 2012, USAC received approximately $2.47 billion in funding requests for internal connections, and was unable to fund any requests below the 88 percent discount rate.[123] As a result, many E-rate recipients have not received support for internal connections, and must provide full funding for needed internal connections or go without. We seek comment on the percent of schools and libraries that do not have the necessary equipment to provide high-capacity broadband connectivity within schools, and the amount it would cost to provide high-capacity broadband connectivity within such schools and libraries. We invite commenters to be as specific as possible and to provide any data they have available on this issue.

84. More broadly, we request that commenters provide data on the nature of internal networks generally deployed within schools and libraries today and the likely needs of schools and libraries going forward. Previously in this section, we asked for information about the most efficient and cost effective network architectures for deployment of high-capacity broadband. Similarly, we ask for detailed information about internal network configurations. Will school networks generally consist of wired connections between classrooms and high-capacity wireless routers in each classroom? Do schools generally have internal high-capacity wired connections to each classroom today? If so, should we focus funding on newer high-capacity wireless routers, which are needed to allow multiple simultaneous high-capacity connections in a classroom environment?

85. Are there other equipment or services necessary for high-capacity broadband connections that should qualify for prioritized support? For example, which of the internal connection services listed as priority two services on the current ESL are necessary for providing high-capacity broadband connectivity within schools or libraries?[124] What services not on the ESL should we consider supporting? Should we, for example, consider providing support for caching services or for services necessary for providing network security for schools and libraries? Is there evidence that outdated networking equipment (firewalls, content filters, etc.) creates significant speed bottlenecks on school and library networks? Is adding these types of services to the list of supported services, so that schools and libraries have the funding necessary to update those services, needed to eliminate significant speed bottlenecks? Are there any services not currently receiving support that would allow more cost effective use of E-rate funds?

86. In 2001, the Commission prohibited E-rate recipients from obtaining discounts under the universal service support mechanism for the purchase or acquisition of technology protection measures necessary for the Children's Internet Protection Act (CIPA) compliance.[125] At the time of the *2001 CIPA Order*, protection delivered at the network level was in its nascent stages and now schools and libraries

[123] *See* USAC, Estimate of Demand for Schools and Libraries Universal Service Support Mechanism for Funding Year 2012, CC Docket No. 02-6 (filed April 20, 2012).

[124] *See infra* FY 2013 ESL (Appendix B)

[125] *Federal-State Joint Board on Universal Service, Children's Internet Protection Act,* CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8204, paras. 54-55 (2001) (*2001 CIPA Order*).

need to employ network-level protection more ubiquitously. Should the 2001 decision to prohibit schools and libraries from receiving E-rate discounts for technology protection measures apply to the broad spectrum of services schools and libraries employ for network security which may include, or go beyond those protections necessary for CIPA compliance, in order to maintain and protect high-capacity broadband networks? We seek comment on whether we should review the *2001 CIPA Order* decision in light of the network security needs of schools and libraries today.

87. Are there any other rule changes needed to ensure schools and libraries can effectively use high-capacity connections to their premises? What other steps can we take to spur efficient new high-capacity broadband deployment within schools and libraries.

88. *Recurring costs*. We also seek comment on the recurring costs of high-capacity broadband services. As schools and libraries have been increasingly purchasing high-bandwidth connections, how have their recurring monthly costs changed? We anticipate that in order to meet our proposed connectivity goals, the average recurring per-megabit prices of connectivity purchased by schools will need to come down substantially. Fortunately, there is precedent for significant price reductions associated with infrastructure upgrades. For example, the Commission's Rural Health Care Pilot Program showed that bulk buying through consortia coupled with competitive bidding can reduce the prices that recipients pay for services and infrastructure.[126]

89. How can we ensure that recurring costs come down sufficiently over time within the E-rate program to make our proposed connectivity goals achievable and sustainable? Are the program's existing matching and competitive bidding requirements sufficient safeguards, or are further steps required? For example, should we phase in maximum per-megabit prices over time that are eligible for E-rate discounts, or set program-wide per-megabit price guidelines or targets? Would such prices give schools and libraries greater leverage in soliciting bids from vendors, or simply limit the choices available to schools and libraries? What should such prices be? If we set maximum per-megabit prices, should we allow exceptions in certain circumstances? What impact would such price guidelines or targets have on schools or libraries in areas that lack competition for high-capacity broadband, such as Tribal lands? How would such prices account for differences between more and less heavily-managed services? We seek comment on other options. Below, we also seek comment on how to maximize cost-efficient purchasing.[127] Will these approaches ensure cost-effective purchasing of recurring services?

2. Phasing Down Support for Certain Services

90. Above we seek comment on modifying our rules to ensure availability of the key products and services needed for high-capacity broadband connectivity to and within schools and libraries. We now seek comment on two approaches for streamlining the remainder of the ESL to focus support on high-capacity broadband. First, we propose to phase out support for a number of specific services, including outdated services currently on the ESL, for components of voice service, and seek comment on phasing out support for services that are not used primarily for educational purposes. Second, we seek comment on more fundamentally shifting the way we direct E-rate support to focus exclusively on high-capacity broadband connectivity to and within schools. In so doing, we seek comment on whether there are additional services for which we should phase out or reduce support, including traditional telephone services. Finally, we seek comment on a number of issues that will need to be addressed whichever approach we take.

91. We recognize that flash-cuts to support in a funding year could be financially difficult for schools and libraries and therefore, throughout this section, we seek comment on phasing out support for services we remove from the ESL, rather than eliminating them immediately. We also seek comment on

[126] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16720, para. 93 and E-rate Funding Requested vs. Available and Disbursed Chart (FY 1998-2011).

[127] *See infra* paras. 177-223.

other changes we could make, such as assigning such services a different discount rate that would require applicants to pay for a greater share of those services than for services that we consider to be directly connected to the fundamental purpose of the E-rate program. We also seek comment on how to address bundling of supported services, including bundles that include services for which we phase out support.[128]

a. Specific Services for Which Support May No Longer Be Appropriate

92. *Outdated services.* We first propose to phase out funding for those services that are outdated. For example, paging services are eligible for support because in 1998, the first year of E-rate funding, the adoption of mobile phones was not yet widespread and pagers filled the role of common personal and mobile communications. Paging services have grown increasingly obsolete with the advent and explosive growth of mobile technology and services, many of which are also supported by the E-rate program. Yet, paging services continue to be eligible for E-rate support, and in funding year 2011, USAC committed approximately $934,000 for paging services for more than 500 E-rate requests.[129]

93. Likewise, directory assistance services are eligible for support because, in 1997, directory assistance was considered a core service.[130] Now, however, Internet search has largely replaced directory services.[131] We, therefore, seek comment on our proposal to phase out E-rate support for paging services and directory assistance.

94. Do either paging services or directory assistance service serve any important educational purposes? Is it in the public interest to continue to provide support for either paging services or directory assistance? Are there any other services that are similarly outdated and should no longer be eligible for E-rate support?[132] For example, is there any reason to continue to provide support for dial-up services? In funding year 2011, there were more than 100 requests for approximately $95,000 in funding commitments for dial-up services.[133] Is that still necessary today? Are there any schools or libraries that have no other option for accessing the Internet besides dial up services?

95. *Components of voice service and supplemental services.* We also propose to phase out funding for services that are simply components of voice service as well as those services, other than voice, that ride over or are supplemental to high-capacity broadband connections but are not necessary to make a broadband service functional.[134] More specifically, we first propose to eliminate support for custom calling features, inside wiring maintenance plans, call blocking, 800 number services, and text messaging as components of voice services that may not serve educational purposes and do not further

[128] *See infra* paras. 105-110.

[129] *See* Letter from Melvin R. Blackwell, Vice President, Schools and Libraries Division, USAC, to Lisa Hone, Deputy Division Chief, TAPD, Wireline Competition Bureau (June 28, 2013) (2011 PIA Funding Request Data). This data was created by USAC's PIA reviewers' classification of each funding request number (FRN) based on the predominant service or product being requested. Because FRNs can contain multiple products or services, and determination of the predominant service or product requires case-by-case judgment, these estimates are inevitably imperfect. For any given product or service, the estimates exclude FRNs where that product or services is listed but judged not to be predominant. The estimates also include funding for other products or services listed together with the predominant product or service on the same FRN.

[130] *Universal Service First Report and Order*, 12 FCC Rcd at 8815, para. 80.

[131] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17692, para.78, n.114 (recognizing that the importance of directory assistance services to telecommunications consumers has declined with changes in the marketplace). We do not have a good way to quantify the cost to the fund of directory services, because those charges are generally bundled into E-rate funding requests as part of voice service.

[132] *See infra* FY 2013 ESL (Appendix B).

[133] 2011 PIA Funding Request Data.

[134] We seek comment below on how, and to what extent, we should continue to provide support for voice services while focusing on our proposed goal of high-capacity broadband for schools and libraries. *See infra* paras. 105-109.

our proposed goals.[135] USAC has estimated that it committed more than $85,000 for 800 number service in funding year 2011 and more than $75,000 for unbundled text messaging in funding year 2011.[136] We seek comment on this proposal and we ask whether there are other such services for which we should no longer provide E-rate support?

96. We also seek comment on phasing out funding for supplemental or "ride-over" services. In the *Healthcare Connect Fund Order*, the Commission determined it would only provide support for services necessary to make a high-capacity broadband service functional as distinguished from services or applications that ride over the network. The Commission explained that it was connectivity that served as the "input" to making the ride-over services functional and not the other way around.[137] Although the proposed goals for the E-rate program are somewhat different from our Healthcare Connect Fund goals, should we use the *Healthcare Connect Fund Order*'s concept of "ride over" services to help determine what currently supported E-rate services should be considered supplemental to broadband, and therefore no longer supported? We seek comment on whether the *Healthcare Connect Fund Order*'s characterization of ride-over services is instructive for E-rate purposes.

97. Based on the concept articulated in the *Healthcare Connect Fund Order*, we seek comment on phasing out E-rate support for services that are not directly related to connectivity and seek comment on this proposal, such as electronic mail services (e-mail) service and web hosting as supplemental services. In previous proceedings, commenters have claimed that the pricing of web hosting in the K-12 market has become skewed when compared to other commercially available web hosting services and claim that vendors have become adept at packaging their services to increase the cost of web hosting above market rates in order to decrease the cost of the ineligible services.[138] USAC estimates that it committed $9.8 million for e-mail services and almost $28 million for web hosting in funding year 2011.[139] Should the E-rate fund be supporting services such as web hosting and email at costly monthly rates when many such services are cloud based and offered basically for free to other users? Is there any continuing and compelling policy reason to continue to fund such services?

98. We note that "electronic mail services" are included with in the definition of "Internet access" in section 54.5 of our rules and we therefore seek comment on whether we would need to change the definition of "Internet access" for purposes of the E-rate program if we were to stop providing support for e-mail services.[140] If so, should we simply delete the reference to electronic mail services in the definition of Internet access in section 54.5 of our rules? Are there are other changes we need to make to our rules if we phase down or eliminate support for the types of services discussed above? Are other services that are currently eligible for E-rate support that ride over or are supplemental to high-capacity broadband connections, but are not necessary to make a high-capacity broadband service functional?

99. *Educational purposes.* In the *Schools and Libraries Second Report and Order*, the Commission determined that 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

[135] 2011 PIA Funding Request Data.

[136] *See* 2011 PIA Funding Request Data.

[137] *Healthcare Connect Fund Order*, 27 FCC Rcd at 16754, para. 166.

[138] *See* Comments of SECA on the FY 2010 Draft Eligible Services List for the Schools and Libraries Service Mechanism at 10-16 (filed June 23, 2009), *available at* http://apps.fcc.gov/ecfs/document/view?id=6520223018 (last visited July 15, 2013).

[139] *See* 2011 PIA Funding Request Data.

[140] 47 C.F.R. § 54.5.

to library patrons, qualify as "educational purposes."[141] The *Schools and Libraries Second Report and Order* also, however, provided a presumption that services provided on-campus serve an educational purpose.[142] More recently, the Commission clarified educational purposes in *Schools and Libraries Sixth Report and Order* by requiring that schools must primarily use services funded under the E-rate program, in the first instance, for educational purposes.[143]

100. We seek comment on whether we should make changes to the E-rate program to ensure that supported services are, at a minimum, used for the core purpose of educating students and serving library patrons.[144] More specifically, we seek comment on whether we should allow a school or library to seek E-rate support for services that will be used only by school and library staff, administrators, or board members. If school and library staff use the supported services in their role as educators and information providers but the services are inaccessible to students and library patrons, does this satisfy the statutory requirement that the support be used for educational purposes in 254(h)(1)(B) and that advanced telecommunications be enhanced for all classrooms and libraries in 254(h)(2)(A)?[145] Should E-rate funds be provided if school and library staff use such services only for administrative or other purposes not directly tied to education? If funds are provided for administrative or other purposes not directly tied to education, should they have a lower priority than funds provided for the core purpose of serving students and library patrons? Alternatively or additionally, should we stop providing E-rate support for services to non-instructional buildings, such as bus garages? If so, how should we treat non-instructional buildings, such as technology centers, that support E-rate supported services? Are there some administrative functions such as parent-teacher communication that should always be considered as primarily serving an educational purpose? Or, even if there are services that further the educational mission of the school, is it now no longer realistic to support all of these services within our budget since funding is always limited? We invite commenters to distinguish between and among E-rate supported services when responding to these questions. For example, do commenters think we should take a different approach when it comes to Internet access services as opposed to basic voice services? What changes to the E-rate program would be necessary, such as changes to our rules or required program certifications, if we were to limit E-rate funding to services directly available, at least in part, to students and patrons?[146] Would placing limits on funding for services that are not directly available to students or patrons be too difficult to monitor or audit or raise cost-allocation challenges? Commenters should be specific in their proposals.

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[141] 47 C.F.R. § 54.500(b); *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, para. 17 (2003) (*Schools and Libraries Second Report and Order*). 47 U.S.C. §254(h)(1)(B).

[142] *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, Para. 17.

[143] *See Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18774, para. 22

[144] As mentioned in Section III, the Commission clarified educational purposes in the *Schools and Libraries Sixth Report and Order* by requiring that schools must *primarily* use services funded under the E-rate program, in the first instance, for educational purposes. *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18774. This was generally to allow schools to open up their facilities for community use yet ensure that students "always get first priority in use of the schools' resources." *Id.*

[145] 47 U.S.C. § 254(h)(1)(B), (2)(A).

[146] In setting up the conditions under which community use would be permitted, the Commission prohibited schools from requesting "funding for more services than are necessary for educational purposes to serve their current student population." *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18775, para. 22. The Commission found this condition "necessary to ensure that E-rate funds remain targeted to educational needs of the institution and its students" and noted that this condition is "essential to preserve limited funds and to carry out Congress's intent in establishing the E-rate program." *Id.*

101. *Basic maintenance of internal connections (BMIC).* We seek comment on phasing out funding for BMIC. For funding year 2011, USAC committed nearly $125 million for BMIC.[147] We previously sought comment on modifying our approach to funding for BMIC, and now seek to refresh the record.[148] We recognize that maintenance in some form is necessary for broadband and other supported services to remain available to schools and libraries. However, under our current rules which fund BMIC as a priority two service, the same high-discount school districts receive more than ample funding for basic maintenance each year, while other needy schools and school districts have received no priority two support for increasingly important and necessary internal connections. Additionally, it is especially difficult for USAC to monitor compliance with rules regarding BMIC, and BMIC may therefore be more susceptible to abuse than other funded services. We therefore seek comment on whether to amend section 54.502 of our rules by deleting subsection (a)(2) and removing all other references to basic maintenance services.[149] We also seek comment on whether there are other provisions of our rules that need to be amended if we phase out support for BMIC.

102. *Cellular data plans and air cards.* We also seek comment on how to treat support for Internet access services provided via cellular data plans, including air cards. Such services are costly, and can be provided more efficiently on-campus via an E-rate supported local area (LAN) network that connects to the Internet.[150] Should we phase out support for cellular data plans and air cards or should we instead deprioritize support for such services?

b. Tightly Focusing the Eligible Service List

103. In addition to the specific services identified above, we seek comment on whether we should more fundamentally shift the way we prioritize E-rate support to emphasize and accelerate high-capacity broadband connectivity to and within schools and libraries. In particular, we seek comment on whether we should seek to identify the services currently on the ESL – plus any additional services – that are essential for high-capacity broadband connectivity, and limit the ESL to just those services. What services, in addition to those identified above, should we remove from eligibility under this approach? Would taking this approach help ensure that schools and libraries have the bandwidth necessary to support digital learning?

104. SECA's recent proposal to streamline priority two services is one example of such an approach.[151] SECA recommends that the priority two ESL be "redefined to focus on ensuring that the transmission of bandwidth inside the building is sufficient, and all other functionality should no longer be eligible for support."[152] It therefore suggests that priority two eligible services should be limited to routers, up to one per building; wireless access points, up to one per classroom for schools; and internal cabling, up to three cabling drops per classroom for schools.[153] We seek comment on SECA's proposal, as well as on variations and alternatives.

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[147] USAC Schools and Libraries website, Search Commitments, *available at* http://www.usac.org/sl/tools/commitments-search/Default.aspx (last visited July 15, 2013).

[148] *See Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking, 25 FCC Rcd 6872, 6905, para. 80 (2010) (*E-rate Broadband NPRM*).

[149] *See* 47 C.F.R. § 54.502.

[150] For instance, 86 requests for wireless data service resulted in E-rate commitments of more than $1.7 million for funding year 2011. *See* 2011 PIA Funding Request Data.

[151] *See* Letter from Gary Rawson, State E-rate Coordinators' Alliance, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6, at 6 (filed Jun. 24, 2013) (attaching SECA's "Recommendations for E-rate Reform 2.0") (SECA June 2013 White Paper).

[152] *Id.* at 7.

[153] *Id.* at 8.

c. Transitioning Voice Support to Broadband

105. We also seek comment on phasing out services that are used only for voice communications. At the inception of the E-rate program, one of the primary ways to access the Internet was through voice telephone lines that delivered dial-up service via a 56 kbps modem. Today, widespread deployment of faster-speed technology has permitted schools and libraries to have access to high-capacity broadband connections that permit many types of digital learning technologies. We ask whether focusing on the transport of broadband and transitioning away from voice services would better serve the proposed priorities of the program.[154]

106. In funding year 2011, there were more than 37,000 requests for local and long distance telephone service, amounting to approximately $260 million in funding commitments.[155] While, for funding year 2011, USAC estimates that it committed close to an additional $176 million for cellular services.[156] We seek comments on whether this funding would have greater impact for students and library patrons if it were transitioned to support broadband for schools and libraries.

107. SECA's June 2013 White Paper recommends that telecommunications services that are used only for voice communications should be phased out of E-rate support because such services are not used to provide advanced telecommunications or information services to schools or libraries. It suggests, however, that telecommunications services used for both data and voice telecommunications services should continue to be fully eligible for E-rate without requiring any cost allocation.[157] SECA specifically proposes a tiered phase out of funding for all basic phone service over a five-year period to allow the smaller and more rural applicants who disproportionately use the basic phone service and legacy technologies ample opportunity to upgrade their infrastructure, and for their associated service providers to also update their service offerings.[158] We seek comment on SECA's plan for phasing out E-rate support for basic voice telecommunications. Would the savings resulting from the phase out of funding for basic voice be better spent on high-capacity broadband that supports digital learning? Would the phase out of voice services give more E-rate applicants the opportunity to have internal connections project funded under the program?

108. We ask about the potential hardship schools and libraries would face if voice phone service was phased out under the E-rate program. As we noted in the *E-rate Broadband NPRM*, we recognize that local, state and Tribal jurisdictions around the country are facing economic difficulties and budget tightening.[159] At the same time, we seek comment on the extent to which E-rate support for voice service serves to provide schools and libraries access to services they would not otherwise be able to afford, or simply subsidizes voice telephone service that schools and libraries would purchase anyway,

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[154] *See, e.g., id.* at 6-7 (recommending that telecommunications services that are used only for voice communications should be phased out of E-rate support).

[155] 2011 PIA Funding Request Data.

[156] *Id*.

[157] SECA June 2013 White Paper at 6-7. SECA asserts that this approach will incent applicants and service providers to migrate voice telecommunications services onto the data communications network platform wherever feasible and will encourage applicants to focus on augmenting their data network transmission capability to meet the anticipated needs for online testing in the near future. *Id*.

[158] *Id.* at 6. SECA's phase out proposal for basic voice is as follows: Year One 80% of annual phone service would be funded at the applicant's E-rate discount; Year Two 60% of annual phone service would be funded at the applicant's E-rate discount; Year Three 40% of annual phone service would be funded at the applicant's E-rate discount; Year Four 20% of annual phone service would be funded at the applicant's E-rate discount; Year Five No funding available for phone service.

[159] *E-rate Broadband NPRM*, 25 FCC Rcd at 6897, para. 59.

including voice services schools across the country may have been paying for in full before the inception of the E-rate program.

109. Should the Commission consider subsidizing more cost-effective ways to make local and long-distance calls? Does Voice over Internet Protocol (VoIP) service provide a viable alternative to public-switch telephone service? Has the advent of increased broadband speeds in schools and libraries made VoIP service a more cost-efficient and attractive way to receive voice services? How should our rules accommodate the needs of schools and libraries in areas without VoIP services, including some Tribal lands? Or should the Commission also phase out funding for all voice services, including VoIP service?

110. We seek comment on whether there are any statutory limitations that must be considered in eliminating voice telephone service from the ESL.[160] To the extent there are legal concerns with removal of voice telephony service from the ESL, could we condition support for voice telephony service in a way that would eliminate stand-alone support for voice telephony service but allow it for bundles that include broadband service? Could the Commission forbear from applying the obligation on telecommunications carriers to discount their voice telephony service, thus eliminating the need for such reimbursement?[161]

d. General Issues Related to Phasing out Support

111. In the paragraphs above, we have proposed or sought comment on proposing phasing out funding for several types of services. If we decide to phase out support for these services, should we begin immediately for funding year 2014? Or should we instead phase down such support over a longer period of time to provide more time for applicants? If so, what period of time would be appropriate? Are there some services we should stop supporting immediately, and others we should phase out incrementally over time?

112. Alternatively, should we consider maintaining support for some or all of these services, but at a lower priority than the funding of high-capacity broadband services? Or, as another alternative to phasing out funding for the services described above, should we consider reducing the percentage of support we provide for those services? If so, what percentage of support would be appropriate?

113. Are there other services for which we should phase out support or reduce the percentage of support E-rate provides? We ask commenters to identify any specific services that they think should be supported by the E-rate program, but at a lower discount rate, and what discount rate commenters think we should use. Should the discount be flat for all services, regardless of the applicant or should we adjust all applicant discount rates for such services? Finally, we invite commenters to help us refine USAC's estimates of the amount of E-rate funding spent on each of the services at issue in this section and elsewhere in this NPRM. Should we consider other changes to the ESL?

114. We seek comment on any other approaches we should consider. For example, because access to high-capacity broadband is far below the national average on Tribal lands, should we consider adopting an E-rate Tribal priority? If so, how should such Tribal priority operate? Should, for example, a Tribal priority be available to schools operated by the Bureau of Indian Education or by individual Tribal governments? Commenters should be as specific as possible.

C. Ensuring Equitable Access to Limited E-rate Funds

115. To help address high demand for E-rate funding and to ensure equitable access to limited E-rate funds, we seek comment on revisions to the way E-rate funding is currently distributed. As explained in more detail above, under current program rules, eligible applicants must contribute between

[160] We note that voice telephone service is the service supported by the Universal Service Fund's high-cost and low-income programs. 47 C.F.R. § 54.101.

[161] 47 U.S.C. § 10.

10 and 80 percent of the cost of the supported service.[162] The discount available to a particular school is determined by the percentage of student enrollment that is eligible for a free or reduced price lunch under the NSLP or a federally-approved alternative mechanism, such as a survey.[163] A library's discount percentage is based on the discount rate of the public school district in which the library is physically located.[164] Schools and libraries located in rural areas also may receive an additional 5 to 10 percent discount compared to urban areas.[165] The rules provide a matrix, produced above in Figure 1, reflecting both a school's urban or rural status and the percentage of its students eligible for the school lunch program to establish a school's discount rate, ranging from 20 percent to 90 percent, to be applied to eligible services.[166]

116. Below we seek comment on six options for revising the structure for distributing funds under the E-rate program by: (1) revising the discount matrix to increase certain applicants' matching requirements; (2) providing support on a district-wide basis; (3) revising our approach to supporting rural schools and libraries; (4) incorporating a per-student or per-building cap on funding into the discount matrix; (5) providing more equitable access to priority two funding; and (6) allocating funds to all eligible schools and libraries up front. These options are not necessarily exclusive of one another and we encourage interested parties to address comprehensively the various proposals, particularly if aspects of one are in tension with another. We also ask that parties consider the impact of changes to the discount matrix on libraries, and we seek comment on what particular challenges libraries will face if we change the discount matrix.

1. Modifying the Discount Matrix

117. To have sufficient funds to meet applicants' needs for high-capacity broadband and equitably distribute funding across schools and libraries, we seek comment on whether we should gradually increase, over time, the minimum percentage of matching funds that E-rate applicants must provide when seeking support from the E-rate program. We seek comment on whether this would better serve – on a cost benefit basis – our statutory mandate to "ensure affordable access to and use of" E-rate services.[167] We also seek comment on other possible changes to the discount matrix.

118. *Increasing applicants' matching requirement.* Gradually increasing the minimum matching funds provided by applicants would broaden the availability of E-rate support. In funding year 2011, for example, USAC committed approximately $818 million in support for applicants at the 90 percent discount level, and $790 million in support for applicants at 80-89 percent discount levels.[168] Thus, nearly two thirds of all funding went to applicants at these funding levels. Some previous commenters have suggested reducing the maximum discount rate to 80 or even 70 percent.[169] If the

[162] *See supra* paras. 60-61.

[163] 47 C.F.R. § 54.505(b)(1).

[164] 47 C.F.R. § 54.505(b)(2).

[165] 47 C.F.R. § 54.505(c).

[166] *Id.*; *see also supra* Figure 1 (School and Library Discount Matrix).

[167] 47 U.S.C. § 254(h)(1)(B).

[168] *See* USAC, Schools and Libraries, Search Commitments (as of June 13, 2013), *available at* http://www.universalservice.org/sl/tools/commitments-search/Default.aspx (last visited July 15, 2013).

[169] Some support a maximum priority two discount of 70%. *See, e.g.,* SECA Comments in CC Docket No. 02-6 at 43 (filed July 8, 2010); California Dept. of Educ. Comments in CC Docket No. 02-6 at 15 (filed July 9, 2010); Wisconsin Dept. of Public Instruction, Comments in CC Docket No. 02-6 at 9 (filed July 9, 2010); Alaska Department of Education and Early Development, Alaska State Library, and Alaska E-rate Coordinator's Office Comments in CC Docket No. 02-6 at 9-10 (filed July 9, 2010); E-Rate Management Professionals Assoc. Comments in CC Docket No. 02-6 at 18 (filed July 8, 2010)(or 80% maximum). *See also infra* n.171.

maximum discount rate had been 80 percent in funding year 2011, there would have been approximately $150 million in funding to spread more widely to applicants who did not receive support for priority two services.

119. Increasing the matching requirement could also encourage applicants to make more efficient and smarter decisions. In 2003, a USAC task force on the prevention of waste, fraud and abuse found that increasing the percentage of costs that schools and libraries pay for E-rate supported services would encourage more careful and cost-efficient purchasing of E-rate supported services and would thereby reduce the risk of waste, fraud and abuse of E-rate funds.[170] Therefore, it recommended requiring applicants to pay at least 20 percent of the price of priority two E-rate services.[171] We seek comment on that analysis.

120. More recently, Funds for Learning, an E-rate consultant, issued a report demonstrating that school districts with high discount rates spend, on average, far more on E-rate supported services than schools that have to pay a higher percentage of the costs of the supported services they purchase.[172] We seek comment on that analysis and whether it supports a decision to reduce the maximum discount level. Funds for Learning also notes, however, that the majority of high-discount schools are not, in its words, "big spenders."[173]

121. Recent changes to the Rural Health Care program provide an example of the potential benefits of reducing the maximum discount level. In adopting the *Healthcare Connect Fund Order* last year, the Commission required fund recipients to contribute 35 percent of the costs of the supported services.[174] The Commission found that requiring recipients of Healthcare Connect funds to contribute 35 percent of the costs of services gave health care providers a strong incentive to control the total costs of the supported services and "appropriately balances the objectives of enhancing access to advanced telecommunications and information services with ensuring fiscal responsibility and maximizing the efficiency of the program."[175]

122. We anticipate several advantages to increasing the matching requirement even if we do so over time. For example, requiring the schools and libraries with the highest discount rate to pay for a greater share of their purchases could help drive down the purchase price for E-rate supported services. Applicants receiving substantial (80-90 percent) discounts have greatly reduced incentives to ensure they are receiving the lowest priced services or that they are getting only services they need. We also seek comment on the other benefits, as well as the drawbacks, to increasing schools' and libraries' minimum matching requirement for E-rate supported services.

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[170] *See* USAC, Recommendations of the Task Force on the Prevention of Waste, Fraud and Abuse, at 3-4 (Sept. 22, 2003) (submitted with letter from Cheryl Parrino, USAC, to Marlene Dortch, Secretary, FCC (filed Nov. 26, 2003)) (2003 USAC Task Force).

[171] *Id.* Others also supported a reduction in the maximum 80% discount for priority two services in their responses to the 2010 E-rate Broadband NPRM. *See, e.g.,* New York State Depart. Of Education Comments in CC Docket No. 02-6 at 8-9 (filed July 9, 2010) (also supporting an 80% maximum for priority one services); Funds for Learning Comments in CC Docket No. 02-6 at 6-9 (filed July 9, 2010) (also supporting a maximum 85% discount for priority one services); E-Rate Central Reply Comments in CC Docket No. 02-6 at 7 (filed July 24, 2010) (also supporting a maximum 80% discount for priority one services); E-Rate Management Professionals Assoc. Comments in CC Docket No. 02-6 at 18 (filed July 8, 2010) (70% maximum); Kellogg & Sovereign Comments in CC Docket No. 02-6 at 19-23 (filed July 9, 2012).

[172] *See infra* para. 136. *See also, e.g.,* FFL Feb. 2013 Rep. at 16.

[173] John Harrington, *E-Rate Myths*, Funds for Learning (Jun. 10, 2013), *available at* http://www.fundsforlearning.com/blog/2013/06/e-rate-myths (last visited July 15, 2013).

[174] *Id*.

[175] *See Healthcare Connect Fund Order* 27 FCC Rcd at 16717-19, paras. 84, 91.

123. For any revisions we may ultimately make to the discount an applicant can receive for E-rate supported services, we propose to phase in such changes over some period of time, such as three years. Is this enough of a phase-in to allow applicants to adjust their requests? Does the length of the necessary phase-in depend on the extent of reduction in the maximum discount level? We seek comment on such a phase-in for each of the different suggested revisions noted above.

124. *Other modifications to the discount matrix.* We also seek comment on other potential adjustments to the discount matrix to ensure that we can provide some funding to all eligible schools and libraries for all supported services. Should we, for example, reduce the lowest discount rate from 20 percent to 10 percent? How would that change affect the ability of schools and libraries with the lowest number of students qualifying for free and reduced lunch to receive affordable high-capacity broadband? Should we reduce the top discount to 85 percent, 75 percent, or 65 percent?[176] If so, should there be a reasonable transition period? Should we consider reducing each discount level by a set percentage, such as five percent or ten percent? We estimate that if all the discount rates were five percent lower in 2011, USAC would have been able to distribute an additional $169 million in priority two funding. We estimate that if all discount rates were ten percent lower, in 2011 USAC would have been able to distribute an additional $338.5 million in priority two funding. Would reducing the discount rate across the board result in a disparate impact on applicants depending on the discount level? What would the impact be if we reduced the number of discount levels? Would such a decision simplify the discount calculation process for applicants? Should we consider combining applicants at similar discount levels into a single discount level? Should we require all applicants eligible for a discount between 75 percent and 85 percent, for example, to apply using only an 80 percent discount? Should we have a flat rate discount, or one flat rate discount for rural schools and libraries and one for all other schools and libraries? Are there other ways to adjust the discounts applicants are eligible for? In order to encourage consortium purchasing, should we have a higher minimum discount rate for consortia applications than for individual school and school district applications?[177]

125. There are other possible ways to modify the matching funds requirement, and we invite commenters to offer other proposals. We also invite commenters to refresh the record on previous proposals. For example, in response to the *E-rate Broadband NPRM*, SECA proposed simplifying the discount matrix by setting applicants' discount rate at the sum of the applicant's NSLP discount percentage plus 20 percent for non-urban areas, and 25 percent for rural areas, up to a maximum discount rate.[178] We invite comments on that proposal, and specifically seek comment on how such a change would affect applicants and the fund. What should the maximum discount rate be? Are there other ways that SECA's proposal should be adjusted?

2. Support Based on District-Wide Eligibility and Application by School District

126. We seek comment on requiring all schools within a school district to submit applications by school district, rather than by individual school or groups of schools within the same discount, and to use the average discount rate for the entire school district rather than the weighted average for each school building. We also seek comment on whether all libraries located within a school district should use the school district's discount rate when calculating their discount rate.

127. 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 discount based on the discounts of all member schools and

[176] We adopted a 65% discount for eligible health care providers in the *Healthcare Connect Fund Order*. *See id.*

[177] *See infra* paras. 179-185, discussing ways to expand the use of consortium purchasing in the E-rate program.

[178] SECA *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 43-44 (filed July 9, 2010) (SECA *E-rate Broadband NPRM* Comments).

libraries.[179] 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 in an application 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.[180] 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.[181] 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.[182] Each billed entity–the entity responsible for making payments directly to a service provider–must file a separate FCC Form 471 application to certify their eligibility to receive discounts on eligible services for eligible schools, libraries, and consortia of those entities.[183]

128. In the *E-rate Broadband NPRM*, the Commission sought comment on a proposal to revise the discount rules so that schools would 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.[184] As the Commission observed in the *E-rate Broadband NPRM*, calculating discounts by individual school adds a significant level of complexity to the application process, because the discounts must be calculated separately by school and checked individually by USAC.[185] Simplifying the discount percentage rate calculation across a school district could streamline the application process for school districts and reduce the administrative burden on USAC by no longer requiring USAC to verify each individual school's discount percentage rate.[186] We also anticipate that applying one discount rate to all eligible schools in a school district could lead to more timely funding commitments from USAC. Additionally, the Commission stated that it could significantly reduce the amount of information necessary for Block 4 of the FCC Form 471 application and eliminate a billed entity's submission of multiple FCC Form 471 applications at different discount levels.[187] Moreover, SECA argues that calculating discounts on a district-wide basis better reflects schools' financial realities: tax bases are calculated on an entire district population, not just those of a subset of schools, and budgets are set district-wide.[188] Allowing libraries located within a school district to use the school district's discount rate would also ease the administrative burden of such libraries.

129. Accordingly, we propose to revise section 54.505(b) of the E-rate rules to read:

School districts shall calculate discounts on supported services described in § 54.502(b) by 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 within the school district by the total number of students within the school district. This single discount percentage rate shall

[179] *See* 47 C.F.R. § 54.505(b)(4).

[180] *Id.*

[181] *Id.*

[182] *Id.*

[183] *See* Schools and Libraries Universal Service, Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form, OMB 3060-0806 (October 2010).

[184] *See E-rate Broadband NPRM*, 25 FCC Rcd at 6887-88, paras. 34-36.

[185] *Id.*

[186] *Id.*

[187] *Id.*

[188] SECA June 2013 White Paper at 14.

then be applied to the discount matrix to set a discount rate for the supported services purchased by all schools within the school district.[189]

We seek comment on this proposed rule. We also seek comment on whether we should define "school district" for purposes of this proposal.

130. We also propose below to change our definition of "rural" for purposes of the E-rate program to ensure greater funding to truly rural areas by using the U.S. Department of Education's NCES definitions.[190] Currently, the definition of "rural area" is the same used by the U.S. Department of Health and Human Service's Office of Rural Health Care Policy (ORHP).[191] Are there any school districts for which some schools would be differently classified as "rural" or not under our current or proposed definition? If so, we seek comment on whether to apply the rural discount if any schools in a district are considered to be located in a "rural" area or if a majority of the schools in a district are considered rural. Alternatively, should we consider partial rural discounts depending on the proportion of schools that are rural, or other approaches? We recognize that there may be specific instances where adopting a district-wide discount rate may result in a lower discount for certain entities. We therefore seek comment on the impact of this proposal on schools and libraries.

131. Additionally, in the *E-rate Broadband NPRM*, as part of its efforts to streamline the application process, the Commission sought comment on a proposal to require all schools and libraries that are part of the same school district to submit applications for priority two internal connections by school district, rather than by individual school.[192] As the Commission stated in the *E-rate Broadband NPRM*, requiring schools to apply by school district would help streamline the process and simplify the discount calculation for schools as well as the review process for both applicants and USAC.[193] Additionally, it would ensure that libraries receive funding for internal connections and at the same discount level as schools located within their school district.[194] We thus seek comment on amending section 54.504(a) of the E-rate rules to read:

An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator. All schools and libraries that are part of the same school district and seek priority two internal connections shall submit a completed FCC Form 471 to the Administrator as part of the school district in which they are located. A commitment of support is contingent upon the filing of an FCC Form 471.

We seek comment on this proposed rule.

132. We also seek comment on whether we should require schools and libraries to submit applications for priority one services by school district. Commenters should address what, if any, additional burden such proposal may place on applicants. In addition, we seek comment on whether to limit applications for a school district to one for each category of service requested. For example, if the Commission retains the current priority one and priority two distinctions, an applicant could only submit two applications – one for each category. What are the advantages and disadvantages of such a requirement?

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[189] We note that a rulemaking change involving CEO could affect this proposed revision. *See infra* paras. 282-293.

[190] *See infra* paras. 276-281.

[191] *See infra* para. 277.

[192] *See E-rate Broadband* NPRM, 25 FCC Rcd at 6905, para. 79. The Commission explained that schools that operate independently from a school district, such as private schools and some charter schools, should still apply for discounts individually. *Id.*

[193] *Id.*

[194] *Id.*

3. More Equitable Funding for Rural Schools and Libraries

133. In order to ensure more equitable access to E-rate funding, we seek comment on whether we should further increase the discount rate or the amount of E-rate funds available for schools and libraries in rural areas or in remote rural areas. When the Commission created the E-rate program, it recognized that schools and libraries in rural areas would likely face higher costs for E-rate supported services, and therefore provided an additional 5-10 percent discount rate for rural schools and libraries that would otherwise receive a discount rate of 60 percent or less.[195] E-rate has been crucial in supporting connectivity to rural schools and libraries.[196] However, those schools and libraries in rural areas that also have a high percentage of students that qualify for free or reduced-price school lunches do not get an additional discount, even though there costs may be higher. We therefore seek comment on whether all rural schools and libraries, or those in remote-rural areas should receive additional E-rate support to recognize the unique challenges of providing services in rural, less dense areas.

134. Conversely, some commenters argue that the Commission should adjust the discount matrix so that E-rate applicants with similar levels of participation in the national school lunch program receive the same discount percentage, regardless of the location.[197] Given that most E-rate funding goes to schools and libraries that receive discount rates above 60 percent, and therefore the majority of E-rate funds USAC commits are not subject to the discount, is there value in simplifying how discount levels are established for all schools and libraries, as these commenters suggest?[198] Should our approach differ for priority one and priority two services?

4. Setting Budgets or Limits

135. In this section, we seek comment on whether we should impose a per-student or per-building budget, or similar limits, on funding for schools and libraries. Building on a recommendation of the 2003 USAC Task Force,[199] Funds for Learning, an E-rate consultant that has analyzed USAC's data, has argued that appropriately-structured budgets on a per-student or per-building basis could lead to more equitable and predictable distribution of E-rate funds by limiting the funding that is allocated to a small number of high-spending applicants. According to Funds for Learning, 2012 funding requests averaged $44.30 per-student for priority one services across all applicants,[200] but more than 10 percent of applicants sought funding of at least $180 per-student for priority one services.[201] Notably, four school districts in the nation's largest cities requested at least $240 per-student, and more than a dozen other applicants sought over $1,000 per student in total support in funding year 2012.[202]

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[195] *See Universal Service First Report and Order*, 12 FCC at 9040-45, paras. 501-07.

[196] *See E-rate Broadband NPRM*, 25 FCC Rcd at 6873, paras. 5-6.

[197] *See* ALA *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 11 (filed July 9, 2010) (proposing to move all schools and libraries to the current rural discount rate for each respective NSLP range); *see also* Funds for Learning *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 7 (filed July 9, 2010); State Consortium Group *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 2 (filed July 9, 2010); New York State Education Department *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 8-9 (filed July 9, 2010); E-rate Provider Services *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 5 (filed July 1, 2010).

[198] *See supra* paras. 117-125.

[199] *See* 2003 USAC Task Force at 5.

[200] *See* Funds for Learning, USF for Schools and Libraries FY 2013 and Beyond: Growing to Meet the Needs of Students and Library Patrons at 15 (dated Feb. 8, 2013) (FFL Feb. 2013 Rep.) (filed by Miami Dade Public Schools, CC Docket No. 02-6 (Mar. 4, 2013)).

[201] *See* Funds for Learning, FY 2012 Per-student Per-Discount Funding Analysis at 10 (dated Mar. 1, 2013), *available at* http://www.fundsforlearning.com/docs/2013/03/COMM-WEB-PerStudentPreDiscount_2013.pdf) (last visited June 14, 2013).

[202] *Id.* at 11-12.

136. Some variation in funding is not surprising because discount rates range from 90 percent to 20 percent. Moreover, the Commission has always recognized that schools and libraries across the country would have different needs and different challenges in purchasing E-rate supported services.[203] Yet the Funds for Learning analysis of funding year 2013 requests shows that applicants with higher discount rates also planned to spend significantly more per-student in pre-discount dollars for telecommunications and Internet access (priority one services). Those seeking 20-59 percent discounts plan $35.23 per-student in pre-discount purchases of priority one services, while those seeking 60-79 percent discounts plan $43.02 per-student pre-discount purchases for such services, and those seeking 80-90 percent discounts, $86.53 per-student pre-discount purchases for such services.[204] We also expect that a small rural school may have to pay more per-student for Internet access than a large urban school. However, Funds for Learning finds that some of the highest per-student costs are in urban areas, where competition should drive down prices. While the 2,360 applicants in large cities plan an average of $67.88 per-student in pre-discount purchases for priority one services for funding year 2013, the 4,987 applicants in large, medium, and small-size suburban schools plan per-student purchases of priority one services averaging only $40.76, $39.17, and $46.44 in pre-discount prices, respectively.[205] Even the 3,129 applicants in "rural: distant" areas planned pre-discount purchases averaging only $65.35 per-student.[206]

137. In the *E-rate Broadband NPRM,* the Commission proposed a per-student cap on annual priority two spending for schools of $15 per-student per year.[207] A $15 per-student cap would have limited the most disadvantaged schools to 90 percent of $15 in support, or $13.50 per-student per year. Notably, this amount is less than half the average per student funding amount for priority two funding over the past five years.[208] Commenters argued that the proposed cap failed to account for a number of factors that could affect applicants' needs.[209]

138. Having considered the record on that proposal, we now seek comment on whether we should consider a higher and more flexible per-student limit, per-building limit or alternative forms of limits or budget on an applicant's E-rate funding. If we adopt a per-student limit or other form of limit for some or all services, we seek comment on where we might set the limit. Should any limits we adopt include adjustments to reflect the higher costs faced by applicants in more expensive-to-serve locations, such as Tribal lands? Should any such adjustment be based on observed current costs, some relatively simple and reliable proxies for costs, or some other measure? Should limits be set relatively high, so as to serve as a check on excessive funding requests and help prevent a few applicants from securing so much funding that other disadvantaged applicants are crowded out, while leaving most applicants unaffected? Alternatively, should limits be set lower to more aggressively spread funding annually to disadvantaged applicants that have rarely, if ever, received funding for internal connections?

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[203] *See, e.g., Universal Service First Report and Order*, 12 FCC Rcd at 9006-07, paras. 431-32 (citing differing priorities and approaches in comments from several states).

[204] *See* Funds for Learning, FY2013 E-rate Funding Requests, Telecommunications and Internet Access by Schools and School Districts, CC Docket No. 02-6, at 8, 9 (filed Jul. 3, 2013), *available at* http://apps.fcc.gov/ecfs/document/view?id=7520927795 (last visited July 15, 2013) (note that this report did not include funding requests of libraries or consortia in its analysis).

[205] *Id*. at 17.

[206] *Id*.

[207] *Id*.

[208] *E-rate Broadband NPRM*, 25 FCC Rcd at 6902, para. 71.

[209] *See, e.g.,* SECA *E-rate Broadband NPRM* Comments at 41; Council of Great City Schools *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 9-10 (filed July 9, 2010); Funds For Learning LLC *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 8-9 (filed July 9, 2010); E-rate Central *E-rate Broadband NPRM* Reply to Comments, CC Docket No. 02-6, at 7 (filed July 26, 2010).

139. We invite commenters to propose limits for either total annual funding, pre-discount requests, or for priority one and priority two purchases separately and ask commenters to explain their rationale for the limits that they recommend. We seek particular comment on Funds for Learning's most recent proposal calling for a per-student budget calculation.[210] We note that we have sought comment on prioritizing broadband connectivity to and within schools and libraries, which could, among other changes, raise the per student cost of supported services for those schools and libraries seeking support for large installation and construction costs.[211] How do we implement this prioritization of broadband connectivity while also instituting any of the potential funding limits? Should we consider excluding some costs from the limit, such as non-recurring installation and construction costs? Should we instead impose some other cap on costs related to the higher priority services?

140. We realize that anything but a very high per-student limit could prevent the smallest schools and particularly those in remote areas of the country, such as schools on Tribal lands, from affording supported services. Is this an argument for using per-building caps for certain types of services instead? As we did in the *E-rate Broadband NPRM*, we also seek comment on whether there should be a minimum amount of E-rate support for which a school, library, or school district is eligible, irrespective of the number of students, and what it should be. If a minimum amount is established, how should we compute that minimum? Should we provide for different limits depending on the number of students at a school or in a school district? If so, what should those limits be? We also repeat our question about whether any limit should permit additional funding for rural applicants, either by establishing a higher limit for rural applicants or through some other mechanism.

141. We also seek comment on how to set caps for libraries if we were to take either approach above for schools. The *E-rate Broadband NPRM* suggested that library demand might be capped at the level of the public school district in which they were located, but it also noted that it might be advisable to modify that approach.[212] We seek comment on the best way to set caps on E-rate support for libraries, whether based on the cap for the closest public school district, the size of their patron population, or some other figure or figures.

142. We are also particularly interested in any examples that commenters can offer of other funding programs in the United States or elsewhere that have used analogous per-customer caps effectively in other settings, for us to learn what might work best. We also welcome comments pointing us to examples of problems with funding caps that have arisen in other programs.

5. More Equitable Access to Funding for Internal Broadband Connections

143. As described above, internal connections are needed to make effective use of high-capacity connectivity to schools. High bandwidth connectivity to a school or library serves little purpose if students and patrons inside are not able to use it effectively because internal wired and wireless connections are missing or insufficient. Yet today, few schools are able to receive support for internal connections. Indeed some commenters have argued that lack of internal connections funding – due to increasing restrictions on the availability of priority two support –have become a barrier to adoption of higher speed connections for many schools and libraries.[213] In this section we seek comment on how to increase access to funding for internal connections.

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[210] *See* Presentation from John Harrington, FFL, CC Docket No. 02-6 (filed June 14, 2013) (FFL 2.0 Proposal).

[211] *See supra* paras. 70-78.

[212] *E-rate Broadband NPRM*, 25 FCC Rcd at 6902, para. 69, n.167.

[213] *See* Comments of Funds for Learning Comments, CC Docket No. 02-6, at 2 (filed Apr. 8, 2013) (arguing that priority two funding is needed to utilize broadband in a cost-effective manner); Supplemental Comments of Funds for Learning, CC Docket No. 02-6, at 3-4 (filed May 23, 2013) (proposing more E-rate support for internal connections to maximize broadband capacity).

144. In order to provide more equitable access to priority two funding, in 2003 the Commission adopted a rule limiting each eligible entity's discounts receipt of discounts on internal connections to twice every five funding years (commonly referred to as the two-in-five rule).[214] However, because requests for priority two funding exceed the E-rate funding cap, there is wide-spread agreement that a relatively small number of applicants, those that qualify for the highest discount rates, receive priority two funding over and over again, while other applicants seldom qualify for priority two funding. Therefore, we seek comment on whether we should revise or rescind the two-in-five rule, and if so, what we should replace it with.

145. SECA recently suggested that the Commission rescind the two-in-five rule.[215] Instead of using the two-in-five rule, SECA suggested that the Commission allow all applicants to receive funding on a rolling funding cycle.[216] Under SECA's proposal, a different set of applicants would be eligible for priority two funding every year, until all applicants have been eligible for some priority two funding and then the cycle would start again.[217] The benefit to the SECA approach is that it ensures all E-rate applicants have access to some priority two funding over time. If we continue to prioritize funding for some services over others, we seek comment on the approach offered by SECA.

146. *Eliminating the distinction between priority one and priority two.* Other commenters appear to support replacing the current prioritization system with a "whole networks" approach, under which connectivity to schools and internal connections are funded together and all eligible services are given equal priority.[218] Commenters argue that this approach would give schools the flexibility to focus E-rate funding on those portions of their network where upgrades are most needed -- whether connection to the schools or internal connections. It could also eliminate incentives for vendors to re-characterize priority two services as priority one, or for schools to purchase more expensive priority one services – like cellular data connections– in lieu of cheaper priority two services, like internal wireless connections.

147. We therefore seek comment on whether we should more fundamentally shift the way we prioritize E-rate support by eliminating the distinction between priority one and priority two services. Under this approach we would instead allow schools and libraries to choose from one consolidated menu of services. Would this approach allow more schools access to funding for internal connections? Would this additional flexibility be beneficial? If we instituted this proposal, how should we determine the amount of support that each school or library receives? And if we took such an approach, how would we prioritize among funding requests to the extent they exceeded the funding cap? Would such an approach necessarily require a per-student or per-building limit, or other form of budget for individual applicants, as discussed above?[219]

148. Are there other changes we should make to the prioritization of services? For example, instead of consolidating the two existing priority levels should we create more priority levels than currently exist? If so, what should be in the various categories and how should we transition services between the current priority levels and any new ones? Are there any other approaches we should consider?

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[214] *See Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26916-17, paras. 9, 11.

[215] *See* SECA June 2013 White Paper at 9.

[216] *Id.* at 9, 11-13.

[217] *Id.*

[218] *See, e.g.,* Funds for Learning, USF for Schools and Libraries: FY 2013 and Beyond, CC Docket No. 02-6, at 4, 5, 30 (filed Mar. 25, 2013) (favoring a per student cap on E-rate support).

[219] *See supra* paras. 135-142.

6. Simplified Allocation of Funds to All Schools and Libraries

149. In this section, we seek comment on a more fundamental approach to changing the distribution of E-rate funding. Under this approach, we would eliminate the discount matrix and the priority system;[220] instead, each eligible applicant would receive a fixed budget at the beginning of the funding year to spend on any eligible services of their choosing. In contrast to the existing system, whether or not a school or library receives funding would be determined at the beginning of the funding year; thus applicants could know the amount of funding available before committing to any particular project. We seek comment on this approach. We seek comment on the costs and benefits of this approach, how this approach would impact other proposals we have discussed herein, and whether it would further our proposed goals.

150. If we adopted the simplified-allocation approach, we seek comment on how we should allocate such funds among eligible applicants. One method of allocating funding to schools would be to allocate funds to each school (or school district) on a per-student basis. Rural schools facing higher costs and schools serving low-income areas or student populations would receive additional funding for each student. Thus, a school serving a rural area might receive twice as much per student as a school serving an urban area, or a school located in an area with high poverty might receive twice as much per student.

151. If we were to adopt a per-student allocation system, how much additional funding per student should rural schools receive? How much additional funding for schools serving low-income populations? Should these determinations be done on a bright-line basis (*e.g.*, areas with poverty rates of more than 15 percent be classified "low-income" and those with less than 15 percent poverty "high-income") or should we use a sliding scale (such as adjusting funding based on median household income, poverty rate, or some similar metric)? Should there be additional allocations for schools in remote areas (such as schools in the northern villages of Alaska)? If so, what criteria should we use for determining which schools should be eligible for additional allocations? Should there be a minimum funding level (a floor) or a baseline funding amount for all schools?[221] We also ask that commenters explain how this approach and any modifications they offer would affect schools' and libraries' ability to purchase the E-rate supported services they currently receive, those they receive no discount for today under the priority system, and those they are likely to need in the future in order to meet our proposed goals for the E-rate program.

152. Under this system, how should the Commission allocate funds among libraries? For example, could we look at the number of patrons served by a library or the population it serves? Should we adjust the funding for libraries based on whether they are located in a rural or extremely remote area? Should we adjust the funding to reflect the wealth of the surrounding population? How do libraries determine the area they serve, and how could we adjust the allocation methodology to reflect the unique needs of libraries? Should we consider a per-building funding amount for libraries? We also ask commenters to explain the impact of this approach, and of any modifications they offer, to libraries' ability to meet their connectivity needs.

153. We also seek comment on how to allocate funding between schools and libraries. For example, should we look at the past allocation of distributed funds and reserve a similar proportion of the Fund for each group separately? Would allocating 90 percent of E-rate funding each year to schools and ten percent to libraries be a fair appraisal of historical spending patterns (or future spending needs)?

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[220] In other words, rather than some services denoted priority one and others priority two, services would simply be eligible or ineligible for support.

[221] A floor would mean that if a school's total funding fell below a given level (such as $10,000), its allocation would be increased to that level. A baseline funding amount would mean that each school receives some amount (such as $5,000) in addition to its per-student funding.

154. We also seek comment on how the simplified-allocation approach might impact group applicants, including school districts and consortia. For example, under this approach, should school districts be required to report the number of students at each school or could the school district simply report the total number of students in the district? If the latter, how should we calculate the per-student allocation, on a school-by-school basis or using some district-wide averaging? How do we ensure that all schools in a district or a consortia benefit from E-rate support? Would the fact that vendors know the budget of each school, school district, or consortium impact the ability of districts and consortia to drive down prices by aggregating demand?

155. In turn, how might this proposal impact consortia? Today, funding for priority two services is determined in part by the student-weighted average discount-level of consortium applicants. Does that system impact priority two requests, given that a lower discount might prevent a consortium from receiving any funding at all? Under the simplified-allocation approach, each school or library in a consortium could know up front the number of E-rate dollars it can bring to the table, and each consortium could prioritize its spending as it sees fit. Would that knowledge aid or inhibit the formation of consortia?

156. If we adopted the simplified-allocation approach, what sort of matching requirements should we include to ensure that applicants spend E-rate funds prudently? As discussed above, just last year the Commission found that requiring recipients of Healthcare Connect funds to contribute 35 percent of the costs of services gave applicants a strong incentive to control the total costs of the supported services and "appropriately balances the objections of enhancing access to advanced telecommunications and information services with ensuring fiscal responsibility and maximizing the efficiency of the program."[222] Could a lower matching funds requirement, such as requiring E-rate applicants to pay one dollar for every three E-rate dollars they receive, serve the same purposes for schools and libraries that depend on the E-rate program? Would such a requirement deter wasteful spending? Would a flat 25 percent matching requirement give applicants sufficient incentive to control the costs of supported services? Would the fact that they have a specific budget encourage some applicants to spend more money than they might otherwise, or would a specific budget aid schools in long-term planning and prudent spending? How would a flat 25 percent matching requirement impact schools' and libraries' ability to afford high-capacity broadband given that current contribution requirements range from 10 percent to 80 percent? Would it impose a hardship on certain schools, such as schools with few resources and facing extreme costs? If so, should there be an alternative matching requirement for such schools and under what circumstances?

157. We seek comment on the relative fairness to recipients of this approach versus the current system or other options we seek comment on in this Notice. We seek comment on whether, under this approach, recipients would benefit from a more stable, and predictable level of support from year to year. Would such stability aid in long-term planning? We also seek comment on whether there are ways to implement this approach that would ensure that poor, rural schools and libraries that do not currently have access to high-capacity services get them.

158. Would the simplified-allocation proposal give local schools and libraries additional flexibility to meet their diverse needs, allowing some to prioritize higher-capacity circuits and others to prioritize connecting classrooms or deploying Wi-Fi?[223] For example, could we retain support for basic maintenance and other services since funding availability will no longer depend on the specific services ordered by other schools and libraries?

159. One of the proposed goals is streamlining the administration of the E-rate program. We seek comment on whether adopting the simplified-allocation approach would further that goal or hinder

[222] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16717-19, paras. 84, 91.

[223] Wi-Fi (Wireless Fidelity) is a wireless technology that is based on the Institute of Electrical and Electronics Engineers 802.11 standards to offer fixed wireless broadband services to compatible devices.

it. For example, could we consider eliminating all or portions of our competitive bidding rules, and if so which ones? Under this approach, would schools and libraries' incentives to watch over their E-rate funds increase sufficiently to allow us to eliminate the 28-day waiting period? Should we eliminate the price as the primary factor requirement for competitive bidding? If we eliminate some or all of our competitive bidding requirements, should we continue to require applicants to conduct fair and open competitive bidding processes? How should we and USAC determine whether applicants' processes have been conducted in an open and fair competitive manner? How can we best protect against waste, fraud and abuse under the simplified-allocation approach?

160. We also seek comment on other administrative issues under the alternative funding approach. Should we eliminate FCC Forms 470 and 471 and replace them with a single-page form that requires the school or library to identify contact information, certify compliance with federal rules, and certify the number of students/patrons served? Would that initial application need to be filed several months before the start of the funding year (as FCC Forms 470 and 471 are today), or could the initial application be filed after the funding year begins? Could we eliminate the requirement that applicants for internal connections funding file technology plans? Could USAC bear a greater part of the burden of calculating funding amounts for applicants to simplify the process for them? If so, after that initial application, USAC could provide the school with the total amount of funding available in a commitment letter and the school would have the flexibility to spend that funding on any eligible service. Are there other forms, deadlines, or requirements, such as the technology plan and technology-plan-review process, that we could eliminate? To actually receive money, could a school submit invoices or other proof that it has paid and received particular services? Would this approach reduce the time between funding commitments and disbursements? Why or why not, and by how much?

161. What sort of reporting requirements would work best under this proposal? How can we best ascertain that applicants actually purchased supported services and that they are being properly used? Should we, for example, require a school district superintendent or school principal to certify under oath that all supported services are being used to benefit students. Would such a certification make sense at the beginning of the E-rate funding process (such as on FCC Form 471) or at its end (such as on FCC Form 486)? Should libraries be subject to a similar certification requirement? For example, should libraries be required to certify that E-rate funds are being used to benefit their patrons? Would the head librarian be the appropriate representative for such a certification?

162. If we adopted this approach, how could we phase it in over time to give applicants time to adjust? Or would this approach require sufficiently fundamental changes in the program that a flash cut would be required?

D. Lowering New Build Costs and Identifying Additional Funding to Support Broadband to Schools and Libraries

163. In this section, we seek comment on what additional steps the Commission should take to ensure that there are sufficient funds to meet the connectivity needs of students, teaching staff, and libraries.

164. *Public-private partnerships.* Are there steps the Commission could take to improve the private sector business case for deploying fiber to schools and libraries, or otherwise expanding connectivity, and thereby reduce the need for E-rate funding? For example, are there steps the Commission could take to facilitate use of new fiber runs for multiple business objectives, such as backhaul for cell towers or service to other enterprise users, and thereby incent greater sharing of new construction costs? Could waiving, forbearing from, or reducing certain otherwise-applicable requirements in conjunction with new infrastructure builds to schools and libraries help lower costs and therefore extend the reach of E-rate funding? Should the Commission condition certain forms of E-rate funding on changes in local permitting practices or other state and local policy changes (*e.g.*, state and local dig-once initiatives) to help reduce new build costs? What impact would such a policy have on schools and libraries on federal or other trust lands, such as Tribal lands? How can the Commission best coordinate with and support state, local, and Tribal government efforts to increase broadband access to

schools and libraries? Are there other Commission rule changes that would facilitate coordination or support state and local efforts?

165. We also seek comment on other potential public or private sources of funding and how the Commission could help encourage the deployment of such funding to meet school and library needs. For example, in addition to the possible changes to the discount matrix discussed above, could the Commission make certain types of E-rate support, or E-rate support above certain amounts, conditional on state, local, Tribal, or private funds above the otherwise-required school or library 10-80 percent contribution? Would a larger emphasis on matching funds help recruit additional funding from state, local, or private-sector sources? Would it disproportionately benefit schools with greater means or higher-income student populations? What impact would such an approach have on schools and libraries located on Tribal lands? Should schools and libraries operated by the Bureau of Indian Affairs or individual Tribal governments be exempt from such a requirement?

166. Are there other steps the Commission could take to encourage public-private partnerships to promote our proposed E-rate goals? For example, Verizon suggests that its Verizon Foundation Innovative Learning Schools program, which focuses on teacher training and professional development for select schools nationwide, complements E-rate but sometimes faces challenges with respect to E-rate gift rules.[224] We seek comment on whether there are ways that E-rate could allow schools and libraries to take greater advantage of private philanthropy while still allowing the Commission to maintain appropriate control over E-rate expenditures and to prevent improper influence over E-rate service provider selections.

167. *Coordination with other universal service programs*. We also seek comment on whether greater coordination of E-rate funding with funding from other universal service programs could multiply the impact of these other programs to support the goals of E-rate. In the *USF/ICC Transformation Order*, the Commission adopted broadband service obligations for eligible telecommunications carriers (ETCs) that receive high-cost support.[225] The Commission noted that it expected ETCs to engage with community anchor institutions, which include schools and libraries, in the network planning stages with respect to the deployment of Connect America-supported networks.[226] Both price cap and rate-of-return ETCs that receive high-cost support are already required to include in their annual reports the number, names and addresses of community anchor institutions to which the ETC newly began providing access to broadband service in the preceding calendar year.[227]

168. We seek comment on how to minimize any overlap in funding for broadband, while extending the reach of both programs to support the deployment and adoption of broadband by E-rate applicants? How can we best ensure and encourage the two support mechanisms to achieve our universal service objectives, including the goals identified herein? For example, should we consider what portion of deployment should high-cost funding support and what portion should E-rate support? Would it be useful to specify that certain costs – such as construction charges to extend fiber to the school or library property line – are funded by high cost, and other costs – such as recurring charges for broadband service – are funded by E-rate? What measures should we adopt to ensure that there is no duplicative funding of the same facilities or services from the two programs?

169. The Commission has concluded that a forward-looking wireline cost model will be used to determine support to be offered to price cap carriers.[228] After the model is finalized and adopted for

[224] *See* Letter from Alan Buzacott, Executive Director of Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, FCC, CC Docket No. 02-6 (filed July 11, 2013).

[225] *USF/ICC Transformation Order*, 26 FCC Rcd at 17695, para. 86.

[226] *Id.* at 17700, para. 102; 47 C.F.R. § 54.5 (defining "community anchor institution").

[227] 47 C.F.R. § 54.313(e)(3)(ii), (f)(1)(ii).

[228] *USF/ICC Transformation Order*, 26 FCC Rcd at 17727, para. 166.

Phase II purposes, should we consider how it might be used or modified to assist in determining the cost of providing fiber-based broadband to the E-rate applicants in the relevant geographic area? Could we use a model-derived cost to establish a benchmark for the prices an E-rate applicant should pay for broadband? Should we instead consider a model-derived cost—with the relevant E-rate discount applied—as a cap on the amount the E-rate program will fund for such broadband?

170. We also ask for comment on how we can maintain the core requirements and procedures in the E-rate program if we closely coordinate support with other universal service programs. How could we implement some of these ideas while maintaining the framework of the existing competitive bidding requirements for the E-rate program?[229]

171. In the *Healthcare Connect Fund Order*, the Commission allowed an exemption from the rural health care competitive bidding obligations for health care providers entering into a consortium with E-rate participants.[230] Should we consider a similar accommodation for applicants to the E-rate program?

172. *Funding the proposed goals through E-rate.* In this Notice, we seek comment on various approaches to refocusing or reprioritizing funds, or adjusting the support levels for certain services, as well as other proposals that will reduce costs while better targeting support to help schools and libraries get the connectivity they need. We seek comment on whether, in concert with these changes, enough funding will be saved or preserved to enable the E-rate program to meet our proposed connectivity goals within the existing E-rate funding cap. Recent reforms to the other USF programs were achieved without having to increase the overall size of the USF. For example, the Commission established a budget for the Connect America Fund and a savings target for the Lifeline program.[231] Also, the Commission recently reformed the Rural Health Care program to encourage consortium applications, increase eligibility in covered services and provide applicants more flexibility in renewing multi-year contracts.[232] We ask commenters to identify the funding that could become available as a result of the reforms suggested in this NPRM and whether these reforms will result in sufficient cost savings to the E-rate program to meet our proposed program goals.

173. Alternatively, we seek comment on whether a temporary increase in the E-rate cap is necessary to reach our goals and ensure high-capacity broadband connectivity to and within schools? If we were to authorize such a temporary increase, should we modify our rules to focus the temporary funds on providing services related solely on high-capacity broadband connectivity? What services should be eligible for support under such a short-term program? How much short-term funding would be needed to connect all or virtually all schools to infrastructure or other connectivity sufficient to meet their needs? How much short term funding, and over what period of time, would be needed to provide robust internal connections sufficient to take advantage of the high-capacity broadband connectivity to schools and libraries? Should any such funding be allocated using the generally applicable discount matrix, application process, timeline, and other rules, or should we consider modifications, for example to accelerate availability of funding for upgrades? If we consider a temporary increase in E-rate funding to upgrade school and library connections for digital learning, should we limit participation to only some category of applicants, such as only regional consortia?

[229] By Commission rule, all schools and libraries participating in E-rate "must conduct a fair and open competitive bidding process." 47 C.F.R. § 54.503. Connect America Phase II funding will be targeted to areas where there is no competing fixed broadband provider.

[230] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16792-93, paras. 266-267.

[231] *See supra* n.30.

[232] *See generally supra* paras. 96-97.

174. Should we instead consider a more permanent change to the cap to achieve the goals of a modern E-rate program?[233] When the Commission adopted the $2.25 billion cap 16 years ago, it recognized that it was a best efforts attempt to estimate what the demand would be for telecommunications and Internet access services by schools and libraries.[234] Commenters advocating an increase in the cap emphasize that every funding year applicants have requested more than is available in E-rate support.[235] They further argue that because of the effects of inflation and the growth in the number of students in our nation's schools, the actual purchasing power of the E-rate program declined by nearly one third from the start of the program in 1998 to today.[236] We seek comment on these arguments.

175. Also, under either a temporary, long-term or permanent approach to providing additional funding, would it make sense to initially provide funding to a small group of schools and libraries on a competitive basis with the goal of developing best practices and cost-effective approaches to building out high-capacity broadband services?[237] Are there other ways to use competitive approaches to maximize the impact of funding?

176. We also seek comment on the appropriate role for the Federal-State Joint Board on Universal Service in providing the Commission with advice and guidance on any temporary, long-term or permanent approach to providing additional funding for the E-rate program.[238] For example, if we consider any increase in E-rate funding, should we first seek the opinion of the Joint Board regarding the necessity and the amount of the increase?

IV. MAXIMIZING THE COST EFFECTIVENESS OF E-RATE FUNDS

A. Background

177. In providing schools and libraries with affordable access to high-capacity broadband services, we also seek to adopt policies and rules to meet our proposed second goal to ensure that schools and libraries purchase services and equipment in a cost-effective manner. When the E-rate program was created, the Commission adopted a number of rules aimed at encouraging cost-effective purchasing of E-rate supported services. Most notably, the Commission allowed applicants to apply for support as part of a consortium and required E-rate applicants to seek competitive bids for E-rate supported services. The Commission recognized that by forming consortia, eligible schools and libraries could aggregate demand

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[233] *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18780-81, para. 35. For example, some stakeholders have suggested that the Commission did not go far enough when it directed that the E-rate cap be indexed for inflation beginning in 2010. Those commenters suggest that the Commission should raise the cap on the E-rate program to fully index for inflation between 1998-2010 *see, e.g.*, eChalk, Inc. *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 4 (filed July 9, 2010); Funds for Learning, LLC *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 12 (filed July 9, 2010). Other commenters suggest that the cap should be reset based on current program demand *see, e.g.*, Public Broadcasting Service (PBS) *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 6 (filed July 9, 2010); NATOA, NACo, New America Found *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 9 (filed July 9, 2010); Cisco Systems *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 18-19 (filed July 9, 2010); SECA June 2013 White Paper at 3-4.

[234] *See Universal Service First Report and Order,* 12 FCC Rcd at 9056, para. 529.

[235] *See, e.g.,* Funds for Learning, LLC *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 12 (filed July 9, 2010); Blackboard Inc. Funds for Learning, LLC *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 22-23 (filed July 9, 2010); SECA June 2013 White Paper at 3.

[236] *See* eChalk, Inc. *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 4 (filed July 9, 2010).

[237] *See infra* paras. 220-221.

[238] The last recommendation from the Federal-State Joint Board on Universal Service regarding the E-rate Program was in 1996. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 130–92 (Joint Bd. 1996).

for E-rate supported services to drive down prices.[239] Likewise, the Commission adopted competitive bidding requirements in large part based on the theory that competitive bidding would drive down prices for E-rate supported services.[240] More recently, the National Broadband Plan recommended, that we work to make broadband-related purchases more cost-efficient within E-rate.[241]

178. We therefore seek comment on various options aimed at increasing cost-effective purchasing by E-rate applicants, including ways to encourage more consortium purchasing and other forms of bulk buying; provide more transparent pricing for E-rate services; reduce single or no bid contracts; and ensure that specific contracts for E-rate supported services are cost-effective. We also seek comment on creating a model schools and libraries program aimed at identifying specific best practices for cost-effective purchasing. In addition to seeking comment on these ideas, we invite commenters to suggest other ways to drive down prices of E-rate supported services in order to maximize the cost-effectiveness of purchases made with E-rate funds in furtherance of our second proposed goal for the E-rate program.

B. Increasing Consortium Purchasing

179. In the *Universal Service First Report and Order*, the Commission envisioned that allowing schools and libraries to participate in consortia would aggregate demand to influence existing carriers to lower their prices and promote efficient use of shared facilities.[242] The Commission expected that consortia would be particularly important in rural regions to negotiate lower rates as well as secure efficiencies.[243] Today, there are more than 400 consortia, representing more than 9,400 schools and libraries (which include schools in more than 800 school districts), participating in the E-rate program.[244] Every state in the nation has at least one consortium and many states have multiple consortia.[245]

180. At the same time, in funding year 2011, consortium purchasing accounted for only about $300 million of E-rate funds committed by USAC, or about 13 percent of all E-rate funds disbursed.[246] In the recent *Healthcare Connect Fund Order* the Commission found that bulk purchasing by consortia helped drive down service rates, increase bandwidth, improve service quality and reduce administrative overhead.[247] We therefore seek comment on whether we should adopt additional incentives or mechanisms to facilitate the use of consortium purchasing in the E-rate program. In particular, we are interested in ways that consortium purchasing can drive down prices and otherwise benefit applicants and the E-rate fund.

181. We also seek comment on whether there are legal, geographic or other barriers preventing certain schools and libraries from taking advantage of consortium purchasing. Are there ways in which our rules prevent or discourage participation by applicants who might otherwise join a

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[239] *See Universal Service First Report and Order*, 12 FCC Rcd at 8795, para. 33.

[240] *Id.* While school districts also function as consortia of individual schools, for this purpose, a consortium includes a group of schools and/or libraries.

[241] *See* National Broadband Plan at 238 (Recommendation 11.21).

[242] *Universal Service First Report and Order*, 12 FCC Rcd at 8795, para. 33.

[243] *Id.* at 9027, para. 47.

[244] Letter from Melvin R. Blackwell, Vice President, Schools and Libraries Division, to Lisa Hone, Deputy Division Chief, TAPD, Wireline Competition Bureau, CC Docket No. 02-6 (June 28, 2013).

[245] *Id.*

[246] *Id.*

[247] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16702, para. 54. *See also Wireline Competition Bureau Evaluation of Rural Health Care Pilot Program*, WC Docket No. 02-60, Staff Report, 27 FCC Rcd 9387, 9435, paras. 77-78 (Wireline Comp. Bur. 2012).

consortium? We invite commenters to identify specific amendments we can make to our rules to ensure that applicants can join or form consortia.

182. Are there other actions the Commission can take to remove barriers to participation in consortia? We recognize that not all applicants choose to join a consortium and we therefore ask about the factors that contribute to an applicant's decision to join or not to join a consortium. In particular, we seek comment from applicants on how they weigh the administrative benefits of joining a consortium in the E-rate program against the burdens the program imposes today. We seek comment on whether there are consortia-friendly application processes that would minimize the administrative burden on applicants and USAC. Should we, for example, prioritize consortium applications in the USAC review process? Should we allow for prioritization for all consortia or only those that, for example, include the neediest schools and libraries? In what ways should we streamline the consortia review process?[248] What steps should we take to avoid disadvantaging schools and libraries unable to participate in consortia, such as some schools and libraries on Tribal lands?

183. We also seek comment on whether particular types of services lend themselves better to consortium purchasing. For example, we note that while schools and libraries might join consortia for broadband access, they might apply independently for internal connections. In particular, we seek comment on whether consortia are effective vehicles for driving down specific costs, such as equipment purchases or broadband access.

184. We seek comment on whether our consortium procedures have different impacts depending on the composition of the consortia. For example, are there disparate impacts between consortia that include only schools, or only libraries, or both schools and libraries? Is the formation of consortia impacted by potential disparities in discount levels? Are consortia that include other entities such as health care providers and/or public sector entities such as state colleges and universities, educational broadcasters, counties, and municipalities impacted in different ways? While we seek comment on these consortia configurations, we also open the inquiry to whether there are other entities that join with schools and/or libraries to create consortia and whether there are specific impacts on those consortia. Given the potential efficiencies of broadband networks that serve multiple types of anchor institutions, are there steps we can take to facilitate the formation of consortia that extend beyond schools and libraries?

185. Finally, while we are eager for schools and libraries to secure the many benefits that consortia can provide, we are mindful that aggregation of applicants can also diminish competition. We seek comment on whether service providers who would compete to serve some of the entities in a consortium might not bid if they could not serve the entire consortium. As a result, a larger consortium could leave a single bidder facing little pressure to pass on any reduced costs to applicants. We seek comment on what the Commission might do while encouraging cost-saving consortia so as to minimize, if not avoid, negative effects on competition.

C. Encouraging Other Types of Bulk Buying Opportunities

186. We seek comment on how best to encourage other types of bulk buying of E-rate supported services. Currently, consortia are one of many ways that E-rate applicants aggregate demand for E-rate supported services in order to reduce prices and procure necessary services. In some cases, E-rate applicants purchase from state master contracts, which offer prices, terms and conditions negotiated by a state on behalf of a wide range of public institutions within that state.[249] In many places, state or regional research and education networks (R&E networks) are also available and offer bulk purchasing

[248] *See also sura* Section II.D., Streamlining the Administration of the E-rate Program.

[249] *See, e.g., Arizona Dept. of Educ., Arizona State Master Contract available at http://www.azed.gov/educational-technology/e-rate/arizona-state-master-contract* (last visited July 15, 2013*).*

opportunities for applicants.[250] In other cases, E-rate applicants may be able to take advantage of regional contracts managed by public, non-profit or private entities that also aggregate demand and manage the procurement process. Should applicants be required to purchase from these state master or regional contracts in which they may participate, unless they can receive the same services for a lower price? We seek comment on the benefits and burdens of these and any other methods that E-rate applicants currently use to aggregate demand for E-rate supported services and request that commenters provide data on how effective such approaches are for driving down prices and creating administrative efficiencies for E-rate applicants. We also invite applicants to identify and comment on other methods of bulk buying that exist outside the E-rate program and whether such methods could be successfully adapted to the E-rate program.

187. We also seek comment on whether the Commission, working with USAC or some other entity, should create a formal bulk buying program for E-rate supported services. If so, are there specific products or services that such a program should cover? For example, are there certain products, like wireless routers, that are standard or common to school and library networks nationwide? Generally, how would such an initiative work within the structure of the current E-rate program? How would such a program appeal to applicants?

188. If we adopt a bulk buying program, should we amend our rules so that purchases made using the program would be exempt from our competitive bidding requirements? Would we incentivize participation by preempting all or some of the USAC review processes for applicants who purchase through the bulk buying program? How should we treat applicants who purchase products and services that are available through the bulk buying program, outside of the bulk buying program? Should we, for example, treat the prices available through such a bulk-buying as the maximum price for which an applicant can seek support?

189. On the other hand, are there benefits to consortium membership or independent purchasing that could be lost if we were to encourage alternative bulk-purchasing arrangements? By suggesting one bulk buying option, we do not intend to foreclose others, and seek comment on other options.

190. We also seek comment on whether E-rate applicants can lower costs by aggregating data traffic. As we noted earlier, many schools and libraries use district-wide or regional WANs to provide broadband connectivity between buildings.[251] Similarly, state R&E networks can provide high capacity routes from major locations within a state, relying on national networks for long-distance connections and local connections to reach smaller communities and buildings within a community.[252] By partnering with WANs or R&E networks and aggregating Internet traffic, schools and libraries may be able to further drive down prices. E-rate applicants may also work with WANs and R&E networks to purchase circuits and network equipment in bulk and to take advantage of knowledge and relationships with commercial service providers.[253] We seek comment on policies that we can adopt to encourage E-rate applicants to leverage these other networks to lower prices.

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[250] *See, e.g.,* MCNC, Connecting North Carolina's Future Today, *available at* https://mcnc.org/about.html (last visited July 15, 2013). *See generally* R&E Network, *Connections, Capacity, Community: Exploring Potential Benefits of Research and Education Networks for Public Libraries* (Feb. 21, 2011), *available at* http://www.tmng.com/sites/tmng.com/files/CSMG_Gates%20Foundation_Connections%20Capacity%20Community%20RE%20Network%20Paper_21Feb2011.pdf (last visited July 15, 2013).

[251] *See supra* paras. 79-82.

[252] *See* Gates Ex Parte Letter at 6-7.

[253] *Id.*

D. Increasing Transparency

191. We also propose to increase the transparency of E-rate spending and specifically the prices E-rate applicants pay for service. Increasing such transparency may aid oversight of the E-rate program and drive down the prices of E-rate supported services. We seek comment on directing USAC to publish more granular information about E-rate spending and on how to collect such information. We seek comment on whether increasing price transparency will result in schools and libraries paying less for E-rate supported services and on ways we can assist in making prices for E-rate supported services more transparent. More specifically, we propose options for informing schools and libraries about the prices at which service providers are willing to offer for E-rate supported services. We seek comment on the options we propose and invite commenters to offer other suggestions.

192. *Transparency of E-rate spending*. We seek ways to increase transparency with respect to how E-rate funds are allocated and spent. The National Broadband Plan, for example, recommended that we "collect and publish more specific, quantifiable and standardized data about applicants' use of E-rate funds."[254] We accordingly seek comment on whether USAC should be required to create a website where any American could easily look up the details of how any participant in the E-rate program had used its funds in any given year. How should such information be organized? At what level of detail should it be reported? Would such a website provide valuable information to parents? Would it encourage officials to spend money more wisely? How else can we increase the transparency of E-rate spending, including the access that local journalists, school boards, librarians, city governments, and parents have on how E-rate funds are allocated and on what they are spent?

193. Below we seek comment on ways to streamline the E-rate application process. In line with that discussion, how can we minimize the reporting burden on schools and libraries while maximizing the insight the American public has into the spending of E-rate funds? For example, schools report certain characteristics such as the number of classrooms connected on the current Form 471, but that information must be reported before a school has completed a project and before a school has even received a commitment of funding. Could we reduce this burden by instead requiring the disclosure of relevant information (such as capacity leased or wireless access points purchased) on the back-end as part of the invoicing/payment validation process (perhaps as part of Form 486)? Should we require such reporting in a standard format or allow or encourage a fuller description? In short, can we simultaneously increase the transparency of E-rate spending while reducing the burden on applicants?

194. *Transparency of prices available for E-rate supported services.* We seek comment on how best to increase the transparency of prices for E-rate supported services. Are there publicly available online forums, blogs or other media, where schools and libraries can share information about the best prices and deals for E-rate eligible services? If not, or if currently available information is insufficient, we seek comment on what role, if any, the Commission or USAC should have in operating, hosting or endorsing websites or other ways of encouraging service providers to share pricing information with E-rate applicants, and facilitate price comparisons. We invite commenters who have experience with other information exchanges to comment on examples of what does or does not work in other contexts, and whether there are models we should look to in unrelated markets or other countries.

195. *Transparency of prices being bid for E-rate supported services.* Our competitive bidding rules require applicants to publicly seek bids for E-rate supported services, but our rules do not require applicants or service providers to make the responses to those bids public. Should we consider making bid responses public or at least accessible to other E-rate applicants? Would it be advisable to release this information only after the applicant has selected a vendor for the requested services? Are there any state laws, court orders, or contracts expressly prohibiting such disclosure? If we do require public disclosure of bid responses, what is the best format and timing for making such responses public in order to maximize the usefulness of such information to other E-rate applicants? To what extent would

[254] National Broadband Plan Recommendation 11.20.

publicizing such bids drive down prices, both with respect to specific applications and more generally? On the other hand, is there a risk that public bid responses inflate bid prices for E-rate supported services by, among other things, discouraging providers from bidding to provide E-rate supported services? Could such disclosure facilitate tacit collusion to restrict competition through coordinated pricing, market allocation or other approaches that would inflate the price or reduce the quality of E-rate supported services? We also seek comment on the degree to which state, local, and Tribal laws currently require the disclosure of bid responses for E-rate supported services, and whether service providers can and do limit any such public access.

196. *Transparency of actual purchase prices*. As an alternative to requiring public disclosure of all bids to provide E-rate services, we seek comment on making available the prices applicants are paying for E-rate supported services. We note that applicants currently provide that information to USAC.[255] We seek comment on whether we should direct USAC to permit public access to FCC Form 471, Item 21 information or any other information provided by either applicants or service providers participating in the E-rate program. Are there any state laws, court orders, or contracts that would prohibit such public disclosure? Should we limit disclosure of pricing information to other E-rate applicants? We also seek comment on whether requiring public disclosure of the prices applicants actually pay for E-rate supported services create a more effective competitive marketplace for those services and products, or might service providers eschew participation to shield their prices from public view. Could such disclosure facilitate tacit price fixing, bid rigging or market allocation schemes, thus inflating the price of E-rate supported services? In the alternative, do commenters believe that publicly displaying prices may encourage more service providers to approach individual schools and libraries with lower prices and discourage participation in consortia or other aggregate buying groups? Might transparency of pricing also help ensure that providers are complying with the Commission's lowest corresponding price rule?[256]

197. Finally, we note that section 54.501(c)(3) of our rules requires service providers to "keep and retain records of rates charged to and discounts allowed for eligible schools and libraries – on their own or as part of a consortium. Such records shall be available for public inspection."[257] We seek comment on the extent to which applicants can and have availed themselves of that provision of our rules to determine the prices paid by other applicants for E-rate supported services. We also seek comment on the benefits and shortcomings of that provision of our rules and whether we can and should amend it to increase pricing transparency in order to drive down prices of E-rate supported services.

198. *Greater Assistance to Schools and Libraries.* We also seek comment on whether the Commission, USAC, or other entities should take a more active role in assisting applicants in identifying cost-effective purchasing options. The Commission previously directed USAC to develop a pilot program testing an online list of internal connections equipment eligible for discounts.[258] USAC has not updated the database in some time in part because keeping the list current imposed significant administrative burdens on both USAC and vendors. We propose to terminate that pilot program and we invite participants to comment on how the Commission can transition to a more effective system to provide more transparent price information for applicants. For example, should we direct USAC to establish an office to help applicants identify the best prices for E-rate eligible services and products? Such an office could be staffed by consultants with expertise in configurations of educational technologies and the best prices and service providers, and could mine the USAC E-rate databases to

[255] *See supra* n.79. Applicants provide the information in the Item 21 attachments they provide with their funding applications. USAC does not publicly disclose this data. *See* USAC, Schools and Libraries, Item 21, *available at* http://www.universalservice.org/sl/applicants/step04/item-21.aspx (last visited July 15, 2013).

[256] For more information about the lowest corresponding price rule, *see supra* paras. 209-210.

[257] *See* 47 C.F.R. § 54.501(c)(3).

[258] *Second Report and Order*, 18 FCC Rcd at 9213-15, paras. 31-37.

identify and publicly disclose attractive prices, terms and conditions for the products and services. We seek comment on the likely cost of providing that sort of expert assistance and whether the benefits of such an undertaking would outweigh its costs. We also ask whether we can, or should, limit access to this pricing data to participants in the E-rate program.

199. If we adopt such an approach, should we amend our rules so that applicants who chose a product or service at the price posted on the website would be exempt from any additional competitive bidding requirements for such purchases? We seek comment on ways to implement such a proposal. How should the office identify best terms? What criteria should the office use to filter the information?

200. We also seek comment on whether we should direct USAC to employ a team of technical experts who could assist applicants in planning and designing cost-effective networks? Is there a need for such assistance? What are the costs and benefits of housing a team of technical experts at USAC? How should such a team prioritize its work to be most beneficial to schools and libraries and help drive efficiencies in E-rate purchasing?

201. Are there entities other than the Commission or USAC that could perform this function? For example, could USAC or the Commission assemble a list of school chief information officers or other officials from better-resourced districts that could serve as advisors to smaller or lower-resourced districts? Are there other approaches the Commission should take to ensure schools are planning to efficiently and effectively meet their needs?

E. Improving the Competitive Bidding Process

202. To maximize the cost-effectiveness of purchases made using E-rate funds, we seek comment on the current competitive bidding process, and ask how the Commission can reduce the number of E-rate recipients that do not receive multiple bids, and whether the lowest corresponding price rule helps ensure that E-rate recipients receive cost-effective prices. While USAC does not collect comprehensive information about the quantity or quality of the bids received, there is anecdotal evidence that a substantial number of E-rate applications receive one or no viable competitive bids.[259] We seek comment on whether the current competitive bidding process typically results in multiple competitive bids, and ask commenters to elaborate on the characteristics of recipients that do not ordinarily receive multiple bids. We also seek comment on whether the current competitive bidding process continues to address the needs of the schools and libraries program, or if a different application process would better suit applicants' needs. We specifically request that commenters discuss how the current competitive bidding process and any proposed processes ensure that schools and libraries are selecting the most cost-effective services to meet their unique needs, that service providers are offering the lowest prices available, and that we continue to minimize waste, fraud, and abuse in the program.

203. *FCC Form 470*. We also seek comment on how we can ensure that applicants select cost-effective services in situations in which no entity, or only one entity, responds to a FCC Form 470 posting. Under the competitive bidding requirements, eligible schools and libraries that wish to receive support for discounted services must submit an FCC Form 470 to USAC.[260] The FCC Form 470 describes the applicant's needs and notifies service providers of the applicant's intent to contract for eligible services. After the FCC Form 470 has been posted to the Administrator's website for 28 days, the applicant may contract for the provision of services and file an FCC Form 471, requesting discounts for the services.[261] In some situations, however, there may be only one service provider capable of, or willing to, provide the requested service. How can we ensure that the prices for such services are

[259] SECA has noted that "[v]ery few, if any, entities receive viable bids as a result of their priority one form 470 postings [but rather] applicants must [often] reach out to prospective service providers to encourage them to participate in the procurement." SECA *E-rate Broadband NPRM* Comments at 10.

[260] 47 C.F.R. § 54.503(c).

[261] *Id.*

reasonable, and do not waste scarce universal service funds? Should we adopt bright line rules that would impose limits on the amount of discounts available in such situations, or would that unfairly penalize applicants in areas where there are limited numbers of service providers (*e.g.* on Tribal lands)?

204. Currently, if an FCC Form 470 filer receives no bids, the applicant is allowed to solicit bids from service providers.[262] Should the Commission create separate requirements for E-rate applicants that receive no bids from service providers to ensure that services are procured at reasonable prices? Are there steps we should take to avoid imposing additional administrative burdens on schools and libraries located in areas in which there is no competition for supported services, such as some Tribal lands? Are there resources available at the state or regional level that could assist these filers in finding vendors to provide E-rate-supported services at reasonable rates? For instance, we have anecdotal evidence that E-rate applicants maybe unaware of state master contracts or cooperative purchasing organizations, such as the Western States Contracting Alliance, that could be beneficial to them. Should USAC post guidance on its website or take other steps to assist E-rate applicants in finding these resources? Should applicants be required to certify that they have reviewed state master contracts before selecting a vendor?

205. We also seek comment on whether the current system of applying for discounted E-rate services provides potential vendors enough information to formulate bids. We seek comment on whether the FCC Form 470 is the proper tool for adequately informing vendors of the services schools and libraries are seeking through the E-rate program. Does the format of the FCC Form 470 limit the pool of service providers seeking new business? Is the information provided on the FCC Form 470 sometimes so broad or narrow as to limit the number of vendors that could reasonably respond to the posting? The Commission has previously found that an overly broad or generic FCC Form 470 posting may stifle competition among service providers.[263] In the *Ysleta Order*, the Commission clarified that such broad FCC Forms 470 are not consistent with our rules and that the FCC Forms 470 should mirror the level of complexity of the services and products for which discounts are being sought.[264]

206. Our rules require E-rate applicants to "conduct a fair and open competitive bidding process," as spelled out in our rules.[265] Our rules also require E-rate applicants to comply with state and local competitive bidding requirements.[266] We seek comment on whether we should exempt certain applications or applicants from the E-rate competitive bidding rules on the basis that they are complying with state and local competitive bidding requirements. Commenters should identify the criteria they recommend using for selecting which applications or applicants should be exempt from our competitive bidding requirements, and how we can assure that such an exemption does not increase the opportunity for waste, fraud, and abuse, and, if so, what criteria should be used for any exemptions. If we adopt this exemption, should we limit it to purchases below some threshold? What should that threshold be? We seek guidance on providing USAC a practical, reliable, and minimally burdensome way to confirm that the applicants claiming such an exemption had actually complied with these procurement processes. We also seek comment on what USAC should consider as sufficient documentation of compliance with state or local procurement rules. Further, we seek comment on whether we might consider a *de minimis* exemption. For example, if an applicant's total annual E-rate purchases fall below some minimal threshold, should that applicant be exempt from the competitive bidding requirements? What should that threshold be?

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[262] *See* USAC, Schools and Libraries, Selecting Service Providers, *available at* http://www.usac.org/sl/applicants/step03/default.aspx (last visited July 15, 2013).

[263] *See Universal Service First Report and Order*, 12 FCC Rcd at 9078, para. 575 (noting that applicants must provide sufficient detail "to allow providers to reasonably evaluate the requests and submit bids").

[264] *See Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26421, para. 29 (2003) (*Ysleta Order*).

[265] *See* 47 C.F.R. § 54.503(a).

[266] *See* 47 C.F.R. § 54.503(b).

207. Many states negotiate state master services agreements (State MSAs) for services eligible for E-rate support. Should we allow applicants to purchase off a State MSA without the applicant or the State MSA having gone through our competitive bidding process? What are the benefits and burdens of such an approach? If a State MSA offers purchasing options for the same or functionally equivalent products or services at different prices, should we require an applicant select the lowest price offering if it wants to select off the State MSA and be exempt from our competitive bidding rules? In the alternative, under such circumstances should we require applicants to follow currently required process and evaluate all the options on the State MSA using price as the primary factor in selecting a vendor? We note that some State MSAs do not contain specific prices for goods and services, under those circumstances we would not be inclined to provide E-rate support for goods and services purchased off a State MSA, and we seek comment on that issue.

208. Finally we seek comment on whether to revise the deadline for applicants to sign a contract with their service provider. We note that sometimes applicants have difficulty obtaining signatures or final board approvals prior to their submission of their FCC Forms 471, as is currently required by the E-rate rules.[267] Commenters are invited to offer specific examples of difficulty they have had obtaining a signed contract in a timely fashion, and propose alternatives to the current deadline for obtaining a signed contract. We also seek comment on whether modifying this requirement would lead to waste, fraud, and abuse and we invite comments on how to minimize that risk.

209. *Lowest Corresponding Price (LCP).* We also seek comment on the extent to which the LCP rule helps ensure that service providers charge cost-effective prices. In section II.B.2, we sought comment on using the LCP rule to measure progress towards our proposed goal of ensuring applicants have affordable access to broadband. The LCP rule requires service providers to charge the lowest price that a service provider charges to non-residential customers that are similarly situated to a particular E-rate applicant for similar services.[268] We specifically seek comment on the role of the lowest corresponding price rule for competitive bidding. If an applicant receives only one bid or no bid for services should the applicant be required to report that fact to USAC? If an applicant receives only one bid or no bids, should USAC automatically engage in additional review of the application to determine whether the service provider has offered the lowest corresponding price? Or, should USAC only do additional review under those circumstances if the price for the service at issue is flagged as higher than similar services? If USAC should conduct further pre-commitment review for compliance with the LCP rule, what is the least burdensome but effective method for determining whether the service provider is offering the LCP?

210. We also seek comment on the clarity of the LCP rule. In 2010, US Telecom and CTIA (together Petitioners) petitioned the Commission to issue a declaratory ruling to clarify the scope and meaning of the Commission's LCP rule.[269] More specifically, Petitioners requested that the Commission clarify that: (1) the lowest corresponding price obligation applies only to competitive bids submitted by a provider in response to a Form 470; (2) the lowest corresponding price obligation is not a continuing obligation that entitles a school or library to constantly recalculate the lowest corresponding price during the term of a contract; (3) there are no specific procedures that a service provider must use to ensure compliance with the lowest corresponding price obligation; (4) in determining whether a service bundle complies with the lowest corresponding price obligation, discrete elements in such bundles need not be individually compared and priced; and (5) in a challenge regarding whether a provider's bid satisfies the lowest corresponding price obligation, the initial burden falls on the challenger (*i.e.*, a school or library) to

[267] *See* 47 C.F.R. § 54.504.

[268] 47 C.F.R. §§ 54.500(f); 54.511(b).

[269] *See* USTelecom/CTIA Petition at 1. The "lowest corresponding price" is defined as "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." 47 C.F.R. § 54.500(f).

demonstrate a *prima facie* case that the bid is not the lowest corresponding price.[270] The Commission sought comment on that petition,[271] and we now invite commenters to refresh the record on whether it is necessary to clarify the scope and meaning of the LCP rule.

F. Efficient Use of Funding

211. We seek comment on how best to ensure that any given E-rate application reflects a cost-effective approach to filling the applicant's need for E-rate supported services. Our competitive bidding rules require that price must be the primary factor when selecting a winning bid and that applicants must select cost-effective service offerings.[272] We seek comment, however, on whether our rules and our enforcement mechanisms are sufficient to ensure cost-effective purchasing on an application-by-application basis.

212. This is not the first time the Commission has sought comment on this issue. In the 2003 *Schools and Libraries Third Report and Order*, the Commission sought comment on whether to codify additional rules to ensure that applicants make informed and reasonable decisions in deciding which services they will seek discounts.[273] Given that demand for E-rate funding greatly exceeds the cap and that there is a wide disparity in the amount of funds on a per-student basis that applicants seek, it is time to refresh the record on this issue. Specifically, we seek comment on how to ensure that applicants are not receiving support for expensive services that provide functionality that they do not need and will not use and that applicants are not selecting expensive priority one services simply because they are supported services, when less expensive services would fill the same need.

213. As part of our effort to ensure that applicants are making cost-effective purchasing decisions, we seek to refresh the record on whether we should adopt bright line tests, benchmark or formula for determining the most cost-effective means of meeting an applicant's technology needs. For example, should we establish limits or guidelines on purchases of certain kinds of equipment based on reasonable per-classroom, per-teacher, or per-library technology needs? If so, what are appropriate bright line tests, benchmarks or formulas? Would we need a process for granting exceptions, and if so, how should it work? As an alternative to setting hard limits, should we make purchases of equipment above per-classroom, per-teacher, per-student, or other limits a lower priority?

214. Our rules require that an applicant establish that equipment and services are installed and in use.[274] Should we require that an applicant regularly use all of the functions provided by an E-rate supported service? If an applicant has requested and installed an E-rate supported service, but does not

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[270] *See* USTelecom/CTIA Petition at 1. *See also* 47 C.F.R. § 54.511(b).

[271] *See USTelecom/CTIA Petition Public Notice*.

[272] *See Ysleta Order*, 18 FCC Rcd at 26429, para. 50.

[273] *See Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26947, para. 87. The majority of commenters stated that implementation of a standard to evaluate cost-effective decisions would be administratively difficult. *See, e.g.,* Verizon *Schools and Libraries Third Report and Order*Comments, CC Docket No. 02-6, at 13-15 (filed Mar. 11, 2004); Council of Great City Schools *Schools and Libraries Third Report and Order* Comments, CC Docket No. 02-6, at 4-5 (filed Mar. 11, 2004); General Communication, Inc. *Schools and Libraries Third Report and Order* Comments, CC Docket No. 02-6, at 7-8 (filed Mar. 11, 2004); Education and Libraries Networks Coalition *Schools and Libraries Third Report and Order* Comments, CC Docket No. 02-06, at 3-4 (Mar. 11, 2004); American Library Association *Schools and Libraries Third Report and Order* Comments, CC Docket No. 02-6, at 18-19 (Mar. 11, 2004); Central Susquehanna Intermediate Unit *Schools and Libraries Third Report and Order* Comments, CC Docket No. 02-6, at 2-3 (Mar. 10, 2004); Alaska Dept. of Educ. & Alaska State Library *Schools and Libraries Third Report and Order* Comments, CC Docket No. 02-6, at 9 (filed Mar. 10, 2004).

[274] *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26919, para. 17. The Commission determined that recipients of support are expected to use all equipment purchased with universal service discounts at the particular location, for the specified purpose, for a reasonable period of time.

use all of the functionality of the service, has the applicant violated the requirement to engage in cost-effective purchasing? Does it matter if no other vendor services more closely matched the needs of the applicant?

215. We seek comment on whether applicants seek support for priority one services because they know they will receive support for those services, when in reality the services they need or are seeking are unsupported services, or priority two services that are often not funded.[275] We noted above that many applicants purchase expensive cellular data plans and air cards that are funded as priority one services, instead of using less expensive local area network (LAN) services, which are priority two services. Is this an example of applicants seeking support for priority one services because they do not expect to qualify for priority two services, given the E-rate program's funding cap? Are there other examples of such practices? How can the Commission discourage these practices and encourage participants to select the less expensive services? Would the proposals discussed above to reprioritize the E-rate supported services help address this issue?[276]

216. We seek comment on how our cost-effectiveness rules should apply to multi-year contracts and to purchases of ongoing services. Should we encourage or require schools and libraries to take a long-term view of cost-effectiveness? How can we provide E-rate applicants assurance that significant investments which raise costs in the short term but significantly lower recurring costs will not run afoul of our rules, while continuing to protect against wasteful or inefficient purchases? We are particularly interested in this question as it relates to the deployment of new broadband connections to schools and libraries.

G. Broadband Planning and Use

217. We next seek comment on measures E-rate applicants should take in order to ensure they are carefully assessing their need for and readiness to use high-capacity broadband. Should we require schools and libraries seeking support for high-capacity broadband to undertake a formal review and assessment of their broadband needs – both to the premises and within the premises? Such an assessment could not only help applicants determine their broadband connectivity needs but also encourage efficient and cost-effective purchasing decisions. Should we condition receipt of E-rate funds on certain criteria for the broadband assessments and if so, what should those criteria be? For example, should we require schools to plan for providing a device to every student or for a device to a small group of students? Should we require schools and libraries to conduct professional development sufficient to ensure that their staffs have the knowledge and skills to take advantage of high-capacity broadband as well as the devices and applications? Should applicants be required to demonstrate that they have specific plans for using the bandwidth? Who is in the best position to evaluate and, if necessary, approve these assessments, and help schools close any gaps? What should be the consequences be if an applicant conducts inadequate needs assessment and planning, and what resources could be made available to help them improve?

218. In the *Schools and Libraries Sixth Report and Order*, the Commission eliminated technology plan requirements for E-rate applicants seeking only support for priority one services in order to simplify the application process for those schools and libraries.[277] We seek comment on lessons learned from our current and previous technology plan requirements and whether we should consider any elements of those requirements if we implement a broadband assessment requirement. In particular, how can we make such assessment as simple and objective as possible? Is an objective checklist or scorecard approach for school planning and readiness feasible?

219. We seek comment on quantifying the burdens schools and libraries face when completing current technology plans in compliance with federal requirements and the approval process? If we

[275] *See supra* para. 119.

[276] *See supra* para. 147.

[277] *See Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18789-91, paras. 58-63.

eliminate the technology plan requirement, and do not otherwise require E-rate applicants to assess their broadband needs, would schools and libraries continue to develop technology plans, or their equivalents, and if so how might they differ from current plans developed in order to access priority two funding?

H. Innovative Approaches to Encouraging Maximum Efficiency

220. Finally, as we consider various ways to maximize cost-effective purchasing in the E-rate program, we seek comment on whether utilizing scaled down testing of various approaches to purchasing would help identify the most successful practices as well as less effective ideas. Towards that end, we seek comment on whether we should establish one or more programs to foster innovation and highlight specific, scalable best practices for purchasing E-rate supported services that eligible schools and libraries can use to drive down the cost of E-rate supported services.

221. Such a program could, for example, allow experimentation use of consortia, establish novel bulk buying opportunities, and/or test ways to streamline procurement for eligible schools and libraries. A pilot program could also provide an opportunity for the Commission and USAC to gather data about other innovative approaches to lowering costs by incenting cost-reducing measures. Pilots could, for example, offer greater discounts for participants that are able to significantly decrease the pre-discount costs of the services they purchase. This would allow participants to realize a greater share of the savings from cost-reductions. Alternatively, we could allow pilot participants to use savings from reduced spending on priority one services toward priority two services, outside the otherwise applicable prioritization system.

222. We seek comment on these options for pilot programs, and whether such programs would be an efficient use of E-rate funds. We also seek comment on other potential pilot designs, and other potential financial and administrative incentives for participation in purchasing pilot programs. How can we set up these incentives to account for the fact that some short-term investments may result in long-term cost savings? Are there other approaches we should consider to incentivize eligible schools and libraries to find the lowest price? Should we consider adopting any of the pilot program proposals discussed above for the E-rate program as a whole, without first conducting a pilot?

223. We also seek comment on what data we should collect as part of a pilot program, and to measure the effectiveness of the program. In evaluating the results of any pilot program, we would propose to consider, among other things, the quantity of services supplied, the prices per component, the expenses per-student, and the distribution of cost across districts of varying incomes. Are the other factors we should consider? What would be the most appropriate mechanism for sharing this data? How would we maximize the likelihood that any innovations developed in a pilot program could be repeated throughout the country?

V. STREAMLINING THE ADMINISTRATION OF THE E-RATE PROGRAM

224. We propose that streamlining the administration of the E-rate program should be the third goal of the program to address concerns about the complexity and associated burdens of the current E-rate application and associated review process. Applicants for E-rate funds are required to complete approximately six FCC forms over the course of a funding year.[278] Some applicants spend many hours not only filling out FCC forms and gathering required data, but also responding to questions from USAC and requests for additional information, including documentation.[279] As a result, many applicants feel the need to hire consultants to handle these tasks. While consultant fees cannot be paid using E-rate funds, they are a cost to program participants, and therefore may reduce the net benefits that schools and libraries realize from participation in the E-rate program.

[278] *See* USAC, Schools and Libraries, Forms, *available at* http://www.usac.org/sl/tools/forms/default.aspx (last visited July 15, 2013).

[279] *See* USAC, Schools and Libraries, Application Review, *available at* http://www.usac.org/sl/applicants/step05/default.aspx (last visited July 15, 2013).

225. Moreover, funding review decisions can be delayed while USAC seeks to resolve issues that arise during USAC's application review process, such as ensuring that: only eligible entities receive funding for eligible services; the competitive bidding process was fair and open; the applicant has the necessary resources to make use of the requested services; and there are no discrepancies between the information on the funding request and the associated FCC Form 471 Item 21 attachment. When that happens, applicants find themselves pressed to make purchase decisions with imperfect information about the status of their applications or their prospects for receiving E-rate funding. Further, because USAC must still enter some applicants' paper filings in electronic form in order to process them, USAC's efforts to expeditiously process applications and other forms can be handicapped. At the same time, the Commission and USAC are responsible for protecting the E-rate fund from waste, fraud and abuse. Many of the burdens imposed on applicants are rooted in preventing such problems with the program.

226. We therefore propose several options for streamlining the administration of the E-rate program while preserving critical safeguards. These options include: moving to electronic filing of all FCC forms and correspondence with USAC; increasing transparency throughout the application process; speeding review of applications and issuance of commitment decisions; simplifying the eligible services list (ESL) to focus on the service provided rather than the regulatory classification of the service; recovery considerations when seeking reimbursement of previously disbursed E-rate funding; more effective disbursement of unused funds; improve invoicing and disbursement; and streamlining the E-rate appeals review process. We seek comment on our proposals below and any other ways in which we can further streamline the administrative processes, including the program integrity assurance (PIA) review process and the commitment and disbursement processes, to maximize the efficiency of the E-rate program.[280]

A. Electronic Filing of FCC Forms and Correspondence

227. To enable USAC to manage applications more quickly and efficiently, we first propose to require all E-rate applicants and service providers to file all documents, including the FCC Form 500, with USAC electronically and to require USAC to make all notifications electronically. We seek comment on this proposal.

228. While many applicants file a majority of the forms online, many other E-rate program procedures, such as service provider identification number (SPIN) changes, invoice and service delivery deadline extension requests, as well as the FCC Form 500, require paper submissions, some of which must be filled out by hand.[281] When the E-rate program began, some schools and libraries did not have Internet access, thus many applicants did not have the resources to file electronically.[282] Today, however, the vast majority of schools and libraries have Internet access, and – just as we now require E-rate service providers receiving disbursements to use electronic payment systems[283] – we propose to require electronic filing and notification of the receipt of E-rate forms. As the Commission previously concluded, the electronic submission of the FCC forms will improve the efficiency of submitting and processing applications, thereby resulting in faster commitments and disbursements of E-rate funding as well as the return of any unused funds to USAC.[284] It will also reduce USAC's administrative costs because USAC will not have to manually enter data into its electronic system from paper submissions.[285] Additionally, electronic completion, submission, and notification will likely result in fewer errors on the forms and

[280] *See infra* n.295 for explanation of the PIA review process.

[281] *See* SECA NPRM Comments at 21.

[282] *See supra* para. 1.

[283] *See Wireline Competition Bureau Establishes the Effective Date for Electronic Disbursement of Universal Service Support Payments*, CC Docket No. 02-6, Public Notice, 25 FCC Rcd 7067 (Wireline Comp. Bur. 2010); 31 U.S.C. § 3332(f)(1).

[284] *See E-rate Broadband NPRM*, 25 FCC Rcd at 6887, para. 33; SECA *E-rate Broadband NPRM* Comments at 21.

[285] *See* SECA *E-rate Broadband NPRM* Comments at 21.

other communication with USAC and to applicants.[286] In proposing to make all forms and correspondence filed with and received by USAC electronic, we recognize that there may be rare instances in which some applicants may still need to file and receive paper forms due to unreliable Internet access or emergency situations. We therefore seek comment on whether we should impose a minimal fee for applicants who seek to file their forms and correspondence in paper form.

229. SECA suggests that all of an applicant's forms and correspondence with USAC should be available from a centralized portal so the applicant can retrieve current and prior years' information to use as a starting point for new form submissions.[287] SECA states that online functionality will conserve on data entry and problem resolution resources that USAC currently must utilize as well as customer service bureau inquiries.[288] Facilitating access to previous applications will also make it easier for applicants to file forms that are similar to those of previous years and eliminate the duplicative requests for information during PIA review since all the requested information would be available online and available for review.[289] We seek comment on SECA's proposal and any alternative ways to simplify the submission and receipt of FCC forms and other correspondence to USAC. Another way to increase E-rate program efficiencies is automate more of the processes for the program. In addition to requiring online filing, we seek comment on whether there are administrative processes in the program that could be automated and would also result in cost savings and efficiencies. What could be gained by increasing the amount of automated processes at USAC and how could this be best achieved? For example, would increased automation in the application process result in quicker commitment decisions? What aspects of this process lend themselves to automation? What are the ways that increased automation can lead to efficiencies and cost savings? What are the ways automation could reduce or eliminate improper payments? Commenters should be as specific as possible in their proposals.

230. Requiring all forms and correspondence to be available electronically may require USAC to upgrade its internal technology systems in order to accommodate additional electronic submissions and increased automation which could result in initial increased expenditures for the E-rate program. We seek comment on whether the administrative and economic benefits that would result from these changes outweigh any initial upfront costs that would be required for the technological upgrades proposed herein. We note that USAC has already sought public comment on measures to update its internal informal technology systems to improve operational efficiencies and enhance the customer experience.[290] We therefore direct USAC to incorporate into its consideration this proposal as it adopts measures to improve operational efficiencies.

231. Other than time and resource efficiencies gained for both applicants and USAC, we estimate that several of these proposals will result in actual cost savings for the E-rate program. While it is difficult to quantify the aggregate total savings to the E-rate program as result of these proposals, according to USAC's annual report for 2012, USAC spent approximately $70 million on E-rate program operating expenses in 2012.[291] Any reduction in these costs as a result of changes such as electronic filing

[286] *Id.*

[287] SECA June 2013 White Paper at 17-19; SECA *E-rate Broadband NPRM* Comments at 20-21.

[288] SECA *E-rate Broadband NPRM* Comments at 20-21.

[289] SECA June 2013 White Paper at 18.

[290] *See* Universal Service Administrative Company Seeks Comment on Goals and Features to be Considered for the Potential Information Technology Modernization of the Systems Supporting the Administration of the Schools and Libraries Program of the Federal Universal Service Fund, dated Feb. 19, 2013 (comments and reply comments were due on March, 22, 2013 and April 12, 2013, respectively), *available at* http://www.usac.org/_res/documents/sl/pdf/SLITM/RFC-Full-Notice.pdf (last visited July 15, 2013).

[291] *See* Universal Service Administrative Company, 2012 Annual Report at 20*, available at* http://www.usac.org/_res/documents/about/pdf/annual-reports/usac-annual-report-2012.pdf (last visited July 15, 2013) (2012 USAC Annual Report).

and increased automation of program processes would result in increased funding availability for applicants, especially when considered in combination with the other changes proposed herein such as elimination of funding for certain services.

B. Increasing the Transparency of USAC's Processes

232. We seek comment on ways to increase transparency throughout the application, commitment and disbursement processes, so that applicants have a better understanding of the status of their funding requests. SECA suggests, among other things, that the longer a decision is pending, the more status update information should be made available on USAC's website to the affected parties.[292] SECA therefore proposes that USAC should provide additional levels of detail in its "Application Status" tool on its website to provide applicants with a better understanding of where their application is in the review process.[293] For example, SECA suggests additional designations, such as "Normal Review," "Selective Review," "Policy Review," "Investigative Review," and "Pending Program Decision on Available Internal Connection Funding."[294] Additionally, in cases where USAC is waiting for an applicant submission, it could indicate as part of the application status that it is "awaiting applicant's response to USAC's request on [date]." We seek comment on SECA's proposal and other ways in which to increase transparency of the review process for applicants.

C. Speeding Review of Applications, Commitment Decisions, and Funding Disbursement

233. We next seek comment on ways to reduce the time it takes USAC to review applications for E-rate support in order to more quickly release funding commitment decisions. Currently, applications can undergo a number of levels of review prior to release of funding commitment decisions.[295] We note that, in a recent report, GAO recommended that the Commission undertake a risk assessment of the E-rate program.[296] GAO noted that a risk assessment involving a critical examination of the program could help determine whether modifications to USAC's business practices and internal control structure are needed to appropriately address the risks identified and better align program resources to risks.[297] In addition, applicants have found that USAC's review process can become time-consuming and can significantly delay funding commitment decisions, particularly for state networks and consortia that may file numerous funding requests per funding year. At the same time, the Commission has directed USAC to ensure that funding is disbursed to eligible recipients for eligible services. For all the suggestions below, given that we must balance administrative efficiency with protecting against

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[292] *See* Letter from the State E-rate Coordinators Alliance, to Gina Spade, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 02-6, GN Docket No. 09-51, at 1-2, 4-5 (filed Aug. 1, 2011) (concerning black holes and COMADs) (SECA August 2011 White Paper).

[293] *Id.* at 4-5; *see* USAC website, Schools and Libraries, Schools and Libraries Service Program, Services Ordered and Certification Form 471 Application Status, *available at* http://www.sl.universalservice.org/FY3_form471/471StatusCheck.asp (last visited July 15, 2013).

[294] *Id.*

[295] For example, after an FCC Form 471 application and the associated Item 21 attachment(s) are filed within the filing window, USAC checks the information on the forms for completeness and accuracy as part of its PIA review and may request additional information. *See* USAC website, Schools and Libraries, Application Review, *available at* http://www.usac.org/sl/applicants/step05/default.aspx (last visited July 15, 2013). Also, selective review is a separate component of the PIA process that follows up on certifications that applicants make on their FCC Form 471 application about the competitive bidding process and the necessary resources to make effective use of requested services. *See* USAC website, Schools and Libraries, Selective Review, *available at* http://www.usac.org/sl/applicants/step05/selective-review.aspx (last visited July 15, 2013).

[296] United States Government Accountability Office Report to Congressional Requestors, "FCC Should Assess the Design of the E-rate Program's Internal Control Structure," GAO 10-908 (Sept. 29, 2010).

[297] *Id.*

waste, fraud, and abuse, we also seek comment on how we should ensure that streamlining the application and disbursement process does not then result in an increase in improper payments.

234. We seek comment on whether we should establish deadlines for USAC to issue funding decisions or complete its other processing tasks. We describe above the reporting requirements in which USAC must detail performance related to commitments, disbursements, and appeals.[298] If commenters support deadlines, what should those deadlines be? If so, how should we balance speeding the review with protecting against improper payments and waste, fraud and abuse? Commenters should specifically address how the deadlines might improve or harm the application and invoicing processes. What should happen if USAC cannot meet the established deadlines?

235. In addition, we seek comment on ways to expedite the application review process. Are there ways in which USAC can streamline the PIA review process so that applicants are not asked duplicative questions or asked for the same documentation for different applications or funding requests where previous responses or documentation are applicable? Commenters should provide specific examples of the problems they encounter during the application review process, including identifying specific duplicative requests made in the routine review process.

236. Additionally, at times, an entire application or groups of applications involving funding requests for different service providers may be held up pending resolution of one FRN for one provider. Are there changes that should be put in place so that other unrelated funding requests are not held up pending the resolution of an issue involving another FRN? SECA proposes that, absent an active criminal investigation in which the party is the subject, within 90 days of the lack of activity on an FCC Form 471 application or invoice, USAC should notify all affected parties of concerns that are holding up a decision on the application and submit detailed requests for any additional documentation or information as part of the notification.[299] Upon receipt of the requested information, SECA proposes that USAC should issue a decision within 90 days.[300] We seek comment on this proposal and any other proposals setting timeframes for resolution of applications and release of funding commitments. If we were to adopt a deadline by which USAC must act, under what circumstances should we permit USAC to exceed the deadline in order to give full consideration to the application?

237. Further, for USAC to more quickly release funding commitment decisions, should we limit the number of opportunities applicants are given to respond to USAC's requests for documents and clarification? As part of its review, USAC routinely gives applicants additional time to provide missing or incomplete information to USAC during PIA review.[301] When applicants' timely request an extension of time to submit documentation, USAC grants such extensions and gives applicants additional time to respond to their requests for information.[302] The Commission has granted waivers of the E-rate rules providing applicants with additional time to submit documentation to USAC.[303] These extensions of time

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[298] *See supra* paras. 224-225.

[299] SECA August 2011 White Paper at 5.

[300] *Id.*

[301] *See* USAC, Schools and Libraries, Application Review, *available at* http://www.usac.org/sl/applicants/step05/default.aspx (last visited July 15, 2013).

[302] *Id.*

[303] *See, e.g., Requests for Review of the Decision of the Universal Service Administrator by Academia Claret; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 10703, 10709, para. 14 (Wireline Comp. Bur. 2006) (providing applicants with a 15-day opportunity to file additional documentation regarding their requested discount rates); *Request for Review of a Decision of the Universal Service Administrator by Odyssey Charter School; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6875, 6876, para. 2 (Wireline Comp. Bur. 2011) (granting the applicant a limited 60-day opportunity to file documentation supporting its requested discount rate); *Request for Review of a Decision of the Universal Service Administrator of Aberdeen School District 5; Schools and Libraries Universal*

(continued…)

also delay USAC's application review process and ultimately hinder the prompt release of funding commitment decisions. We thus seek comment on whether to limit the number of opportunities and length of time that applicants have to submit complete information to USAC in response to USAC's requests. Commenter's should specifically indicate any potential problems that may arise if we reduce the window of opportunity and any concerns with modifying USAC's outreach to gain complete information to complete their review of pending FCC Form 471 applications.

238. Are there current cost-allocation challenges that impose undue burdens on applicants and on USAC that could be removed? For example, some states do not include preschool within their definition of elementary schools. In such states, preschools classrooms are therefore currently not eligible to receive support for E-rate services, even when those preschool classrooms are located within an elementary school building that otherwise receives E-rate supported services.[304] As a result, in such states, applicants must cost-allocate the expenses for providing E-rate supported services to preschool classrooms, and exclude those expenses from requests for E-rate support. Consistent with the Commission's allowance for the community use of E-rate services,[305] would an exception for these classrooms improve the efficient use of E-rate eligible services and reduce the administrative burden? Are those costs typically so small that the burden of cost allocation and administrative review outweigh the benefit to the Fund of requiring cost-allocation? Commenters should be specific in their proposals.

239. *Multi-year contracts.* E-rate applicants are permitted to enter into multi-year contracts, but applicants with multi-year contracts must file an FCC Form 471 application and go through the same review process every year.[306] Our rules prohibit USAC from issuing multi-year funding commitments in the E-rate program.[307] Stakeholders have argued that it is a waste of an applicant's time to file an application for the same services year after year, and that it is a waste of USAC's time to review the same applications year after year.[308]

240. We agree with stakeholders that multi-year contracts have the potential to drive down service costs, provide more certainty, and that we should minimize duplicative application review by USAC. At the same time, given the dynamic marketplace for many E-rate supported services, it is important that E-rate applicants not bind themselves to multi-year contracts that require applicants to pay prices that are higher than they would receive had they re-sought competitive bids. In balancing those issues, we seek comment on a number of changes to our handling of multi-year contracts.

241. First, we propose that, absent a change in the contract, service provider or recipients of service, we allow E-rate applicants with multi-year contracts that are no more than three years in length

(Continued from previous page)
Service Support Mechanism, CC Docket No. 02-6, Order, 27 FCC Rcd 2152, 2152, para. 1 (Wireline Comp. Bur. 2012) (providing applicants with a limited 15-day opportunity to file additional documentation to support their calculations of the correct discount rates).

[304] http://www.usac.org/sl/applicants/beforeyoubegin/non-traditional/eligibility-table.aspx. *See also* 47 C.R.F. § 54.500 (definitions of eligible elementary school and educational purpose).

[305] *See infra*. para. 296; *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18775-76, paras. 24-26.

[306] *See* USAC, Schools and Libraries, Contracts, *available at* http://www.usac.org/sl/applicants/step03/contracts.aspx (last visited July 15, 2013).

[307] *See* 47 C.F.R. § 54.507(e).

[308] *See, e.g.,* Ex-parte Letter from Michael D. Casserly, Executive Director, Council of the Great City Schools, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 and GN Docket No. 09-51, filed Oct. 3, 2011, at 1 (explaining that despite a contract and service being the same as the one approved in the previous year for a multi-year contract, district applicants often had to undergo identical review processes and PIA audits year after year, with no actual benefit to the applicant or USAC) *available at* http://apps.fcc.gov/ecfs/document/view?id=7021712500 (last visited July 15, 2013).

(including any voluntary extensions) to file a single FCC Form 471 application for the funding year in which the contract commences and go through the full review process just one time for each such multi-year contracts. We seek comment on this proposal, and on what additional steps E-rate applicants should have to take in the second and third year of such contracts to confirm their request for E-rate support for the subsequent years. We specifically seek comment on the following proposed rule language:

> *Multi-year contracts. An eligible school, library or consortium that includes an eligible school or library seeking to receive discounts under this subpart may submit to USAC a single FCC Form 471 covering all the years of a multi-year contract, provided that the term of the contract including extensions, does not exceed three years. An FCC Form 471 covering a multi-year contract must be submitted to USAC before the start of the first funding year covered by the multi-year contract.*

242. Second, we seek comment on amending our rules to permit multi-year commitments in the E-rate program. In the *Healthcare Connect Fund Order*, we allowed applicants to request a funding commitment for a multi-year contract that covers up to three years of funding.[309] Unlike the E-rate program, however, the universal service rural health care program is not currently oversubscribed, so it is more feasible for that program to issue multi-year commitments. Is this difference relevant to our handling of multi-year commitments? Should multi-year funding commitments in E-rate be conditional on the funds being available in subsequent years?

243. Finally we seek comment on whether we should impose any additional or different limits on multi-year contracts. For example, should we limit the maximum term (including voluntary extensions) of multi-year contracts that E-rate applicants may enter into for E-rate supported services to three years? What are the typical terms for multi-year contracts now? What are the typical terms for comparable enterprise services in broader business broadband markets?

244. Should the maximum term of a contract for E-rate supported services depend on the type of service at issue? For example, the efficient term for an IRU in dark fiber may be longer than for Internet access services. Indeed, where significant new fiber builds are involved, long term contracts could be critical to keeping recurring costs low. When fiber is laid for the first time to a school or library, an applicant may be able to seek bids that guarantee low ongoing costs once the initial construction is paid for. If an applicant is prohibited from entering a long term contract when the fiber is first laid, it may be unable to claim similar efficiencies. We seek comment on this analysis.

245. Should we exempt certain services, such as IRUs for dark fiber, from any limits on multi-year contracts? What are the typical terms for enterprise connectivity contracts in commercial markets? Could applicants eliminate the need for long-term contracts associated with new fiber builds by seeking a non-binding renewal option, at a predetermined rate, in contracts? Do such terms exist in contracts for enterprise connectivity for purchasers other than schools and libraries? Do similar issues generally exist for connections to schools and libraries using technologies other than fiber, such as fixed wireless?

246. Are there other approaches to multi-year contracts we should consider? Should we have a cap on the number of multi-year contracts entered into by applicants in a given funding year or the amount of future funding covered by multi-year commitments? If so, how should we select which applicants seeking multi-year funding commitments receive them?

247. *Additional filing windows*. We seek comment on other ways to streamline the administration of the E-rate program and commit available funds as quickly and efficiently as possible. For instance, assuming priority one funding requests do not exceed the E-rate funding cap, should the Commission create separate filing windows – one for priority one and one for priority two commitments? Under this process, the priority one application filing window could run from January to mid-March and the priority two application filing window could run from mid-April to the beginning of June. After the

[309] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16801-02, paras. 296-97.

priority one application filing window closes, the Commission could announce what funds are available after the priority one funding process before applicants file for priority two funding. Under this approach, applicants would not have to expend resources unnecessarily to file for priority two services if there is no funding available. Because USAC does not start reviewing priority two funding requests until much later in the funding year, the later application filing window should not slow down the funding commitment process. If, in reforming the E-rate program, we create more than two funding priorities, should we have a separate application filing window for each set of priorities? We seek comment on the operational challenges to having multiple application filing windows, and whether it would, on balance, benefit applicants and help achieve the goal of maximizing administrative efficiencies.

D. Simplifying the Eligible Services List

248. We propose to simplify the ESL and the FCC Form 471 application process by adopting a definition of eligible services that provides funding for eligible services regardless of regulatory classification. Specifically, we propose to amend section 54.502 and the ESL to remove the regulatory classifications of telecommunications services and Internet access to allow applicants to seek eligible services from any entity.[310] We seek comment on these proposed rule and ESL changes as explained below.

249. The ESL, which is approved by the Bureau and published by USAC each year, provides guidance to applicants on the eligibility of products and services under the E-rate program.[311] Last year, the Bureau reorganized the priority one section of the ESL to consolidate the list of telecommunications services, telecommunications, and Internet access into a single priority one category.[312] The Bureau recognized that, "when applying for discounts, E-rate applicants are focused on the services they need for their schools and libraries, and may be unfamiliar with the regulatory framework for telecommunications services and Internet access established by Commission rulemakings."[313] Also, the Bureau noted that many of the services purchased by schools and libraries using E-rate funding can fall into more than one of the regulatory classifications. As an example, one of the commenters in that proceeding asserted that many applicants erroneously think that they do not need to request Internet access when they are requesting cellular service with data packages and e-mail access.[314] The Bureau also determined that applicants would no longer be expected to classify their service requests into telecommunications service

[310] 47 C.F.R. § 54.502; *see infra* Proposed Rules (Appendix A) (showing revisions to section 54.502 of the Commission's rules which remove references to telecommunications services and Internet access as regulatory categories).

[311] *See* USAC, Schools and Libraries, Eligible Services List, *available at* http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx (last visited July 15, 2013).

[312] *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Report and Order, 27 FCC Rcd 11348, 11350 (Wireline Comp. Bur. 2012) (*2013 ESL Order*); *Wireline Competition Bureau Seeks Comment on Draft Eligible Services List for Schools and Libraries Universal Service Program*, CC Docket No. 02-6 and GN Docket No. 09-51, Public Notice, 27 FCC Rcd 7405 (Wireline Comp. Bur. 2012) (*ESL Public Notice*).

[313] *2013 ESL Order,* 27 FCC Rcd at 11350, para. 5.

[314] *See* SECA *ESL Public Notice* Comments, CC Docket No. 02-6, at 1 (noting, for example, that while distinction between two of the existing Priority One services, "Telecommunications Services" and "Telecommunications" highlights different regulatory treatments, it is not meaningful to most applicants); Kellogg & Sovereign (Kellogg & Sovereign) Consulting *ESL Public Notice* Comments, CC Docket No. 02-6, at 2-4 (noting that the different rules for which type of service provider can provide a particular service adds another layer of complexity to the already-complex set of E-rate program rules; as an example, it asserts that many applicants erroneously think that they do not need to request Internet access when they are requesting cellular service with data packages and email access).

or Internet services categories when soliciting bids for those services on the FCC Form 470,[315] but that applicants must continue to select the correct category of service on the FCC Form 471 application because this serves statutory and regulatory purposes.[316]

250. In the *Healthcare Connect Fund Order,* the Commission determined that it should support broadband Internet access services and also high-capacity transmission services offered on a common carrier and a non-common carrier basis to allow health care providers to choose from a wide-range of connectivity solutions using any technology from any provider.[317] Building off this decision, we seek comment on eliminating the regulatory categories with respect to E-rate supported services. Instead, we propose only that an applicant indicate on the FCC Form 470 the requested service priority level as well as provide enough detail for service providers to identify the requested services and formulate bids on the FCC Form 470.[318] The FCC Form 471 application would also require the service priority level (*e.g.*, priority one or priority two) and the Item 21 attachment would continue to be used by applicants to describe the services for which they seek discounts for each funding request. We seek comment on these changes to the E-rate forms.

251. After the ESL was revised for funding year 2013, the Bureau continued to require applicants to select the correct category of service on the FCC Form 471 application.[319] One of the reasons for retaining this requirement is because USAC uses the service category selections to determine which applicants have sought Internet access and/or internal connections and this need to comply with CIPA.[320] We seek comment on an alternative way for USAC to determine which applicants are required to be CIPA-compliant. For example, should we add a checkbox to the FCC Form 471 with a certification that the applicant is seeking discounts for Internet access and/or internal connections and is subject to CIPA requirements? If so, should we also add the actual CIPA certification to this checkbox allowing the applicant to certify its compliance with CIPA? This would allow us to remove the CIPA certification from the FCC Forms 479 and 486 so that applicants would not have to certify to CIPA on multiple forms. In its June 2013 White Paper, SECA suggests that applicants be given the option of providing the information currently required on the FCC Form 486 on the Form 471.[321] Although, SECA also suggests that applicants who prefer to continue filing the FCC Form 486, be given that option as well and a check box to designate this preference can be included on the FCC Form 471.[322] We seek comment on both of these possible approaches. Would either approach streamline the application, commitment and

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[315] *2013 ESL Order*, 27 FCC Rcd at 11350, para. 5 (directing USAC, in conducting PIA reviews, not to treat an applicant's failure to correctly identify the type of priority one service it is seeking on the FCC Form 470 as an automatic violation of the section 54.503 competitive bidding requirements).

[316] *Id.* at 11351, para. 8.

[317] *Healthcare Connect Fund Order*, 27 FCC Rcd at 16729-30, para. 111.

[318] *See* 47 C.F.R. § 54.503(c)(i), (ii) (stating that the FCC Form 470 and any request for proposal cited in the FCC Form 470 must include, at a minimum, the following information with respect to the services requested: (i) a list of specified services for which the applicant anticipates it is likely to seek discounts; and (ii) sufficient information to enable bidders to reasonably determine the needs of the applicant); *see also Request for Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment Centers et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510 (Wireline Comp. Bur. 2008).

[319] *2013 ESL Order*, 27 FCC Rcd at 11351, para. 8.

[320] *See* 47 C.F.R. § 54.520 (providing the Commission's requirements for compliance with CIPA).

[321] *See* SECA June 2013 White Paper at 17 (recommending that the certifications for CIPA and the technology plan be added to the FCC Form 471).

[322] *Id.*

disbursement process for applicants? Would moving the CIPA certification work for all applicants including consortia?

E. Funding Recovery Considerations

252. In 2000, the Commission adopted the *Commitment Adjustment Implementation Order,* which consistent with the Debt Collection Improvement Act (DCIA) set up a framework for recovering funds committed or disbursed in violation of the Act and our rules.[323] USAC implemented a process for recovering funds disbursed in violation of statutory and rule violations and, in 2004, as part of the *Schools and Libraries Fifth Report and Order,* the Commission largely affirmed and further refined USAC's approach when determining what amounts should be recovered by USAC and the Commission when funds have been disbursed in violation of the Commission's E-rate program rules.[324] The Commission concluded that there are circumstances that warrant full recovery of disbursed funds. For instance, the Commission found that full recovery is appropriate when the applicant failed to comply with the Commission's competitive bidding requirements.[325] The Commission also found that a lack of necessary resources to use the supported services warrants full recovery of funds disbursed for all relevant funding requests.[326] The Commission recognized, however, that recovery may not be appropriate for violation of some procedural rules implemented to enhance operation of the E-rate program.[327] At the same time, the Commission must comply with federal obligations to recover funding that has been improperly disbursed.[328]

253. We recognize the importance of preventing and ferreting out waste, fraud and abuse in the E-rate program and believe that strong rules requiring applicants to reimburse USAC if they are found to have violated a statutory obligation are a powerful deterrent to waste, fraud and abuse. At the same time, as our rules have expanded, the risk to applicants of having USAC or the Commission seek full reimbursement of previously disbursed funds based on a rule or program violation has also grown, and sometimes full reimbursement is not commensurate with the violation incurred. We therefore seek comment on whether there are certain program violations that warrant reduced recovery or some other punitive measure short of recovery. For example, would reduced recovery be warranted where an applicant delayed installation of equipment due to human resource limitations or where an applicant did not conduct a broadband assessment at the beginning of the full funding year? Are the Commission's findings that competitive bidding or necessary resources violations require full recovery still appropriate or should we reconsider those findings? Are there appropriate punitive measures we could implement that more closely tie to the improper behavior? We ask that commenters provide specific scenarios under which they think reduced penalties would be warranted, the rationale supporting reduced recovery under such scenarios, and commenters' suggestions for how the amount of recovery should be recovered. We specifically seek comments identifying a bright line approach to determining recovery amounts for rule violations, creating a system of recovery that is fair, predictable, transparent and administratively

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[323] *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Order, 15 FCC Rcd 22975, 22980, para. 13 (2000) (Commitment Adjustment Implementation Order).

[324] *Id*. at 22977, para. 4. *See* Schools and Libraries Universal Support Mechanism, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15812, 15808, at paras. 10, 16 (2004) (*Schools and Libraries Fifth Report and Order*).

[325] *Id.* at 15815-16, para. 21; *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*., CC Docket No. 96-45, Order, 16 FCC Rcd 4028 (2000).

[326] *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15816, para. 22.

[327] *Id.* at 15815, 15816, 15817, paras. 19, 25, 27.

[328] *See* 31 U.S.C. § 3701(b)(1)(C).

efficient. Furthermore, we seek comment on how the Commission could comply with its legal requirements under such a process.

F. Effective Disbursement of Unused Funding

254. We also propose to improve the administrative efficiency of the E-rate program by reducing the amount of unused E-rate funding each year. As discussed above, the demand for E-rate supported services far exceeds available funds.[329] Since the start of the program, USAC annually issued funding commitment letters covering funding requests up to the amount of available funds. However, because applicants do not spend all of the funds for which they receive commitments, a substantial amount of funds remain unused each funding year.

255. The Commission's approach to the problem has changed over time. From 1997 to 2003, each year USAC committed up to the $2.25 billion E-rate program cap. This resulted in a large unused balance over time, and actual program disbursements well below $2.25 billion.[330] Starting in 2003, the Commission allowed USAC to identify unused funds from previous years and issue funding commitment letters in excess of the annual cap supported by those unused funds.[331] This change has allowed the program to increase the dollar amount of commitments each year and, as result, bring actual disbursements more in line with the E-rate cap. However, there remain many funding commitments each year for which the applicants do not purchase all or some of the requested services and consequently a large amount of funding gets carried over on the USF's balance sheet year-to-year.

256. We seek comment on whether there are changes we could make to the program to reduce the amount of unused funds. For example, should we direct USAC to identify applicants that consistently seek and receive funding commitments that substantially exceed the amount of disbursements that USAC ultimately issues and work with those applicants to make their funding requests more accurate? Should there be consequences for applicants who repeatedly seek funding commitments that substantially exceed the amount of E-rate support they receive? If so, how would we determine what constitutes commitments that substantially exceed disbursements and what should the consequences be? Is there a risk that such consequences could encourage inefficient or wasteful spending by a school to avoid those consequences, and, if so, how do we reduce or eliminate that risk? In addition, the Commission allows applicants an additional year to implement non-recurring services if a funding commitment decision is not issued until after March 1 of the funding year.[332] We seek comment on whether the delay in the issuance of funding commitments may contribute to the amount of unused funds. If so, commenters should propose specific ways to adjust the process to eliminate or reduce this issue.

257. We also seek comment on ways to reduce the gap in time between when an applicant knows that it will not use all or some of the funds for which it has received a commitment and when USAC is able to consider those funds rollover funds that can be used the following year. Currently, E-rate participants are advised to check with USAC whether any funds remain on a funding commitment after USAC has paid the associated invoices.[333] Applicants are then asked to submit an FCC Form 500 in

[329] *See supra* paras. 62-63.

[330] *See infra* Appendix C, Funding Requested vs. Available and Disbursed (FY 1998 – 2011).

[331] *See Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26935, para. 55; *see also Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18780, paras. 34-40; 47 C.F.R. § 54.507(a)(3).

[332] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 13510 (2001); *see also* 47 C.F.R. § 54.507(d).

[333] *See, e.g.*, USAC, Schools and Libraries, Schools and Libraries News Brief, Sept. 14, 2012, *available at* http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=447 (last visited July 15, 2013).

order to reduce the committed amount on the FRN to the exact amount actually used.[334] By reducing its commitment to reflect the actual amount used, USAC will know that these funds can be used in the following funding year. Otherwise, any unused funding as part of the funding commitment remains outstanding and is unavailable to use in a following funding year. Should there be a deadline during or immediately following the funding year or invoice period for applicants to notify USAC whether they will use the full amount of their funding commitments and if not, how much will be available for future funding commitments? Are there incentives we can offer to applicants to encourage them to comply with the deadline? For example, should we direct USAC not to process invoices related to an applicant's funding requests if, within three months after the close of the funding year, the applicant has failed to notify USAC whether it has or does not have unused funds from the preceding funding year? Should we direct USAC to de-obligate funding six months after the invoicing deadline? Should we consider some other period of time? Should USAC then send notices to the applicants and service providers indicating that those funds have been de-obligated?

258. Are there other measures we could implement to more quickly identify unused E-rate funds? For example, should we require applicants to review expenditures halfway through the year to determine if part of the commitment will go unused and should be returned to USAC rather than allowing applicants to wait until after all invoices have been paid? Should we limit the number of invoicing and service delivery extensions? Are there other steps we can take to encourage or require E-rate applicants to identify funding for which they have received funding commitment letters, but will not use? More broadly, are the other steps we can take to reduce the amount of funding that is rolled-over from year-to-year and/or minimize the time between when funds are collected and when they are disbursed?

G. Invoicing and Disbursement Process

259. In order to maximize administrative efficiency, we now propose changes to improve the E-rate disbursement process. In particular, we propose to modify our process to permit schools and libraries to receive disbursements directly from USAC and to adopt specific invoice deadline and invoice deadline extension rules.

260. Currently, schools and libraries may choose either of two methods of seeking reimbursement for E-rate supported services. An applicant may pay its service provider the full cost of the E-rate supported services and then submit to USAC an FCC Form 472, Billed Entity Application for Reimbursement (BEAR) Form. In the alternative, the applicant may pay the service provider only the applicant's portion of the E-rate supported services and then the service provider must file an FCC Form 474, Service Provider Invoice Form (SPI form), with USAC to receive reimbursement.[335] Regardless of which method the applicant chooses, USAC remits the E-rate support payments to the service provider. If the applicant is using the BEAR method, the service provider reimburses the applicant, thus requiring coordination between the applicant and service provider in order for the applicant to receive payment.[336]

261. The Commission established the current reimbursement system in the *Universal Service First Report and Order*, concluding that service providers, rather that schools and libraries, should seek

[334] *See* Universal Service for Schools and Libraries Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form, FCC Form 500, OMB 3060-0853, *available at* http://www.usac.org/_res/documents/sl/pdf/forms/500.PDF (April 2007) (last visited July 15, 2013).

[335] *See* FCC Form 474, Service Provider Invoice (SPI) Form.

[336] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, 17 FCC Rcd 1914, 1919, para. 9. *See also Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9217, para. 42. We note that service providers reimbursing billed entities via the BEAR process must remit the discount amount authorized by USAC to the billed entity within 20 days of receiving the reimbursement payment from USAC. *See* 47 C.F.R. § 54.514 (a); *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9219, para. 51.

compensation from USAC for "administrative ease."[337] We seek comment on adopting a revised disbursement process that allows applicants, paying the full cost of the services under the BEAR process, to receive direct reimbursement from USAC. Under this proposal, the service provider would no longer serve as the pass-through for the reimbursement of funds where an applicant has paid the service provider in full for the services. Where an applicant, however, pays only the reduced cost of the services directly to the service provider, then the service provider will continue to file a SPI form with USAC to receive reimbursement. We seek comment on whether making direct payments to applicants under the BEAR process would simplify the E-rate disbursement process for applicants and service providers by removing a step in the process. One of the E-rate program goals proposed above is to streamline the administration of the program. We seek comment on whether this change would improve the efficiency of the program by minimizing unnecessary delays in the disbursement process due to an applicant's request to review bills before the service provider(s) submits the bills to USAC for payment. We also seek comment on whether there would be other consequences to applicants, service providers and the program from making such changes to our rules. For example, if we move the CIPA certifications to another form, would applicants using the BEAR process and seeking reimbursement directly need to submit an FCC Form 486?

262. We next seek comment on whether the Communications Act creates any barriers to the payment of universal service funds directly to E-rate applicants. We note that section 254 of the Act gives the Commission broad discretion in designing the E-rate program, and that section 254(h)(1)(B) requires that a carrier serving a school or library either apply the amount of the E-rate discount as an offset to its universal service contribution obligations or shall be reimbursed for that amount utilizing universal service support mechanisms.[338] One possible interpretation of that provision is that a carrier must receive any universal service support for discounted services it provides to schools or libraries. On the other hand, the *Universal Service First Report and Order* suggested that schools and libraries could directly receive universal service support, although it declined to adopt such an approach for policy reasons.[339] In addition, the Fifth Circuit upheld the Commission's authority under sections 4(i) and 254(h)(2)(A) to provide support outside the express framework of section 254(h)(1)(B).[340] We seek comment on the possible interpretations of section 254 in this regard. If the only requirement in the Act regarding reimbursement is that the service provider be made whole, we believe modifying the current BEAR process, to allow USAC to reimburse the applicant directly would provide sufficient documentation to demonstrate that the applicant has fully paid for the requested services and is entitled to direct reimbursement from USAC. As it currently exists, the BEAR process satisfies that provision of the Act because the BEAR form requires the applicant to certify that it has made full payment to the service provider.[341] Moreover, the service provider currently signs the BEAR form to indicate that all obligations have been met.[342] We invite comment on these views.

263. We next ask whether there are additional improvements that could be made to the invoicing process or certifications that are required on the invoicing forms, FCC Form 472 and FCC Form 474. Currently, service providers must make a certification each time it files an FCC Form 472, resulting

[337] *Universal Service First Report and Order*, 12 FCC Rcd at 9083, para. 586.

[338] 47 U.S.C. §§ 254(h)(1)(B)(i)-(ii); *Universal Service First Report and Order*, 12 FCC Rcd at 9083, para. 586.

[339] *Universal Service First Report and Order*, 12 FCC Rcd at 9083, para. 586.

[340] *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 443-44 (1999) (holding that although section 254(h)(1)(B) is limited to providing support for telecommunications carriers, the court was "convinced that Congress intended to allow the FCC broad authority to implement this section of the Act," and that the Commission thus had authority to provide support to non-carrier service providers pursuant to sections 4(i) and 254(h)(2)(A) of the Act).

[341] *See* FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form.

[342] *Id.*

in some large service providers having to submit thousands of certifications each year. We seek comment on whether the FCC Form 473, the Service Provider Annual Certification Form, should incorporate Block 4 of the FCC Form 472 BEAR form to include the current service provider acknowledgement certifications in Block 4 of the current FCC Form 472, or if there are other approaches that would improve the administrative process while still adequately protecting against waste, fraud, and abuse.[343] Are there other certifications or components of the invoicing forms that should be revised in order to improve administrative efficiency or protect against waste, fraud, and abuse? In its 2010 report, the GAO noted that USAC did not compare actual bills to the invoices before disbursing funding.[344] Should USAC require additional documentation to be filed with the invoices in some instances? Should we require that applicants approve a service provider invoice prior to reimbursement?

264. We also seek comment on whether we should codify the invoice deadlines and deadlines for requests for an extension of the invoice deadline. Although the deadline for filing the FCC Form 472 and the FCC Form 474 has been the same, the actual day of the deadline has varied.[345] Specifically, since the 2003-2004 funding year, the relevant invoice forms must be postmarked or received by USAC no later than 120 days after the date of the FCC Form 486 NL or 120 days after the last day to receive service, whichever is later.[346] A grant of a request for an extension of the filing deadline provides an applicant with an additional 120 days to submit the relevant invoice forms. In the *Schools and Libraries Third Report and Order*, the Commission sought comment as to whether the Commission should codify rules establishing deadlines for service providers to file invoices with USAC and whether USAC's existing policy to deny support for untimely filed invoices, except in limited circumstances, should be codified.[347]

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[343] While striving to improve administrative efficiency, we acknowledge the importance of encouraging compliance with the various requirements of the E-rate program when submitting forms to USAC. *See infra* E-rate FCC Form Certification Requirements at paras. 299-300.

[344] *See* U.S. Gov't Accountability Office, GAO-11-11, Telecommunications: Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program (2010).

[345] The invoice deadline is not established by a Commission rule; rather, it is established by USAC in accordance with its administrative authority. *See* 47 C.F.R. § 54.702(b); *see generally*, USAC, Schools and Libraries News Archives, *available at* http://www.sl.universalservice.org/whatsnew/default.asp (last visited July 5, 2013). For the 1998-1999 funding year, the invoice deadline was March 28, 2000. *See* USAC, February 2000 Announcements, Final Payment Date for Year 1 Invoices Approaches, *available at* http://www.sl.universalservice.org/whatsnew/2000/022000.asp#yr1inv (last visited July 5, 2013). For the 1999-2000 funding year, the invoice deadline was November 20, 2000. *See* USAC, October 2000 Announcements, Reminder of November 20 Deadline for Submitting BEAR Forms and Service Provider Invoices for Year 2, *available at* http://www.sl.universalservice.org/whatsnew/2000/102000.asp (last visited July 5, 2013). For the 2000-2001 funding year, the invoice deadline was January 31, 2002 or no later than 90 days after the date of the FCC Form 486 NL to the service provider. *See* USAC, Funding Year 3 Disbursement Closeout Process, *available at* http://www.sl.universalservice.org/whatsnew/2001/112001.asp (last visited July 5, 2013). For the 2001-2002 funding year, the invoice deadline was December 9, 2002. *See* USAC, December 2002 Announcements, Deadline for Invoices for FY 2001Recurring Services, *available at* http://www.sl.universalservice.org/whatsnew/2002/122002.asp (last visited July 5, 2013). For the 2002-2003 funding year, the invoice deadline was December 31, 2002. *See* USAC, October 2003 Announcements, Two October Deadlines for Certain Applicants, *available at* http://www.sl.universalservice.org/whatsnew/2002/062002.asp (last visited July 5, 2013).

[346] *See* USAC, June 2002 Announcements, Invoicing Deadlines Extended, *available at* http://www.sl.universalservice.org/whatsnew/2002/062002.asp (last visited July 5, 2013). We also note that, pursuant to the Commission's rules, an extension of the deadline for non-recurring services is also available upon request. *See 2001 CIPA Order*, 16 FCC Rcd at 13512-13515, paras. 10-18; 47 C.F.R. § 54.507(d).

[347] *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26965-66, para 126.

265. We now seek to refresh the record and seek comment on whether to revise our rules to automatically grant, upon request by the applicant, a one-time 120-day extension of the filing deadline for both recurring and non-recurring services to allow applicants the additional time to submit the invoice form. Applicants who receive this one-time 120-day extension would be required to show good cause for additional extensions to limit the amount of time taken for application processing. Should we also direct USAC to inform applicants promptly in writing if an invoice form is not received by the initial 120-day deadline? Applicants would then have 15 calendar days from the date of receipt of this written notice to file the relevant invoice form and necessary documentation or request a one-time 120-day extension of the invoice deadline. We believe these actions appropriately place responsibility to submit the invoice forms with E-rate participants while ensuring the goals of section 254 are realized.[348] Additionally, adopting rules to establish deadlines for the submission of invoices and requests for an extension of the invoice deadline should help to decrease the processing time for invoices and reduce the number of outstanding unpaid invoices. The 15-day period should be sufficient time to submit any invoice forms that were untimely filed due to technical difficulties or clerical errors. Therefore, we believe this additional opportunity to file the relevant invoice form will improve the efficiency and effectiveness of the Fund. We thus seek comment on this proposal. We note that any rules we adopt on invoicing deadlines should conform to proposals aimed at reducing unused funds. For instance, we also seeking comment in this NPRM on whether USAC should be directed to de-obligate funding six months, or some other period of time, after the invoicing deadline.[349]

H. Streamlining E-rate Appeal Process

266. We seek comment on how to further improve and streamline the Commission's E-rate appeal process. During the last three years, the Commission has made a concerted effort to reduce the backlog of E-rate appeals and has issued orders addressing more than 1,200 appeals. However, a backlog remains, including requests that have been pending for years, and we continue to receive many new appeals every month. We recognize that with a program attracting over 46,000 applications each year, appeals are inevitable. At the same time, we recognize that certainty about the outcome of appeals benefits both applicants and the program as a whole, and we therefore invite comment on how to streamline the E-rate appeals process.

267. Currently E-rate applicants that are denied funding and parties from whom USAC seeks return of money for violating E-rate program rules, can seek review of a USAC decision by USAC or by the Commission.[350] If a party seeks Commission review of a USAC decision, the Bureau acting on authority delegated to it by the Commission, usually resolves the appeal.[351] If the Bureau denies a request for review, the review process dictated in the Commission's rules is triggered; the party can seek reconsideration by the Bureau of that decision and then may also seek to have full Commission consider the matter if the Bureau denies the request for reconsideration.[352] If the Commission denies an application for review, under some circumstances the party can seek reconsideration of that decision.[353]

268. One result of the many opportunities to seek further review of USAC and Bureau decisions is a growing number of possible appeals. For every USAC decision, the Commission staff could be required to address the matter on three different occasions. In some cases, this delay benefits the applicants who take the multiple opportunities afforded them by our rules to avoid a negative decision.

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[348] 47 U.S.C. § 254(h).

[349] *See supra* para. 257.

[350] 47 C.F.R. § 54.719.

[351] *See* 47 C.F.R. § 1.106.

[352] *See* 47 C.F.R. § 1.115.

[353] *Id.*

At the same time, there are sizable costs to the E-rate community when applicants and service providers must sometimes wait long periods of time for their appeals to be fully resolved. During the last several years, the Commission has attempted to streamline the process by issuing more E-rate orders addressing multiple appeals, and by streamlining aspects of the written order. Where appropriate, for example, the order provides a more concise explanation of the facts. In other orders, the Commission staff truncates the written legal analysis where the determination is clearly consistent with the Commission's precedent.

269. We seek comment on other changes Commission staff can implement to improve the appeals review process. Should Commission staff explore other ways to streamline the orders disposing of the appeals? When the Bureau grants an appeal on delegated authority, should it simply specify that the appeal is granted and not provide any analysis, or does the analysis serve the important function of providing guidance to other E-rate stakeholders? Would the request for review filed by the party provide enough guidance to interested parties? We encourage commenters to suggest creative methods to improve the efficiency of the process while providing parties and other interested stakeholders with meaningful guidance about the decision. Finally, should we consider more comprehensive changes to the appeal process pertaining to E-rate decisions? Should we reduce the number of opportunities E-rate applicants have to contest adverse findings? If so, how could that be done consistent with relevant statutory requirements,[354] and what rule changes would be needed? Could we amend or clarify the E-rate rules to reduce the number and type of USAC decisions that can be appealed? Are there other changes we can make to improve the efficiency of the appeals process?

VI. OTHER OUTSTANDING ISSUES

270. We also take this opportunity to seek comment on or refresh the record on a variety of issues that have been raised by stakeholders in recent years, including the applicability of the Children's Internet Protection Act (CIPA) to devices brought into schools and libraries, and to devices provided by schools and libraries for at-home use; changes to the National Lunch Program; additional measures for protecting the program from waste, fraud and abuse; wireless community hotspots; and adoption of E-rate program procedures in the event of a national emergency or natural disaster.

A. The Children's Internet Protection Act

271. Stakeholders have sought clarification on the applicability of CIPA to devices not owned by E-rate recipients but using E-rate supported networks and to off-premises use of devices owned by schools and libraries.[355] We seek input from interested parties about the measures schools and libraries are taking and need to take to comply with CIPA when they allow third-party devices to connect to their

[354] *See, e.g.*, 47 U.S.C. § 155(c)(4) ("Any person aggrieved by any such order, decision, report or action [taken on delegated authority] may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe, and every such application shall be passed upon by the Commission."); 47 U.S.C. § 405(a) ("After an order, decision, report, or action has been made or taken in any proceeding by the Commission, or by any designated authority within the Commission pursuant to a delegation under section 155(c)(1) of this title, any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for reconsideration only to the authority making or taking the order, decision, report, or action; and it shall be lawful for such authority, whether it be the Commission or other authority designated under section 155(c)(1) of this title, in its discretion, to grant such a reconsideration if sufficient reason therefor be made to appear.").

[355] *See* Notice of *Ex Parte* Communication from John Windhausen, Jr., Coordinator for the Schools, Health and Libraries Broadband Coalition, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 02-6; GN Docket No. 09-51; WC Docket No. 10-90; WC Docket No. 05-337 (dated Aug. 27, 2010) at 3-4 (SHLB Coalition Aug. 2010 *Ex Parte*); *BYOD to School?*, Scholastic Administrator, *available at* http://www.scholastic.com/browse/article.jsp?id=3756757 (last visited July 15, 2013). *See also* U.S. Department of Education, Office of Educational Technology, Transforming American Education, Learning Powered by Technology, National Education Technology Plan (Nov. 2010), *available at* http://www.ed.gov/sites/default/files/netp2010.pdf (last visited July 15, 2013) (stating that CIPA should be clarified and schools and districts should explore the ways that student-owned devices can aid in learning).

E-rate supported networks.[356] Also in response to stakeholder concerns, we seek comment on what steps schools and libraries are taking and must take to ensure that they are not violating CIPA when they provide employees, students and library patrons with portable, Internet-enabled devices that can be used off-premises.[357]

272. *Background.* CIPA prohibits schools and libraries from receiving E-rate funding for Internet access services, or internal connections, unless they comply with, and certify their compliance with, specific Internet safety requirements, including the operation of a technology protection measure.[358] Schools, but not libraries, must also provide education about appropriate online behavior including cyber-bullying.[359] When CIPA was enacted, most school and library computers that provided Internet access were found at large, stationary terminals. Few, if any, students or staff brought computers to school, and, likewise, library patrons did not bring their own Internet-enabled devices into libraries. Moreover, even if people had brought their own computers into schools and libraries, almost no schools or libraries had Wi-Fi hotspots or other ways to allow outside computers to access their Internet connection. Now, it is commonplace for students and employees of, and visitors to, schools and libraries to carry Internet-enabled devices onto the premises and for schools and libraries to allow third-party devices access to their networks.[360] Additionally, more and more school- and library-provided devices are brought off-campus to connect with other networks.

273. *Covered devices.* We seek comment on what devices are covered by CIPA. Congress mandates that CIPA apply to schools and libraries "having computers with Internet access,"[361] and also requires each such school or library to certify that it is enforcing a policy of Internet safety that includes the operation of a technology protection measure "with respect to any of its computers with Internet access."[362] We seek comment on whether the language "computers with Internet access," as used in the

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[356] We are also asking these questions in response to the Commission's recommendation in the *2011 CIPA Order* to seek comment on these issues. *See Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Report and Order, 26 FCC Rcd 11819, 11829, para. 23 (2011) (*2011 CIPA Order)* (suggesting a need for clarification on the appropriate policies regarding the application of CIPA to portable devices owned by students and library patrons, such as laptops and cellular telephones, when those devices are used in a school or library to obtain Internet access funded by E-rate). "Third-party devices" are any devices that are not owned or controlled by the school or library.

[357] *See* SHLB Coalition Aug. 2010 *Ex Parte* at 3-4; Education & Libraries Networks Coalition *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 12 (dated Jul. 9, 2010); CenturyLink *E-rate Broadband NPRM* Reply Comments, CC Docket No. 02-6, at 15 (dated Jul. 26, 2010); Audrey Waters, *When School Web Filtering Comes Home,* Mind/Shift (Oct. 25, 2011), *available at* http://blogs.kqed.org/mindshift/2011/10/when-school-web-filtering-comes-home (last visited July 15, 2013).

[358] CIPA is codified at section 254(h)(5)-(6), and section 254(l) of the Communications Act of 1934, as amended. 47 U.S.C. §§ 254(h)(5)-(6) and (l). CIPA requires each covered school and library to certify that the school or library is: (1) enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access [by both adults and minors] through such computers" to visual depictions that are, (i) obscene; (ii) child pornography; or, (iii) with respect to use of the computers by minors, harmful to minors; and (2) enforcing the operation of such technology protection measure during any use of such computers" by minors and adults. 47 U.S.C. §§ 254(h)(5)(B)(i),(ii) and (C)(i),(ii), (6)(B)(i)(ii) and (C)(i)(ii) and 254(l); 47 C.F.R. §§ 54.520(c)(1)(i), 54.520(c)(2)(i). The Commission adopted regulations implementing CIPA in 2001 and updated those regulations in 2011. *2001 CIPA Order*, 16 FCC Rcd at 8184, n.5; *2011 CIPA Order*..

[359] *2011 CIPA Order*, 26 FCC Rcd at 11821, para. 5.

[360] In 2011-2012, 90.5% of all public libraries offer wireless Internet access. ALA Summer 2012 Report, *supra* n.7, at 19.

[361] 47 USC §§ 254(h)(5)(A)(i), 254(h)(6)(A)(i).

[362] 47 USC §§ 254(h)(5)(B)(i) and (C)(i), 254(h)(6)(B)(i) and (C)(i).

context of CIPA, includes all devices used to access the Internet, including all portable devices such as laptops and netbooks with wired Internet access, with Wi-Fi capability, or with wireless data or air cards; cellular phones or "smartphones" capable of accessing the Internet; and Internet-enabled e-readers and tablets. As more and more devices, from routers to refrigerators, are equipped with computing capability, we seek comment on limiting principles we should apply to our treatment of what constitutes a computer with Internet access for CIPA purposes, and how those limiting principles relate to the statutory language and goals of CIPA. For example, should we consider as a limiting principle the language in CIPA that requires the operation of a technology protection measure that provides protection against access to "visual depictions" that are obscene, child pornography, or harmful to minors? Specifically, does the use of "visual depictions" in CIPA mandate that in order to fall within CIPA, the computers with Internet access in question must at least provide a screen, monitor, or other way to view the prohibited material? We also invite commenters to recommend specific changes to our rules that would clarify this issue. For example, should we include a definition of "computers with Internet access" in our CIPA-related rules, and what should that definition be?

274. We also seek comment on whether the phrases "having computers with Internet access" and "with respect to any of *its* computers with Internet access" and other similar language in the statute means that schools and libraries are required to comply with CIPA only with regard to those computers that they own or control. Does this interpretation fulfill the intended purpose of CIPA?[363] We also seek comment on whether we should amend our CIPA-related rules to reflect this reading of the statute, and if so how should we amend them. In the alternative, we seek comment on whether CIPA should be interpreted more broadly to be focused on protecting children from harmful online content on any device, and therefore require CIPA compliance with respect to any computer that is accessing the Internet using E-rate supported Internet access or internal connections, regardless of the ownership or control of the device used to access such content.[364]

275. *Off-Campus Use*. We seek comment on whether CIPA requirements extend to school or library computers taken off-campus and used with outside networks that are not supported by E-rate. If we find that CIPA requirements do not apply to computers with Internet access when used with networks that are not supported with E-rate funds, how should we address instances where school or library computers are used to access the Internet using a service that is supported for on-campus use, but not for off-campus use? For example, if a student uses a tablet with an Internet access data plan, the school could seek E-rate support for the portion of the cost of the data plan used on-campus, but not for the portion used off-campus. Should the CIPA requirements only apply when the computer is used on campus, because the school is not seeking E-rate support for the off-campus portion of the cost of the data plan? We also seek comment on whether our existing CIPA-related rules need to be amended to cover these off-campus use situations. We request that commenters be as specific as possible when recommending amendments to our rules.

B. Identifying Rural Schools and Libraries

276. We propose to modernize our definition of "rural area" to make it more relevant and useable for schools and libraries seeking to get the benefit of the additional discounts for rural schools and libraries. In 1997, the Commission adopted for the E-rate program the definition of "rural area" used by

[363] The Senate Report accompanying the Protecting Children in the 21st Century Act states that the purpose of that legislation "is to assist parents in protecting their children from harmful content on the Internet and in educating children about potential dangers associated with inappropriate online communications." S. Rep. No. 110-245 (2007).

[364] End-user devices are not eligible for E-rate support. *See Schools and Libraries Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18805 (reiterating that the E-rate program does not provide support for content or end-user devices such as computers or telephones). Therefore, where E-rate is not paying for the access, there is no nexus to E-rate program funding.

the U.S. Department of Health and Human Service's Office of Rural Health Care Policy (ORHP).[365] 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 OMB, or if it is specifically identified as "rural" in the Goldsmith Modification to Census data.[366]

277. The Commission explained in the 2003 *Schools and Libraries Third Report and Order* and again in the *E-rate Broadband NPRM* and the that a new definition was necessary because the U.S. Department of Health and Human Service's Office of Rural Health Care Policy (ORHP) no longer uses the definition adopted by the Commission and therefore has not updated the Goldsmith Modification to the 2000 Census data.[367] In the *E-rate Broadband NPRM*, we proposed that any school or library that is within a territory that is classified as "town-distant," "town-remote," "rural-distant," or "rural-remote" by the U.S. Department of Education's National Center for Education Statistics (NCES) urban-centric locale code be considered rural for purposes of calculating its E-rate discount level.[368] We seek to refresh the record on that proposal. The NCES codes could be a reliable indicator of rural areas for the E-rate, because the Department of Education's definition is specifically targeted to schools, pinpoint more precisely whether a school is located in a rural area, and is readily available through the Department of Education's website which has the coding system broken down by state.[369] Therefore we seek comment on changing our rules to read as follows:

<u>§ 54.505 Discounts.</u>

(a) * * *
(b) * * *
(1) * * *
(2) * * *
(3) The Administrator shall classify schools and libraries as "urban" or "rural" based on location in an urban or rural area, according to the following designations.

(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.

278. Because NCES codes are not assigned immediately, it is possible that not every school that is part of an E-rate application will have a code or classification. If we adopt the proposed rule above, how should we handle such schools?

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[365] *See Universal Service First Report and Order*, 12 FCC Rcd at 9042, para. 504.

[366] 47 C.F.R. § 54.505(b)(3).

[367] *E-rate Broadband NPRM*, 25 FCC Rcd at 3888, para. 38; *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26939, para. 67. *Id.* at para. 67. ORHP subsequently updated the Goldsmith Modification to the 2000 Census data, and has also developed the Rural Urban Commuting Area (RUCA) code system for designating rural areas eligible for rural health grants.

[368] *E-rate Broadband NPRM*, 25 FCC Rcd at 3889, para. 39. *See* U.S. Dept. of Education, National Center for Education Statistics, *available at* http://nces.ed.gov/ccd/rural_locales.asp (last visited June 14, 2013) (Identification or Rural Locales).

[369] *See* U.S. Dept. of Education, National Center for Education Statistics, *available at* http://nces.ed.gov/ccd/rural_locales.asp (last visited June 14, 2013) (Identification or Rural Locales).

279. An alternative to relying on NCES codes would be to use census data. The census classifies areas into three groups: urbanized areas, urban clusters, and rural areas. Urbanized areas "consist[] of densely settled territory that contains 50,000 or more people," urban clusters "consist[] of densely settled territory that contains at least 2,500 people, but fewer than 50,000 people," and rural areas include all areas that are not urbanized areas nor urban clusters.[370] As of the 2010 Census, 220 million Americans lived in urbanized areas, 29 million lived in urban clusters, and 59 million lived in rural areas.[371] How could we use census data to classify a school for purposes of E-rate? Should it be based solely on the location of the school, and if so, should the "rural" designation only apply to schools located in rural areas or also those in urban clusters? Should it be based on where its students live, so that if a majority of student live in a rural area, the school should be designated "rural" for E-rate even if it's located in an urban cluster? How should the classification account for the fact that schools are often located in small towns, which may be considered urban clusters, even though the costs of providing to the service to the school are significantly higher than the costs in urbanized areas (such as cities and their suburbs)? We seek comment on relying on census data for purposes of the rural-urban classification, and on changing our rules to read as follows:

§ 54.505 Discounts.

(a) * * *
(b) * * *
(1) * * *
(2) * * *
(3) The Administrator shall designate a school or library as "urban" if and only if the school or library is located in an urbanized area as determined by the most recent rural-urban classification by the Bureau of the Census; the Administrator shall designate all other schools and libraries as "rural".

280. In 2010, the American Library Association (ALA) pointed out that libraries do not have urban-centric locale codes.[372] We therefore seek comment on how libraries should determine whether they are considered urban or rural. How can we ensure libraries serving rural areas receive sufficient support? Should libraries use the locale-code of the school closest to each library? If we adopt our proposal below to adopt district-wide discount criteria should a library use the urban-centric code of the school district in which it is located? Are there any library systems that have facilities in multiple school districts? If so, we seek comment on how to account for such library systems. We also invite commenters to suggest alternate definitions of rural for use in the E-rate program, and we ask that commenters who offer other definitions explain the benefits and drawbacks of their proposals as compared to our proposal.

281. Finally, we seek comment on how existing E-rate schools and libraries that that receive support would be impacted by changes to the rural definition. Should we phase in changes to the rural definition over time to help schools and libraries that are reclassified as non-rural to adjust?

C. Addressing Changes to the National School Lunch Program

282. As we consider changes to the structure of the E-rate program, we also take this opportunity to address changes in the National School Lunch Program (NSLP) that necessitate some adjustments to how we determine what discounts some schools and libraries can receive. Traditionally,

[370] Dep't of Commerce, Bureau of the Census, Qualifying Urban Areas for the 2010 Census, 77 Fed. Reg. 18652 (Mar. 27, 2012).

[371] Bureau of the Census, 2010 Census Urban and Rural Classification and Urban Area Criteria, http://www.census.gov/geo/reference/ua/urban-rural-2010.html (last visited July 19, 2013).

[372] *See* ALA *E-rate Broadband NPRM* Comments, CC Docket No. 02-6, at 11 (filed July 9, 2010).

schools that participate in the NSLP collect individual eligibility applications from each of their students seeking free or reduced-priced lunches.[373] Under the E-rate program, most schools and school districts use the NSLP eligibility as a proxy for poverty when calculating discounts on services received under the E-rate program.[374] In the alternative, schools and school districts can use a federally-approved alternative mechanism, such as a survey.[375] Libraries' discount percentages are based on the public school district in which they are physically located.[376]

283. In 2011, as mandated by the Healthy, Hunger-Free Kids Act of 2010,[377] the United States Department of Agriculture (USDA) began rolling out a new reimbursement mechanism called the Community Eligibility Option (CEO), allowing schools to elect to serve free breakfasts and lunches to all the students attending a school without collecting household applications from any of the students at the school.[378] Schools that elect to participate in the CEO must: (1) have 40 percent or more of their students directly certified as eligible ("Identified Students")[379] for free meals (for example, on the basis of their participation in the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families, or Food Distribution Program on Indian Reservations) in the year prior to implementing the option; (2) agree to serve free lunches and breakfasts to all students for four successive school years;

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[373] *See* United States Department of Agriculture, Food and Nutrition Service, National School Lunch Program, *available at* http://www.fns.usda.gov/cnd/lunch/ (last visited July 15, 2013).

[374] *See* 47 C.F.R. § 54.505(b)(1). The Commission found that "[T]he national school lunch program determines students' eligibility for free or reduced-price lunches based on family income, which is a more accurate measure of a school's level of need than a model that considers general community income." *Universal Service First Report and Order*, 12 FCC Rcd at 9044, para. 509.

[375] Schools electing not to use an actual count of students eligible for the NSLP may use only the federally-approved alternative mechanisms contained in the Elementary and Secondary Education Act of 1965, *amended by* No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002). Pursuant to the Act, private schools without access to the same poverty data that public schools use to count children from low-income families may use comparable data either collected through alternative means such as a survey or from existing sources such as Aid to Families with Dependent Children or tuition scholarship programs. Schools using a federally-approved alternative mechanism may also use participation in other income-assistance programs, such as Medicaid, food stamps, or Supplementary Security Income (SSI) to determine the number of students that would be eligible for the NSLP. *See* Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806, at 12-13 (Oct. 2010).

[376] *See* 47 C.F.R. § 54.505(b)(2).

[377] *See* Health, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183§ 104 (Healthy, Hunger-Free Kids Act of 2010) (amending section 11(a)(1) of the Richard B. Russell National School Lunch Act, 42 U.S.C. § 1759a (a)(1)).

[378] For more information regarding the CEO program, *see* USDA Food and Nutrition Service, Community Eligible Option: Guidance and Process for Selection of States for School Year 2011-2012 (Memo Code SP 23-2011) (dated Mar. 15, 2011), *available at* http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP23-2011_os.pdf (last visited July 15, 2013) (School Year 2011-2012 CEO Program Guidance) and USDA, Food and Nutrition Service, Community Eligible Option: Guidance and Process for Selection of States for School Year 2012-2013 (Memo Code SP 12-2012) (dated Feb. 9, 2012), *available at* http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2012/SP12-2012%20os.pdf (last visited July 15, 2013) (School Year 2012-2013 CEO Program Guidance) (collectively, CEO Program Guidance).

[379] Identified Students are defined as "students certified based on documentation of benefit receipt or categorical eligibility as described in 7 C.F.R. 245.6a(c)(2)", which primarily includes students who are directly certified for free meals on the basis of their participation in the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program), Temporary Assistance for Needy Families, and the Food Distribution Program on Indian Reservations. *See* School Year 2012-2013CEO Program Guidance , Attachment B. It also includes homeless, runaway and migrant youth. It does not include students who are categorically eligible based on submission of a free and reduced price application. *Id.*

and (3) agree to cover with non-federal funds any costs of providing free meals to all students above amounts provided in federal assistance.[380] To compensate for the students who would qualify for free or reduced price meals, but who do not participate in a program which allows them to be directly certified as school lunch-eligible, schools in the CEO program apply a standard multiplier of 1.6 to their Identified Students population in order to determine the total percentage of meals for which they will be reimbursed by the USDA.[381] Schools are then responsible for the difference between the federal reimbursement rate and the total cost of meals for all students.[382]

284. Because schools that participate in the CEO no longer collect individual eligibility data from participating students, it could affect student eligibility for free school meals. If the E-rate program were to use the same eligibility criteria as the CEO program to determine E-rate discounts against the current discount matrix, it could potentially increase the number of schools eligible for 80 percent discounts and higher on the E-rate discount matrix.[383]

285. In 2011, the Bureau directed USAC to allow schools participating in the CEO program to use their NSLP eligibility data for the most recent E-rate funding year in which such schools did not participate in the CEO to determine their E-rate discounts. In 2012, the Bureau repeated this guidance.[384]

286. We now seek to gather data that will inform our ability to assess the extent and impact of challenges related to the CEO and the E-rate program. In particular, we seek comment on six over-arching issues. First, we seek comment on how we should calculate student eligibility for schools and school districts electing the CEO as opposed to those schools and school districts not electing the CEO. If we adopt two separate tracks – CEO schools and school districts and non-CEO schools and school districts–should CEO schools be permitted to qualify under either track, or should they be limited to the CEO track? Commenters should address the practical implications of adopting two separate tracks. Should any adopted methodology for determining discount rates attempt to preserve an applicant's average discount rate under the current E-rate program or the current overall distribution of discount rates among the applicants?

287. Second, we seek comment on whether we should consider alternative ways to measure the poverty level for eligible schools and libraries that is minimally burdensome for schools and provides an accurate measure of poverty. For example, should the Commission reconsider using U.S. Census

[380] *Id*. at 1.

[381] *Id*., Attachment B. This factor was derived from USDA's Food and Nutrition Service (FNS) administrative data to represent the remainder of the free students (those determined free based on income) and the reduced price students for schools qualifying for the CEO. The factor will be 1.6 through school year 2013-2014 (July 1, 2013 through June 30, 2014). *Id.* No later than December 31, 2013, the USDA is required to publish a report, among other things, assessing the impact of the CEO option, the number of schools and local education agencies (LEAs) eligible to elect the CEO, and the multiplier selected (between 1.3 and 1.6) that the USDA intends to use for the 2014-2015 school year and beyond. *See* Healthy, Hunger-Free Kids Act of 2010. Schools electing the CEO will keep the same factor for an entire four-year cycle and do not have to implement changes until the next four-year cycle if the CEO is elected again. *See* CEO 2012-2013 Program Guidance, Attachment B.

[382] CEO 2012-2013 Program Guidance at 1.

[383] For example, under the E-rate program, using a 40% NSLP eligibility number, a school would receive a 60% urban discount and a 70% rural discount. Under CEO, a school that has 40% of its students directly certified for the NSLP would qualify for a 64% rate using the 1.6 multiplier. Applying the CEO eligibility figure of 64% to the current E-rate discount matrix, the school would receive an 80% discount rather than a 60% (urban) or 70% (rural) discount.

[384] *See* Letter to Mel Blackwell, Vice President, Schools and Libraries Division, USAC, from Trent B. Harkrader, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, 27 FCC Rcd 8860 (Wireline Comp. Bur. 2012).

Bureau data, such as the American Community Survey (ACS),[385] an annual socioeconomic survey of households, to determine reimbursement levels?[386] The ACS is designed to produce relatively precise estimates throughout the nation for small geographic areas, such as school districts, by surveying large samples of households and accumulating data over periods of 1, 3, and 5 years, depending on an area's population.[387] If we were to use U.S Census data to set subsidy levels, how would we ensure that such data accurately measures a school's level of need rather than general community income? And how could we ensure that such data is sufficiently current? Are there any issues regarding the definition of Tribal lands and the collection of data on Tribal lands in the ACS of which we should be aware? As more states opt for the CEO, is there a common way in which to measure the poverty level for schools that the USDA, the U.S. Department of Education and the Commission could all use for CEO schools in implementing their programs based on poverty levels? Are there other ways to accurately measure poverty among schools that are familiar to most schools that we should consider? Specifically, in regard to libraries, is there an alternative method that may more accurately reflect the level of poverty in a library's service area? Commenters should indicate whether any proposed alternatives are accessible to all schools and how difficult, costly, and burdensome such alternatives may be to administer among schools.

288. Third, we seek comment on whether we should require schools and school districts to use a federally-approved alternative mechanism, such as school-wide income survey, to determine their level of poverty. Currently, for CEO schools to maintain current free and reduced poverty statistics to determine eligibility for various additional state and federal program benefits that their students may qualify for, they have had to collect Household Information Surveys, which they then process manually following poverty guidelines. Should the Commission require a similar survey or application for purposes of receiving E-rate program benefits? We understand that the requirement of such a survey or form for purposes of the E-rate program may conflict with the objective of the CEO program to eliminate the effort associated with collecting and processing applications.[388] However, does the benefit of receiving E-rate reimbursements for services outweigh any administrative burdens associated with collecting and processing these forms or surveys, particularly, where schools and school districts have already collected and processed these forms?

289. Currently, if a school uses a school-wide income survey and at least 50 percent of the surveys are returned, the school may calculate the percentage of NSLP-eligible students from the returned

[385] *See* U. S. Department of Commerce, U.S Census Bureau, American Community Survey, *available at* http://www.census.gov/acs/www/ (last visited July 15, 2013) (ACS Guidance); Using American Community Survey Data to Expand Access to the School Meals Programs. Panel on Estimating Children Eligible for School Nutrition Programs Using the American Community Survey, Allen Schirm and Nancy Kirkendall, Ed. Committee on National Statistics, Division of Behavioral and Social Sciences and Education, Washington, DC: The National Academies Press, *available at* http://www.nap.edu/catalog.php?record_id=13409 (last visited July 15, 2013) (report summarizing the technical and operational feasibility of using data from the ACS to estimate students eligible for free and reduced-price meals for schools and school districts).

[386] In the *Universal Service First Report and Order*, the Commission chose not to adopt a proposal to use U.S. Census Bureau data or a proposal to consider the value of owner-occupied housing or median household income and population density to determine a school's poverty level because the Commission found that these methods may burden many schools with the task of collecting additional data. *See Universal Service First Report and Order*, 12 FCC Rcd at 9046, para. 511. The Commission also found that these methods, to the extent they measure the wealth of a school's surrounding area rather than the wealth of a school's students are less accurate than the federally-approved alternative mechanisms. *Id*.

[387] *See* ACS Guidance, Data & Documentation, *available at* http://www.census.gov/acs/www/data_documentation/data_main/ (last visited July 15, 2013).

[388] *See* USDA, Food and Nutrition Service (FNS), USDA Announces Next States Chosen to Phase In Streamlined Free School Meal Option, Press Release, Release No. FNS-2.12 (rel. May 4, 2012), *available at* http://www.fns.usda.gov/cga/pressreleases/2012/FNS-2.htm (last visited July 15, 2013) (USDA FNS Press Release).

surveys and project that percentage of eligibility for the entire school population, for purposes of determining its discount rate under the E-rate program.[389] We take this opportunity to revisit that practice, and seek comment on whether allowing schools to project the percentage of their NSLP-eligible students unreasonably distorts the number of needy students by artificially inflating the E-rate discount rate they are able to claim. Should CEO or other schools that use school-wide surveys be allowed to project the percentage of their NSLP-eligible students based on the surveys they receive as permitted by our current procedures?[390] Would those projections be more accurate if we require schools to receive a higher percentage, such as at least 75 percent of the surveys in order to project their students NSLP-eligibility from the surveys? In the alternative, should all applicants that use school-wide income surveys be required to base their E-rate discount rate only on the surveys they actually collect? Commenters should indicate what other concerns are associated with requiring schools and school districts to collect these poverty statistics for the purposes of the E-rate program.

290. Fourth, we seek comment on whether we should use direct certification data with a multiplier to determine a school's poverty level. Using only the direct certification poverty statistic without a multiplier as the basis for a CEO school's E-rate discount would tend to severely underreport a school's actual poverty statistic, because students at the reduced-price lunch status, along with some free lunch students, would not be included in the counts for determining the E-rate discount rate. Not all families who currently receive free or reduced lunch apply for benefits such as Medicaid, SSI, Section 8 and SNAP and those students would not be included in the direct certification data. While the current multiplier of 1.6 is applied to the direct certification data under the CEO program through school year 2013-2014, USDA's FNS is permitted to change the multiplier to a number between 1.3 and 1.6 after school year 2013-2014.[391] We thus seek comment on whether we should establish a multiplier between 1.3 and 1.6, consistent with the CEO, or some other multiplier to the direct certification data? For schools and school districts currently participating in the CEO, we seek data on the difference in the poverty level when using NSLP eligibility, direct certification, and direct certification with the 1.6 multiplier currently used by USDA. Commenters should indicate what multiplier they believe is fair and reasonable and will adequately capture schools' poverty levels. Should we develop a different multiplier for priority one and priority two services? Additionally, we seek comment on whether the direct certification data and nationwide multiplier should be used for determining an applicant's discount rate or should we apply this eligibility figure to the current E-rate discount matrix? If so, should we make any adjustments to the current E-rate discount matrix given the advent of the CEO? Commenters should set forth with specificity any alternative proposed discount matrix.

291. Fifth, we seek comment on whether there are scenarios under which we should provide a mechanism for CEO schools to qualify for higher discounts than they would under whatever default approach we adopt. The CEO operates on four-year cycles, but it provides a mechanism whereby schools may demonstrate that their poverty levels have changed, thus making them eligible for additional reimbursement.[392] The current E-rate program requires applicants to demonstrate discount eligibility on an annual basis.[393] If the Commission adopts a mechanism that permits schools to establish their discount

[389] For example, suppose a school with 100 students sent a survey to all of its students, and 60 surveys were returned. If 40 of the students are eligible for NSLP (*i.e.*, 66% of the returned surveys) then the school may project the 66% to the total school enrollment. *See* USAC, Schools and Libraries, Applying for Discounts, *available at* http://www.usac.org/sl/applicants/step04/alternative-discounts.aspx (last visited July 15, 2013).

[390] *Id*.

[391] *See* Healthy, Hunger-Free Kids Act of 2010 at § 104(a)(1)(F)(vii)(I). Schools electing the CEO will keep the same multiplier for an entire four-year cycle and do not have to implement changes to the multiplier until the next cycle if the CREO is elected again. *See* School Year 2012-2013 CEO Program Guidance, Attachment B (Frequently Asked CEO Questions).

[392] *See* CEO 2012-2013 Program Guidance, Attachment B.

[393] *See* 47 C.F.R. § 54.505.

level for multiple funding years, as current CEO schools are now able to do, should there be a process by which they may demonstrate that their E-rate discount level has increased? If so, what information should we require from applicants seeking an exception? Should the applicant then be required to establish the discount level annually for successive years in a cycle, or would the new discount level be retained for multiple years? How would this operate if the applicant were a consortium, or a consortium comprised of CEO and non-CEO schools (and potentially libraries)?

292. Lastly, we seek comment on what procedural and administrative issues are impacted by the CEO? For example, USAC annually requests states to provide a spreadsheet listing NSLP data by school that is used for application review. While many states attempt to comply with these requests, a states' database systems vary by state and may not easily lend themselves to producing reports in USAC's requested format. The introduction of CEO schools potentially compounds the state reporting problem, particularly because CEO states and those that will become CEO states may not yet have determined how, or if, CEO schools will be accounted for within their NSLP-based database. What procedural mechanisms can we establish to minimize the burden upon states, while mitigating any additional administrative burden for USAC in reviewing the data for CEO schools? Additionally, USAC has provided a specific designation to identify those schools providing free meals for all students under the USDA's CEO in Block 4 (Discount Calculation Worksheet) of a school's FCC Form 471 application. Should the Commission revise the FCC Form 471 application or any of the other forms in order to accurately identify a CEO school? Commenters should specifically indicate any proposed changes. Commenters should also indicate what other administrative or procedural barriers or concerns may need to be addressed as part of any proposed alternative. For example, what information or documentation should be required by USAC, as necessary, for state validation of the student eligibility data depending upon the method used? Should we consider a different approach for schools operated by federal or Tribal entities, such as the Bureau of Indian Education or Tribal governments? What should USAC's review processes entail for CEO schools? What, if any, other procedural or administrative issues may need to be addressed if applying the direct certification data with a multiplier to the E-rate program?

293. We also seek to identify best practices by those currently participating in the CEO program, so that we can fully consider possible programmatic changes, including potential rule changes. We are most interested in ways to mitigate the impact of the CEO on the E-rate program regarding discount eligibility, administrative burdens, and E-rate processes as a whole. So that we may have a factual basis and detailed record upon which to determine the nature and extent of any problems, we encourage commenters that currently participate in the CEO and those that will become eligible in the future, to provide us with detailed information regarding their experiences, both positive and negative. We believe that input from those schools and school districts that currently participate in the CEO and those libraries and library systems affected by the CEO is crucial in fully evaluating the impact of the CEO on the E-rate program. Further, identifying with specificity particular examples or concerns will ensure that we have a complete understanding of the issues involved. In responding to the questions posed above, commenters should address what, if any, additional burden any new reporting or data collections requirements may place on service providers and/or applicants.

D. Additional Measures to Prevent Waste, Fraud and Abuse

294. The Commission is committed to guarding the Fund against waste, fraud, and abuse and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. During the last 15 years, the Commission has assisted with several dozen criminal prosecutions of individuals who have sought to defraud the E-rate program,[394] entered into compliance plans with individuals, schools and

[394] *See, e.g.,* U.S. Department of Justice, Office of Public Affairs, Businessman Convicted In Dallas Independent School District (DISD) Corruption Case Sentenced to 10 Years in Federal Prison, (Nov. 13, 2008), *available at* http://www.justice.gov/opa/pr/2009/June/09-civ-632.html (last visited July 15, 2013); Press Release, U.S. Department of Justice, Six Corporations and Five Individuals Indicted in Connection with Schemes to Defraud the Federal E-rate Program, (Apr. 7, 2005), *available at*

(continued…)

companies that are alleged to have violated the E-rate rules,[395] and suspended or debarred dozens of persons from participating in the E-rate program.[396] We invite commenters to identify and discuss ways that the Commission can continue to combat waste, fraud and abuse in the E-rate program. We seek to identify additional policies and procedures that we can put in place to protect against waste, fraud, and abuse; to identify waste fraud and abuse; and to aggressively pursue actions against those engaged in waste fraud and abuse. We also specifically seek comment on our proposal to extend document retention requirements for participants in the E-rate program from five years to at least ten years to ensure documents are available when needed for investigations and prosecutions involving waste, fraud and abuse in the E-rate program consistent with the time frame for pursuing recovery under the False Claims Act.

1. Extending the E-rate Document Retention Requirements

295. We propose to extend the E-rate program document retention requirements from five to at least ten years. We seek comments on the benefits and burdens of doing so. Access to relevant documents is crucial to conducting effective audits of E-rate applicants and service providers, and otherwise investigating compliance with the requirements of the E-rate program. Our rules currently require schools and libraries to retain all documents related to the application, receipt, and delivery of eligible services received under the E-rate program for at least five years after the last day of the delivery of services.[397] Schools and libraries must also retain all other documentation that demonstrates compliance with the statutory or regulatory requirements for the E-rate program as well as all 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.[398] Service providers are also required to retain documents related to the delivery of eligible services for at least five years after the last day of service delivery and all other documentation that demonstrates compliance with the statutory or regulatory requirements for the E-rate program.[399]

296. In the *USF/ICC Transformation Order and FNPRM*, the Commission revised the record retention requirements for recipients of high-cost support to extend the retention period from five years to ten years.[400] In doing so, the Commission determined that the high-cost retention requirement of five years was inadequate for the purposes of litigation under the False Claims Act,[401] which can involve

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http://www.justice.gov/atr/public/press_releases/2005/208469.htm (last visited July 15, 2013); U.S. Department of Justice, Office of Public Affairs, U.S. Settles Lawsuits Against Hewlett-Packard and Intervenes Against its Business Partners for Violating FCC Competitive Bidding Rules in Texas, (Nov. 10, 2010), *available at* http://www.justice.gov/opa/pr/2010/November/10-civ-1284.html (last visited July 15, 2013).

[395] *See, e.g.,*, Press Release, Federal Communications Commission, HP To Pay $16.25 Million to Settle DOJ-FCC E-rate Fraud Investigation, DOC-302764A1 (Nov. 10, 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-302764A1.pdf (last visited July 9, 2013).

[396] *See Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9224-29 (adopting suspension and debarment rules); *See also* Federal Communications Commission, Enforcement Bureau, Universal Service Fund Suspension and Debarment Actions, *available at* http://transition.fcc.gov/eb/usfc/sdr.html (last visited July 15, 2013)(providing a list of E-rate suspensions and debarments); USAC, Schools and Libraries, Program Integrity, Suspensions and Debarments, *available at* http://www.usac.org/sl/about/program-integrity/suspensions-debarments.aspx (last visited July 15, 2013).

[397] 47 C.F.R. § 54.516(a)(1).

[398] *Id.*

[399] 47 C.F.R. § 54.516(a)(2).

[400] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17864 paras. 619-21; *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

[401] 31 U.S.C. §§ 3729-33. Under the False Claims Act, carriers receiving funds under fraudulent pretenses may be held liable for a civil penalty of between $5,000 and $10,000, plus treble damages. 31 U.S.C. § 3729(a)(1).

conduct that relates back substantially more than five years.[402] Similarly, in the *Lifeline Reform Order*, the Commission proposed to amend its rules to extend the retention period for eligible telecommunications carriers receiving low-income universal service support from three years to at least ten years.[403] Similar concerns lead us to propose to amend section 54.516 of the Commission's rules to read as specified below and we seek comment on this proposed rule:

> *(a) Record keeping requirements – (1) Schools, libraries and consortia. Schools, libraries, and any consortium that includes schools and libraries shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least 10 years after the last day of the delivery of services or from the end of the applicable funding year, whichever is later. Schools, libraries, and any consortium that include schools or libraries shall also retain any other document necessary to demonstrate compliance with the statutory or regulatory requirements for the schools and libraries mechanism. Schools and libraries shall 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.*
>
> *(2) Service providers. Service providers shall retain documents related to the delivery of discounted telecommunications and other supported services for at least 10 years after the last day of the delivery of services or from the end of the applicable funding year, whichever is later. Service providers shall also retain any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries universal service support mechanism.*

297. We also seek comment on whether there are other changes we should make to our document retention requirements. For example, should our rules specify that applicants and service providers must keep records of all their communications relating to bids for and purchases of E-rate supported services? Should we extend the required retention of records in the event of any Governmental investigation, audit, or other governmental inquiry involving a particular participant or applicant for funding in the E-rate program to avoid destruction of potentially relevant documents. We further seek comment on the manner in which such an extension would be implemented. For example, should the obligation for an extended retention period be immediately and automatically triggered by a participant or applicant's knowledge that an investigation of its E-rate funding or E-rate requests is ongoing? If so, should the record retention extension be a blanket extension applying to all existing E-rate documents in its possession or should an extension be implemented only at the discretion of the Commission, upon direction from the Commission or USAC, to the party involved? In other words, should additional retention be required and permitted "as directed by the Commission or USAC" and targeted to those documents determined to be appropriate in the Commission's sole discretion? Would such a targeted "hold" requirement be better than an automatic, blanket hold? We seek comment on these options.

2. Documentation of Competitive Bidding

298. As discussed above, E-rate applicants are currently required to retain documentation that demonstrates compliance with the statutory or regulatory requirements for the E-rate program as well as all 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.[404] In the *Healthcare Connect Fund Order* the Commission required applicants to the HealthCare Connect Fund to submit to USAC competitive bidding documents, including a copy of each bid received, the bid evaluation criteria, bid sheets, a list of people who evaluated bids, memos, board minutes, or similar documents, and any correspondence with vendors during the bidding, evaluation, and

[402] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17864, paras. 619-21.

[403] *See Lifeline Reform Order*, 27 FCC Rcd at 6857, paras. 505-06.

[404] *Id.*

award phase of the process. Having such documents from E-rate recipients would allow USAC to evaluate more fully the competitive bidding process conducted by E-rate applicants and ensure that documentation of the competitive bidding process was retained in the event of an audit. At the same time, providing such documents would impose additional burdens on E-rate applicants and could increase application review time and administrative costs. We therefore seek comment on whether we should similarly require E-rate applicants to submit competitive bidding documents with their FCC Forms 471. Are there specific documents, such as the bid selection sheet, that would allow USAC to review an applicant's competitive bidding process while minimizing the burden on applicants?

3. E-rate FCC Form Certification Requirements

299. As the custodian of the universal service fund, we are committed to ensuring that universal service funds are used in a manner consistent with the E-rate program rules. One way to encourage compliance and to ensure that we hold entities responsible for failing to follow our rules is to require applicants and service providers to certify their compliance with various requirements of the E-rate program when submitting forms to USAC. Certifications of compliance with our rules will help protect against waste, fraud and abuse in the program by imposing a duty on the person submitting the certification to consider whether the applicant or service provider is in compliance with all E-rate rules. Moreover, the certifications are an important enforcement tool in protecting the USF from waste, fraud and abuse.

300. Currently, most E-rate forms submitted to USAC require an "authorized person" to attest to the certifications contained on those forms on behalf of the entity submitting the form.[405] While a signatory may be "authorized" to sign an E-rate form pursuant to a general delegation by the applicant or service provider, occasionally signatories on the E-rate forms do not have sufficient knowledge about the actual operation of the E-rate program or a sufficient understanding of the Commission's E-rate program rules to provide a meaningful or accurate certification. As a way to further guard against waste, fraud and abuse, we therefore propose to amend our rules to require that an officer of the service provider sign certain forms submitted to USAC in support of an application for eligible services and any requests for payment. We also propose to codify the current certifications contained on our E-rate forms. We further propose to require service providers to certify their compliance with the lowest corresponding price rule and with state and local procurement laws.

a. E-rate FCC Form Signatories

301. First, we seek comment on whether the current signatories on the following E-rate forms and any other E-rate forms are sufficiently knowledgeable about the E-rate program to accurately certify to program compliance. The relevant E-rate forms include:

> *FCC Form 470 (Description of Services Requested and Certification Form).* The FCC Form 470 is used by an applicant to open a competitive bidding process for desired eligible services.[406] It requires an "authorized person" on behalf of the school or library to certify certain information to ensure, among other things, that the applicant will conduct a competitive bidding process in accordance with Commission rules, the applicant has not received anything of value from the service provider other than the requested services, and that only eligible entities receive support under the E-rate program.[407]
>
> *FCC Form 471 (Services Ordered and Certification Form*). The FCC Form 471 is used by an

[405] *See infra* paras. 301-303

[406] *See* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2010) (FCC Form 470).

[407] *Id.* at Block 5, Certifications and Signature.

applicant to request funding from USAC for the services selected by the applicant during its competitive bidding process, and to provide USAC with information about the requested services and the discount(s) for which an applicant is eligible to receive on eligible services under the E-rate program.[408] As with the FCC Form 470, the FCC Form 471 requires an "authorized person" to certify to certain information to ensure, among other things, that only eligible entities will receive support under the E-rate program.[409]

FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form). The FCC Form 472 is used by an applicant to seek reimbursement from USAC for discounts on services paid in full.[410] This form requires certifications by an "authorized person" on behalf of both the applicant and service provider to ensure that the applicant has paid for the services, that the service provider has provided discounted services within the current funding year for which it submits an invoice to USAC, and that invoices submitted from service providers for the costs of discounted eligible services do not exceed the amount that has been approved.[411]

FCC Form 473 (Service Provider Annual Certification Form). The FCC Form 473 is used to establish that the participating service provider is eligible to participate in the E-rate program and to confirm that the invoices submitted by the service provider are in compliance with the E-rate rules.[412] This form requires certain annual certifications by an "authorized person" on behalf of the service provider to ensure that the service provider is in compliance with the Commission's rules.[413]

FCC Form 474 (Service Provider Invoice (SPI) Form). The FCC Form 474 is used by service providers to seek payment from USAC for the discounted costs of services it provided to applicants for eligible services.[414] The FCC Form 474 is also used to ensure that each service provider has provided discounted services within the current funding year for which it submits an invoice to USAC, and that invoices submitted from service providers for the costs of discounted eligible services do not exceed the amount that has been approved.[415] While this form does not currently require attestation to certifications, we have recently sought renewal of this form and have proposed to include certifications by an "authorized person" on behalf of a service provider.[416]

FCC Form 479 (Certification by Administrative Authority to Billed Entity of Compliance with the Children's Internet Protection Act). The FCC Form 479 is used by the Administrative Authority for one or more schools or libraries, for which universal service discounts have been requested or

[408] *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2010) (FCC Form 471).

[409] *Id.* at Block 6, Certifications and Signature.

[410] *See* Universal Service for Schools and Libraries, Billed Entity Applicant Reimbursement Form, OMB 3060-0856 (April 2007) (FCC Form 472).

[411] *Id.* at Block 3, Billed Entity Certification, and Block 4, Service Provider Acknowledgment.

[412] *See* Universal Service for Schools and Libraries, Service Provider Annual Certification Form, OMB 3060-0856 (April 2007) (FCC Form 473).

[413] *Id.* at Block 2, Certification.

[414] *See* Schools and Libraries Universal Service, Service Provider Invoice Form, OMB 3060-0856 (April 2007) (FCC Form 474).

[415] *Id.*

[416] *See Wireline Competition Bureau Seeks Comment on Revision to FCC Forms 472, 473, and 474*, CC Docket No. 02-6, Public Notice, 28 FCC Rcd 2210 (Wireline Comp. Bur. 2013) (*FCC Forms 472, 473, and 474 Public Notice*).

approved for eligible services, to certify their compliance with CIPA.[417] This form requires an "authorized person" on behalf of the Administrative Authority to certify that an Internet safety policy is being enforced.[418]

FCC Form 486 (Receipt of Service Confirmation Form). The purpose of the FCC Form 486 is to authorize the payment of invoices from service providers, indicate approval of technology plans, and indicate compliance with CIPA.[419] This form requires an "authorized person" on behalf of the applicant to certify that, for example, the discounted services indicated on the form are covered by the technology plan that has been approved by the state or other authorized body and that the services listed on FCC Form 486 have been, are planned to be, or are being provided to all or some of the eligible entities identified on the FCC Form 471.[420]

FCC Form 500 (Adjustment of Funding Commitment and Modification to Receipt of Service Confirmation Form). The FCC Form 500 is used by the applicant to make adjustments to previously filed forms, such as changing the contract expiration date filed with the FCC Form 471, changing the funding year service start date filed with the FCC Form 486, or cancelling or reducing the amount of funding commitments.[421] This form requires an "authorized person" on behalf of the applicant to certify as to the veracity of the information within the form, the applicability of the discount level, and that any records relied on to complete the form will be retained for five years.[422]

302. We propose to require that an officer of the service provider make the required certifications on the FCC Form 472 (BEAR Form), FCC Form 473 (Service Provider Annual Certification Form) and the FCC Form 474 (SPI Form), the key documents provided by service providers to USAC attesting to the service provider's compliance with the E-rate rules and seeking payment for supported services provided. Requiring an officer to certify compliance will help ensure that the certification reflects the service provider's commitment to understand and comply with the E-rate program rules and requirements.

303. Specifically, in proposing to require officer certification on the FCC Form 472, we seek comment on amending section 54.504(f) to read:

> *(f) Filing of FCC Form 472. All service providers must submit a Service Provider Acknowledgement as part of the Applicant's FCC Form 472 seeking reimbursement from the Administrator for eligible services. The FCC Form 472 shall be signed by an officer of the service provider and shall include the officer's certifications under oath that:*
>
> > *(1) This service provider will remit the discount amount authorized by the fund administrator to the Billed Entity Applicant who prepared and submitted the Billed Entity Applicant Reimbursement Form as soon as possible after the fund administrator's notification to the service provider of the amount of the approved discounts on this Billed Entity Applicant Reimbursement Form, but in no event later than 20 business days after*

[417] *See* Schools and Libraries Universal Service, Certification by Administrative Authority to Billed Entity of Compliance with the Children's Internet Protection Act, OMB 3060-0853 (April 2007) (FCC Form 479).

[418] *Id.* at Block 2, Certifications and Signature.

[419] *See* Universal Service for Schools and Libraries, Receipt of Service Confirmation Form, OMB 3060-0853 (April 2007) (FCC Form 486).

[420] *Id.* at Block 4, Certifications and Signature.

[421] *See* Universal Service for Schools and Libraries, Adjustment of Funding Commitment and Modification to Receipt of Service Confirmation Form, OMB 3060-0853 (April 2007) (FCC Form 500).

[422] *Id.* at Block 3, Certification.

receipt of the reimbursement payment from the fund administrator, subject to the restriction set forth in subsection (2) below.

(2) This service provider will remit payment of the approved discount amount to the Billed Entity Applicant prior to tendering or making use of the payment issued by the Universal Service Administrative Company to the service provider of the approved discounts for the Billed Entity Applicant Reimbursement Form.

(3) This service provider is in compliance with the rules and orders governing the schools and libraries universal service support program and that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of discount funding and/or cancellation of funding commitment.

(4) Failure to comply with the rules and orders governing the schools and libraries universal service support program could result in civil or criminal prosecution by law enforcement authorities.

What are the benefits and burdens of requiring an officer signature on the FCC Form 472?

304. Recently, in seeking to renew the information collection requirements associated with the FCC Form 473, we sought comment on amending that form to require an officer of the service provider, rather than just an "authorized person" to make the required attestations on the FCC Form 473.[423] While we received comments in response to our proposal, we do not consider the record robust enough to support changes to the form.[424] However, the issue is important to our efforts at reducing waste and abuse in the program and we therefore renew our request for comments. We thus seek comment on redesignating current section 54.504(f) of our rules as newly added section 54.504(g) and revise subsection (g) to read:

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

What are the benefits and burdens of requiring officer certification on the FCC Form 473?

305. Further, in proposing to require officer certification on the FCC Form 474, we seek comment on adding a new provision to our rules at section 54.504(h) that would read:

(h) Filing of FCC Form 474. All service providers seeking reimbursement from the Administrator for eligible services shall submit a completed FCC Form 474 to the Administrator. The FCC Form 474 shall be signed by an officer of the service provider and shall include the officer's certifications under oath that:

(1) This service provider is in compliance with the rules and orders governing the schools and libraries universal service support program and that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of discount funding and/or cancellation of funding commitment.

[423] *See FCC Forms 472, 473, and 474 Public Notice*.

[424] *See* Opposition of United States Telecom Association, CC Docket No. 02-6 (filed Mar. 27, 2013); Comments of The Schultz Group, PLLC, CC Docket No. 02-6 (filed Mar. 27, 2013); Comments of Sprint Nextel Corporation, CC Docket No. 02-6 (filed Mar. 27, 2013); Comments of CSM Consulting, Inc., CC Docket No. 02-6 (filed Mar. 27, 2013); Comments from the State E-rate Coordinators' Alliance, CC Docket No. 02-6 (filed Mar. 27, 2013); Reply to Comments of Edline, LLC, CC Docket No. 02-6 (filed Apr. 8, 2013); Reply to Comments of the National Cable & Telecommunications Association, CC Docket No. 02-6 (filed Apr. 8, 2013).

> *(2) Failure to comply with the rules and orders governing the schools and libraries universal service support program could result in civil or criminal prosecution by law enforcement authorities.*

What are benefits and burdens of requiring officer certification on the FCC Form 474?

306. Similarly, we propose and seek comment on whether we should also require all E-rate forms submitted by E-rate applicants be signed by someone with authority equivalent to that of a corporate officer. For example, we propose amending section 54.503(a)(2) of our rules to read:

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

We also propose amending section 54.504(a)(1) of our rules to read:

> *(1) The FCC Form 471 shall be signed by person authorized to order eligible services for the eligible school, library, or consortium, and with authority equivalent to that of a corporate officer, and shall include that person's certifications under oath that:*

Commenters should provide comments on both the benefits and burdens of requiring an equivalent signature for applicants on the FCC Forms 470, 471, 472, 479, 486, and 500, and any other E-rate forms attested to by the applicant.

307. In the alternative, we seek comment on whether we should require that the certifications on the FCC Forms submitted by applicants, service providers or both be made by an individual with substantial knowledge of E-rate program requirements who is also responsible for ensuring program compliance by the service provider or the applicant. Commenters should provide comments on the benefits and burdens of requiring such a knowledgeable individual to sign the FCC Forms 470, 471, 472, 473, and 474, and any other E-rate forms.

b. Existing Certifications

308. Our rules currently require certain certifications be made as part of the FCC Forms 470, 471, 472, 479, 486, and 500, but we recognize that many of the certifications on the current E-rate forms are not codified in the Commission's rules.[425] For example, the FCC Form 471 requires that a person authorized by the applicant certify that no kickbacks were paid to anyone within the applicant. This certification, however, is not specified in section 54.504(a)(1) of our rules.[426] We thus seek comment on whether we should amend our rules to include all of the certifications currently found on the E-rate FCC Forms.[427] If we do so, should we make the list of certifications non-exclusive and to continue to delegate authority to the Bureau to consider including additional certifications on E-rate forms as necessary and appropriate? We seek comment on that approach.

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[425] *See* 47 C.F.R. § 54.503(c)(2) (listing some of the FCC Form 470 certifications); 47 C.F.R. § 54.504(a)(1) (listing some of the FCC Form 471 certifications); 47 C.F.R. § 54.504(f) (listing some of the FCC Form 473 certifications); 47 C.F.R. § 54.520(c) (indicating the required CIPA certifications on the FCC Forms 479 and 486); 47 C.F.R. § 54.08(c) (requiring confirmation on the FCC Form 486 that the applicant's technology plan was approved before they began receiving services).

[426] *See* FCC Form 471 at Block 6, Certifications and Signature; 47 C.F.R. § 54.504(a)(1) (2013).

[427] We recognize that in Section G, Invoicing and Disbursement Process, of this item we propose to modify our invoicing process to permit schools and libraries to receive disbursements directly from USAC. *See supra* paras. 262-263. We thus seek comment on whether the FCC Form 473, the Service Provider Annual Certification Form, should incorporate Block 4 of the FCC Form 472, BEAR Form, to include the current service provider acknowledgement certifications in Block 4 of the current FCC Form 472. *See supra* para. 264.

c. Additional Certifications

309. *Lowest Corresponding Price Certification*. We also propose to amend section 54.511 to require service providers to certify their compliance with the lowest corresponding price rule.[428] The lowest corresponding price rule requires service providers to provide applicants with prices no higher than the lowest price that it charges to similarly-situated non-residential customer for similar services.[429] Requiring such a certification will provide additional incentive for service providers to offer schools and libraries with competitive prices for supported E-rate services and hold service providers further accountable for complying with this rule. We seek comments on the benefits and burdens of such a requirement. Specifically, we seek comment on the following proposed amendment to section 54.511(b) of our rules:

> *(e) The service provider must certify on the FCC Form 473 and FCC Form 474 that it is charging schools, school districts, libraries, library consortia or consortia including any of these entities, the lowest corresponding price for supported services, unless the Commission, with respect to interstate services, or the state commission, with respect to intrastate prices, had found that the lowest corresponding prices is not compensatory.*

310. *State and Local Law Compliance by Service Providers*. There are state and local procurement laws that protect against waste, fraud, and abuse. Currently, our rules require applicants to comply with state and local competitive bidding requirements, but do not impose any such duty on service providers.[430] State and local procurement requirements protect against waste, fraud and abuse. Therefore, we propose to amend section 54.503 and 54.504 to require service providers to comply with state and local procurement laws, and to require service providers to certify compliance with that requirement. Specifically, we seek comment on the following proposed rule changes to section 54.503(b) of our rules:

> *(b) Competitive Bid Requirements.*
>
> > *(1) Except as provided in § 54.511(c), an eligible school, school districts, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.*
> >
> > *(2) Service providers must certify that they are in compliance with state and local procurement laws.*

311. We also propose to require service providers to certify that the service provider complied with all applicable state and local procurement laws when it participated in the competitive bidding processes as part of submitting an FCC Form 474. Thus, in addition to seeking comments above on

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[428] 47 C.F.R. § 54.511(b) (2013).

[429] *Id.* ("Providers of eligible services shall not charge schools, school district, libraries, library consortia, or consortia including any of these entities 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 prices 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."); 47 C.F.R. § 54.500(f) (2013) (defining "lowest corresponding price" as 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."). *See also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, 13 FCC Rcd 2372, para. 133 (1997).

[430] *See* 47 C.F.R. § 54.503(b) (2013).

adding subsection (h) in section 54.504 of our rules,[431] we also seek comment on adding the following required certification:

(3) The service provider is in compliance with state and local procurement laws.

312. As we move forward with other reforms of the E-rate program, we also seek comment on additional certifications that may be necessary to ensure that funds are being used for their intended purpose.

313. We seek comment on the benefits and burdens on service providers and applicants should we adopt these proposed changes to our rules. Are there state or local procurement requirements that do not currently apply to E-rate service providers? We also seek comment on whether there are other obligations on applicants within the rules that do not have corresponding obligations on service providers that we should consider adopting to ensure that service providers are held responsible where appropriate and necessary to guard against waste, fraud and abuse.

4. Post-Commitment Compliance and Enforcement.

314. The Commission currently has tools available to ensure compliance with our rules and to impose penalties upon those parties who willfully violate our rules. The Commission's USF audit program, called the Beneficiary and Contributor Audit Program (BCAP), is one of our most important tools for identifying and deterring program rule violations, and for recovering funding that has been improperly disbursed.[432] We take this opportunity to reinforce our continuing commitment to ensuring that the Commission and USAC have a rigorous audit program that includes both targeted audits of high-risk applicants and vendors as well as random audits to ensure that all applicants and vendors comply with our rules. We also take this opportunity to seek comment on whether there are ways to further strengthen the BCAP audit procedures to ensure that compliance issues, particularly substantial ones, are identified.

315. Recently, in reforming the USF Lifeline program, the Commission required that every eligible telecommunications carrier (ETC) providing Lifeline services and drawing $5 million or more in the aggregate on an annual basis from the Lifeline program hire an independent audit firm to assess the ETC's overall compliance with the program's requirements.[433] Those audits must be performed once every two years, unless otherwise directed by the Commission. We seek comment on whether we should adopt a similar third-party independent audit requirement for E-rate applicants or service providers as a method of augmenting the current BCAP program. If so, what should we establish as the threshold for the audits? Should it be a set dollar amount or should it be the top percentage of recipients – for example, the top 1 percent or the top 20 funding requests – regardless of the dollar amounts? Should the threshold be based on funding requests or funding actually disbursed? How often should such an audit be required?

[431] *See supra* para. 305.

[432] USAC's audit program historically has consisted of audits by USAC's internal audit division staff as well as audits by independent auditors under contract with USAC. In addition, in the past, the Commission's OIG has conducted audits of USF program beneficiaries. *See* Federal Communications Commission Office of Inspector General, Semiannual Report to Congress, October 1, 2009 through March 31, 2010 at 17-20, *available at* http://transition.fcc.gov/oig/SAR_March_2010_050710.pdf. In a February 12, 2010, letter to USAC, OMD directed USAC to separate its two audit objectives into distinct programs – one focused on Improper Payments Information Act (IPIA) assessment and the second on auditing compliance with all four USF programs. *See* Improper Payments Information Act of 2002, Pub. L. No. 107-300, 116 Stat. 2350 (2002). In addition to providing guidance on the implementation of the IPIA assessment program and compliance audit program, the letter informed USAC that OMD would assume responsibility for oversight of USAC's implementation of both programs. *See* Letter from Steven Van Roekel, Managing Director, Federal Communications Commission to Scott Barash, Acting CEO, Universal Service Administrative Company (filed Feb. 12, 2010), *available at* http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf.

[433] *See Lifeline Reform Order*, 27 FCC Rcd at 6857, paras. 291-7*; see also* 47 C.F.R. § 54.420.

Would the frequency of such a requirement be different if the audit identified issues or it had no findings? What would be the burden of such a requirement on applicants and service providers? We recognize that some other federal programs require funding recipients to conduct annual audits, and seek comment on whether there are audit requirements in those programs that we should adopt in the E-rate program. We also seek comment on any other ways the Commission could improve its own audit processes.

316. We also seek comment on whether the Commission should revise its suspension and debarment rules to further ensure that individuals and entities that have violated the E-rate program rules cannot do so in the future. The Commission currently has rules providing for suspension and debarment from participation in universal service programs when there have been certain criminal convictions or civil judgments.[434] We note that there is a government-wide debarment and suspension system for non-procurement programs and activities, for which OMB guidance is set forth in Part 180 of Title 2 of the Code of Federal Regulations.[435] We seek comment on the pros and cons of participating in that government-wide debarment and suspension system in administering our universal service programs.[436] We seek comment on any policies or procedures that we should adopt if we were to implement Part 180, and in particular on what procedures would be "consistent with the [OMB] guidance."[437] We seek comment on the extent to which our existing procedures for appealing a suspension or debarment could be used, or whether different or additional procedures should be employed.

317. We also seek comment on how we should address those matters for which the OMB guidelines give each agency some discretion, including both those noted below and the other matters identified in the Part 180 rules.[438] For example, under the government-wide system agencies have some discretion to define the scope of transactions that a person excluded or disqualified under those rules generally is restricted from participating in.[439] Under the government-wide system, the guidelines apply to at least these two categories of transactions: a "primary tier between a federal agency and a person"; and a "lower tier between a participant in a covered transaction and another person."[440] Under this framework, however, each agency's implementing regulations must address whether certain subcontracts also should be transactions covered by these rules.[441] We seek comment on these issues here. Would it be appropriate or desirable to designate contracts between a service provider and its subcontractors in the E-rate context as "an additional tier of contracts" that should be included as a "covered transaction?" Alternatively, should certain transactions be exempted from coverage?[442] Proponents of any expansion or contraction of covered transactions should explain the rationale for their recommendations. As another example, we also seek comment on considerations that might be appropriate in implementing section

[434] 47 C.F.R. § 54.8.

[435] 2 C.F.R. §§ 180.5 *et seq*.

[436] We note that adoption of the government-wide debarment and suspension system could encompass nonprocurement transactions beyond just those related to our universal service programs. *See* 2 C.F.R. §180.970(a) (defining "*nonprocurement transaction*" as encompassing many transactions, except procurement contracts, that involve the payment of monies by an agency, including without limitation subsidies, loans and loan guarantees, grants, and "payments for specified uses."). *See also* Subpart B, §180.200 – 180.225 (describing "covered transactions" under Part 180).

[437] 2 C.F.R. § 180.25(a).

[438] *See* 2 C.F.R. § 180.25(b), (c).

[439] *See* 2 C.F.R. § 180.205 (discussing the significance of a particular transaction being covered by the rules). *See also* Appendix to Part 180 – Covered Transactions.

[440] 2 C.F.R. § 180.200.

[441] 2 C.F.R. §§ 180.25(b)(2); 180.220(c).

[442] *See* 2 C.F.R. § 180.215(g)(2) (providing that any transaction may be exempt from coverage under Part 180 if a Federal agency's regulation exempts it).

180.135, which allows a Federal agency head or designee to "grant an exception permitting an excluded person to participate in a particular covered transaction."

318. In addition, we note that the OMB government-wide guidelines in Part 180 of title 2 afford substantial discretion to agencies to evaluate whether or not to suspend or debar depending on the individual circumstances presented.[443] Even in the absence of full implementation of Part 180 of Title 2 of the Code of Federal Regulations , should the Commission adopt rules for suspension and debarment similar to those set forth in Subpart G of Part 180 of Title 2 (Suspension) and Subpart H of Part 180 of Title 2 (Debarment)? What other discretionary factors should be considered, if any, in addition to those set forth in Part 180? For example, should we treat service providers differently than applicants and consultants in any circumstances? Should parties in some circumstances have an opportunity to shorten their debarment period by demonstrating that they have instituted a compliance plan with training and oversight that will facilitate program compliance? Should repeat offenders be treated differently than those violating our rules for the first time? We seek comment on these and any other factors we should take into consideration if the Commission revises its suspension and debarment rules to allow for more discretion than exists under the current regulations, which provide for debarment only after certain criminal convictions or civil judgments.

E. Wireless Community Hotspots

319. We next inquire whether we should continue to increase the reach of E-rate supported services. In the *Schools and Libraries Sixth Report and Order*, the Commission revised its rules to allow schools to open their facilities to the general public to utilize services supported by E-rate when classes are not in session.[444] The Commission recognized that providing community use on school premises was consistent with the overarching goals of universal service to promote access to telecommunications and information services.[445] In order to effectuate this change, the Commission amended sections 54.503 and 54.504 to require applicants to certify that "[t]he services the applicant purchases at discounts will be used *primarily* for educational purposes," as opposed to *solely* for education purposes.[446] We now seek comment on whether we should permit schools to provide wireless hotspots to surrounding communities using E-rate supported services.

320. We first seek comment on permitting students and the general public to receive E-rate funded Internet access offsite through wireless hotspots.[447] In allowing community use of schools' E-rate supported broadband services, the Commission recognized that students' need for broadband access does not end when their schools' doors close for the day. Allowing after-hours, on-premises access to a school's broadband connections has given students the opportunity to work on homework, school projects and engage in extracurricular activities that require broadband access. At the same time, it has allowed other community members broadband access for adult education, job training, digital literacy programs, and online access to governmental services and resources. However, not all community members who

[443] *See* 2 C.F.R. §180.700 (grounds for suspension) and §180.800 (causes for debarment). In addition to debarment for convictions or civil judgments under §180.800(a), the guidelines provide for debarment when the party's conduct is "so serious as to affect the integrity of an agency program," such as the willful failure to abide by the terms of a transaction, repeated unsatisfactory performance, or willful violations of statutory, regulatory or other requirements applicable to a transaction. 2 C.F.R. §180.800(b). *See also* 2 C.F.R. §180.800(c) (enumerating additional causes to debar).

[444] *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18773-77, paras. 20-27; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 1740 (2010) (*E-rate Community Use Order and NPRM*).

[445] *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18774-75, para. 23.

[446] *Id.* at 18773-77, paras. 20-27.

[447] *See supra* n.223 (giving the definition of Wi-Fi).

need broadband access can take advantage of on-premises access to school's broadband services. For example, in response to this issue, Oakland Unified School District and Revere Public Schools both filed petitions with the Commission seeking waivers of our rules to allow them to provide wireless hotspots in communities surrounding their schools.[448] We therefore seek public input on the prospect of permitting wireless hotspots for communities.

321. We also ask whether we should implement other changes to the E-rate program to accommodate the use of wireless hotspots. Currently, services used off school or library property are generally ineligible for E-rate support because they are not deemed to be used for "educational purposes."[449] Therefore, if applicants use a service both on-premises and off-premises, they must reduce their funding request by the amount of the ineligible off-site use.[450] Recognizing the potential value to students and the broader community of having access to broadband services off-premises, are there programmatic changes we should make to ensure applicants are able to deploy such wireless hotspots? Do we need to further revise the educational purposes standard if we permit off-premises access for community use?

322. To reduce the likelihood of waste, fraud, and abuse, and to guard against potential additional costs being imposed on the E-rate program, the Commission adopted several conditions for allowing community use of schools' E-rate supported services during non-school hours. Specifically, (1) schools are not permitted to request funding for more services than are necessary for educational purposes and may not seek funding for more services or equipment than necessary to serve its current school or library population; (2) the use of E-rate funded services after hours must comply with Commission rules, including CIPA; and (3) consistent with the Act, the 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."[451] Should we impose the same conditions with respect to off-site access via wireless hotspots? We seek comment on whether there are any unique circumstances in the context of offsite use that would reasonably change these conditions. Furthermore, we seek comment on whether there are any additional conditions to guard against waste, fraud, and abuse that should be imposed on E-rate applicants that use E-rate funded services for wireless community use.

323. We also seek comment on what other conditions we should impose on allowing community access to schools' E-rate supported services via community hot spots. Our rules allowing for community use in schools limits that use to non-school hours. Should we impose the same limitation here? Is there a justification for such a limitation in this case where wireless service will be accessible at all hours and, unlike the community use implemented in the *Schools and Libraries Sixth Report and Order*, does not require use of the applicant's physical property? Are there reasons to preclude access to the wireless service during school hours? Would permitting such wireless access to the community during school hours be detrimental to the operations of the school? For example, could testing or other school operations reliant on broadband be negatively affected by community access during school hours?

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[448] Letter from Gee Kin Chou, Information Technology Officer, Oakland Unified School District, to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 12, 2011) (Oakland Request for Waiver); Letter from Dianne Kelly, Assistant Superintendent of Schools, Revere Public Schools, to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 14, 2011) (Revere Request for Waiver) (together, Requests for Waiver).

[449] 47 U.S.C. § 254(h)(1)(B); 47 C.F.R. §§ 54.503(c)(2)(v) and 54.504(a)(1)(vii) (2011) (requiring applicants to certify on their FCC Forms 470 and 471 that services obtained through discounts from the E-rate program would be used solely for educational purposes). The Commission has said that, in limited instances, the use of certain services off school or library property would be considered as an "educational purpose" (such as the use of a cell phone on a school bus or a library staff person's use of a cell phone on a mobile library unit van). *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-09, para. 19, n.28.

[450] *See* 47 C.F.R. § 54.504(e).

[451] *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18775-76, paras. 24-26.

If so, are there any measures applicants could take to reduce the impact of the community access on the applicant? Next, should we impose any geographic limitations on the scope of offsite Internet access? What restrictions, if any, should be placed on service providers in the communities that donate equipment, services or funding to help with the creation or expansion of the Internet access points to ensure no violations of the Commission's gift rules occur?[452] We also seek comment on the adequacy of security measures that would be needed to guard against network security breaches. What other issues are raised by this idea?

F. Procedures for National Emergencies

324. *Background.* We propose to adopt rules requiring USAC to follow specific procedures in the aftermath of a natural disaster or other emergency in order to ensure that USAC can efficiently assist affected schools and libraries in obtaining immediate relief. In the aftermath of Hurricane Katrina, in 2005, the Commission released the *Hurricane Katrina Order* providing relief under the E-rate program to eligible schools and libraries that were directly or indirectly affected by Hurricane Katrina.[453] For example, the Commission created a special filing window for funding requests, permitted applicants to restart the clock for the "two-in-five" rule,[454] and allowed broad service substitutions for those applicants affected by Hurricane Katrina.[455] Since the *Hurricane Katrina Order*, the Commission has considered, on a case-by-case basis, requests for waivers from petitioners seeking relief from the E-rate rules because of other natural disasters, and in some instances USAC has, on an *ad hoc* basis, provided relief from its filing rules for applicant's effected by natural disasters.[456] We now propose to incorporate disaster relief mechanisms into our rules in order to regularize the response to natural disasters and other emergencies.

325. *Discussion*. In considering what specific disaster relief mechanisms to adopt, we first consider the circumstances under which such relief procedures should apply. We propose to apply relief procedures to schools and libraries that have been directly affected by any event determined by the President of the United States to be either an "Emergency" or a "Major Disaster," as defined by the Federal Emergency Management Agency (FEMA);[457] which has caused severe structural damage and

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[452] *See* 47 C.F.R. § 54.503(d) (2011).

[453] *See Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-up*, CC Docket Nos. 96-45 and 02-6 and WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883 (2005) (*Hurricane Katrina Order*).

[454] *See* 47 C.F.R. § 54.502 (a)(iii) (explaining that applicants are eligible for support for internal connections services, except basic maintenance services, no more than twice every five funding years).

[455] *See Hurricane Katrina Order*, 20 FCC Rcd at 16908, para. 49.

[456] *See, e.g., State of Louisiana Department of Education Baton Rouge, LA et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6 et al., Order, 25 FCC Rcd 1653 (2010) (*Louisiana Department of Education Order*). *See also* USAC, Schools and Libraries Program, Latest News 11/2/2012-FCC Form 486 and FY 2011 Recurring Services Invoice Deadlines Extended to Jan. 28, 2013, *available at* http://www.usac.org/sl/tools/news/default.aspx#650 (last visited July 15, 2013) (extending the deadlines for the FCC Form 486 and the Funding Year 2011 recurring services invoices for applicants in light of Hurricane Sandy and permitting extra time for applicants affected by Hurricane Sandy to answer PIA questions and comply with other program requirements).

[457] *See* 44 C.F.R. § 206.2(a)(9) (2012) (defining "Emergency" as "any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States). A "Major Disaster" is defined as "any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local

(continued…)

displaced student and patron populations, and also to those schools and libraries indirectly affected by a Major Disaster who absorb displaced populations. We note that FEMA declares numerous Emergencies and Major Disasters every year, and therefore seek comment on how to properly limit any new rule to ensure it only applies to schools and libraries in communities that have suffered major disruptions. We also seek comment on how to measure the amount of disruption to an applicant. Finally, who should make the final determination that there has been enough of a disruption to warrant relief?

326. Next, we seek comment on what particular relief procedures we should adopt. For example, we recognize that schools and libraries may need additional time to file programmatic forms, appeals, and to answer questions from USAC. We therefore propose to delegate authority to the Bureau to extend Commission deadlines for filing documents, and to direct USAC to do the same with respect to its procedures. We also propose to excuse the record retention requirement for applicants whose records are destroyed in an Emergency or Major Disaster and cannot be recovered or recreated, although we propose to require that applicants whose records were destroyed document the loss of their records.

327. We also recognize that schools and libraries affected by a Major Disaster or Emergency may need time to repair or rebuild buildings and to restore telecommunications and Internet access services and that, in the event of evacuation, schools not directly affected by the Major Disaster or Emergency may need additional funding to support the needs of displaced students and citizens. We therefore seek comment on allowing USAC to initiate a special filing window upon the declaration of a Major Disaster or Emergency for sixty days to allow applicants directly and indirectly affected to apply for E-rate eligible services and products.[458] When there is a Major Disaster or Emergency, we also propose to exempt affected applicants from the FCC Form 470 filing requirement and the 28-day waiting period so long as such applicants comply with state and local bidding requirements. We propose to allow affected applicants to "restart the clock" for the purposes of calculating compliance with the "two-in-five" rule for priority two services and excusing them from the requirement that substituted services or products have the same functionality as the services they are replacing.[459]

328. Finally, we propose to require affected applicants to make certain certifications on their emergency relief forms to USAC similar to those found in the *Hurricane Katrina Order* to guard against waste, fraud and abuse.[460] For example, we propose to require applicants to certify that they incurred substantial structural damage as a result of the Major Disaster and/or Emergency and that the services and products sought in their applications will be solely used to restore the network to the functional equivalent of the pre-Major Disaster or Emergency degree of functionality and that other resources are not available for restoration. We also propose to require applicants to certify that any alternative funding in excess of the cost for products or services requested on their applications will be returned to the federal Universal Service Fund.[461] To the extent that applicants are handling increased populations, those applicants shall certify that there are more than a *de minimis* number of Major Disaster or Emergency victims and the applicant experience and associated increase in the demand for E-rate eligible services and/or products.[462]

329. We also seek comment on whether there are other policies and rules that should govern circumstances in which schools and libraries are faced with an Emergency or Major Disaster.

(Continued from previous page)
governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby." *See* 44 C.F.R. § 206.2 (a)(17)(2012).

[458] *See, e.g.*, *Hurricane Katrina Order,* 20 FCC Rcd at 16905, para. 42.

[459] *Id.* at 16907, paras. 47, 49.

[460] *Id.* at 16903-04, para. 39.

[461] *Id.*

[462] *Id.*

VII. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

330. As required by the Regulatory Flexibility Act of 1980, as amended,[463] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this NPRM, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The IRFA is in Appendix D. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[464] In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[465]

B. Paperwork Reduction Act Analysis

331. This NPRM seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

C. Ex Parte Presentations

332. Permit-But-Disclose. The proceeding this Public Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[466] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Comment Filing Procedures

333. Comments and Replies. We invite comment on the issues and questions set forth in the NPRM and IRFA contained herein. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47

[463] *See* 5 U.S.C. § 603.

[464] *See* 5 U.S.C. § 603(a).

[465] *See id.*

[466] 47 C.F.R. §§ 1.1200 *et seq.*

CFR §§ 1.415, 1.419, interested parties may file comments on this NPRM by September 16, 2013 and may file reply comments by October 16, 2013. **All filings related to this NPRM shall refer to WC Docket No. 13-184**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

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

    - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

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

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

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

334. In addition, one copy of each paper filing must be sent to each of the following: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554; website: www.bcpiweb.com; phone: (800) 378-3160; (2) Lisa Hone, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 6-A326, Washington, DC 20554; e-mail: Lisa.Hone@fcc.gov; and (3) 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.

335. Filing 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 website: www.bcpi.com, by e-mail at fcc@bcpiweb.com, by telephone at (202) 488-5300 or (800) 378-3160 or by facsimile at (202) 488-5563.

336. 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 section 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 or internal review process.

337. For additional information on this proceeding, contact Regina Brown at (202) 418-0792 or James Bachtell at (202) 418-2694 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

VIII. ORDERING CLAUSES

338. Accordingly, IT IS ORDERED that, pursuant to the authority 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, this Notice of Proposed Rulemaking IS ADOPTED.

339. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 C.F.R. Part 54, Subpart F, as follows:

PART 54—UNIVERSAL SERVICE

Subpart F—Universal Service Support for Schools and Libraries

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

47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.503 by adding paragraphs (b)(1) and (b)(2) and by revising paragraph (c)(2) to read as follows:

§ 54.503 Competitive bidding requirements.

* * * * *

(b) *Competitive bid requirements.*

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

(2) Service providers must certify that they are in compliance with state and local procurement laws.

(c) * * *

(1) * * *

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

* * * * *

3. Amend § 54.504 by revising paragraph (a), adding new paragraphs (f) and (h), and redesignating current paragraph (f) as new paragraph (g) and revising that paragraph to read as follows:

§ 54.504 Requests for services.

(a) * * *

(1) The FCC Form 471 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium, and with authority equivalent to that of a

corporate officer, and shall include that person's certifications under oath that:

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) *Filing of FCC Form 472*. All service providers must submit a Service Provider Acknowledgement as part of the Applicant's FCC Form 472 seeking reimbursement from the Administrator for eligible services. The FCC Form 472 shall be signed by an officer of the service provider and shall include the officer's certifications under oath that:

(1) This service provider will remit the discount amount authorized by the fund administrator to the Billed Entity Applicant who prepared and submitted the Billed Entity Applicant Reimbursement Form as soon as possible after the fund administrator's notification to the service provider of the amount of the approved discounts on this Billed Entity Applicant Reimbursement Form, but in no event later than 20 business days after receipt of the reimbursement payment from the fund administrator, subject to the restriction set forth in subsection (2) below.

(2) This service provide will remit payment of the approved discount amount to the Billed Entity Applicant prior to tendering or making use of the payment issued by the Universal Service Administrative Company to the service provider of the approved discounts for the Billed Entity Applicant Reimbursement Form.

(3) This service provider is in compliance with the rules and orders governing the schools and libraries universal service support program and that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of discount funding and/or cancellation of funding commitment.

(4) Failure to comply with the rules and orders governing the schools and libraries universal service support program could result in civil or criminal prosecution by law enforcement authorities.

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

(1) * * *

(2) * * *

(3) * * *

(h) *Filing of FCC Form 474*. All service providers seeking reimbursement from the Administrator for eligible services shall submit a completed FCC Form 474 to the Administrator. The FCC Form 474 shall be signed by an officer of the service provider and shall include the officer's certifications under oath that:

(1) This service provider is in compliance with the rules and orders governing the schools and libraries universal service support program and that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of discount funding and/or cancellation of funding commitment.

(2) Failure to comply with the rules and orders governing the schools and libraries universal service support program could result in civil or criminal prosecution by law enforcement authorities.

(3) The service provider is in compliance with state and local procurement laws.

4. Amend § 54.505 by revising paragraphs (b)(1), (b)(3)(i), and (b)(3)(ii) to read as follows:

§ 54.505 Discounts.

* * * * *

(b) * * *

(1) School districts shall calculate discounts on supported services described in § 54.502(b) by 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 within the school district by the total number of students within the school district. This single discount percentage rate shall then be applied to the discount matrix to set a discount rate for the supported services purchased by all schools within the school district.

(2) * * *

(3) The Administrator shall classify schools and libraries as "urban" or "rural" based on location in an urban or rural area, according to the following designations.

(i) Schools and libraries whose local 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 local 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.

* * * * *

5. Amend § 54.507 by adding new paragraph (e), revising paragraph (g), and redesignating current paragraphs (e) and (f) and revised paragrah (g) as paragraphs (f), (g), and (h), respectively, to read as follows:

§ 54.507 Cap.

* * * * *

(e) *Multi-year contracts*. An eligible school, library or consortium that includes an eligible school or library seeking to receive discounts under this subpart may submit to USAC a single FCC Form 471 covering all the years of a multi-year contract, provided that the term of the contract including extensions, does not exceed three years. An FCC Form 471 covering a multi-year contract must be submitted to USAC before the start of the first funding year covered by the multi-year contract.

* * * * *

6. Amend § 54.511 by adding new paragraph (c) and redesignating current paragraphs (c) and (d) as paragraphs (d) and (e) to read as follows:

§ 54.511 Ordering services.

* * * * *

(c) The service provider must certify on FCC Form 473 and FCC Form 474 that it is charging schools, school districts, libraries, library consortia or consortia including any of these entities, the lowest corresponding price for supported services, unless the Commission, with respect to intrastate prices, had found that the lowest corresponding price is not compensatory.

* * * * *

7. Amend § 54.516 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 54.516 Auditing.

(a) *Record keeping requirements – (1) Schools, libraries and consortia.* Schools, libraries, and any consortium that includes schools and libraries shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least 10 years after the last day of the delivery of services or from the end of the applicable funding year, whichever is later. Schools, libraries, and any consortium that include schools or libraries shall also retain any other document necessary to demonstrate compliance with the statutory or regulatory requirements for the schools and libraries mechanism. Schools and libraries shall 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.

(2) *Service providers.* Service providers shall retain documents related to the delivery of discounted telecommunications and other supported services for at least 10 years after the last day of the delivery of services or from the end of the applicable funding year, whichever is later. Service providers shall also retain any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries universal service support mechanism.

* * * * *

APPENDIX B

2013 Eligible Services List

Schools and Libraries Universal Service Support Mechanism

Eligible Services List

CC Docket No. 02-6; GN Docket No. 09-51

Released: September 27, 2012

The Federal Communications Commission's rules provide that all services that are eligible for to receive discounts under the Schools and Libraries Universal Service Support Mechanism (otherwise known as the E-rate program or "E-rate") are listed in this Eligible Services List (ESL). The E-rate program is administered by the Universal Service Administrative Company (USAC).

Background:

The E-rate program provides eligible schools and libraries discounts for eligible services and products. Consistent with prior years, in each category the ESL first lists the services and products that are eligible for funding, and then lists the services and products that are not eligible for funding. Under the E-rate program, E-rate funds are allocated according to rules of priority, with first priority given to requests for telecommunications services, telecommunications, and Internet access services; these services are listed in the "Priority One" section of the ESL. The remaining available funds are allocated to requests for support for internal connections and basic maintenance of internal connections; these services are listed in the "Priority Two" section of this ESL. There is also a Miscellaneous section, and at the end of this ESL, a Special Eligibility Conditions section and a Glossary, providing additional information and definitions for many of the terms used herein.

Note on FCC Form 471. For Block 5 of the FCC Form 471, for Priority One services, applicants must indicate the services they select as a Priority One Telecommunications Service or Priority One Internet Access. The applicant may select one or the other category depending on the provider of the service (*i.e.,* if the service is one that could be requested as a telecommunications service or Internet access, but the applicant checks "Telecommunications Services" on Block 5, the service needs to be provided by a "telecommunications carrier" (see "Special Regulatory Requirements" in the Special Eligibility Conditions section below)). After an applicant has complied with E-rate competitive bidding requirements and selected its vendors, it may consult with each vendor about which service category in Block 5 of the FCC Form 471 the applicant should use in describing the service the vendor will be providing. See also "Administrative Convenience" below for additional information regarding combined service offerings.

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

CIPA Reminder. The funding of Internet access in the telecommunications services category *does not* relieve applicants of complying with the requirements of the Children's Internet Protection Act (CIPA) if the service request includes Internet access.

Additional information about eligibility requirements is available at USAC's website at http://www.usac.org/sl/, the reference area of the USAC website at http://www.usac.org/sl/tools/reference-area.aspx, and in Schools and Libraries News-briefs available at http://www.usac.org/sl/tools/news-briefs/Default.aspx. These documents are not incorporated by reference into the Eligible Services List.

This List, dated **September 27, 2012** may represent a change from prior funding years and applies to funding requests for Funding Year 2013.

Priority One

This section lists the Priority One telecommunications services, telecommunications, and Internet access services for which E-rate applicants may seek discounts.

Support is also available for maintenance and technical support appropriate to maintain reliable operation when provided as a component of these services. Please see the Miscellaneous section of this document for additional entries applicable to these services, such as charges for installation and configuration.

Function	Description
Digital Transmission Services	Digital transmission services provide transmission from an eligible school or library facility to other locations beyond the school or library. Such services generally refer to data links that connect multiple points using any available technology. An eligible digital transmission service may be used to connect an eligible location to the Internet or Internet2. Digital transmission services used to link local networks are commonly called "wide area networks" (WANs). Eligible digital transmission technologies include, but are not limited to: • Asynchronous Transfer Mode (ATM) • Broadband over Power Lines (BPL) • Digital Subscriber Line (DSL) • DS-1, DS-3 • Ethernet • Fiber • Frame Relay • Integrated Services Digital Network (ISDN, BRI, PRI) • OC-1, OC-3, OC-12, OC-n • Satellite service • Switched Multimegabit Data Service (SMDS) • T-1, T-3, Fractional T-1 • Wireless Components required as an integral part of a digital transmission service are eligible for discount, such as: • costs of a permanent virtual circuit (PVC) • costs of trunk lines • reasonable installation costs -The telecommunications component of: • a distance learning capability • video, or • interactive television, is eligible for discount. In addition, the telecommunications component of voice or video

	conferencing services that provide a means for multiple users to participate in group discussions may be eligible if the services are limited only to eligible educational or library purposes.
E-mail Service	E-mail service is eligible. E-mail service may be included in the cost of Internet access (listed above) or may be provided at a separate cost, either as a fixed charge and/or on a per-user or other basis. Some e-mail services may include substantial ineligible features, such as collaboration tools, and services to ineligible users. Funding is limited strictly to the eligible portion of an electronic mail service (*i.e.*, the part of the service that provides for the transmission of text messages and other information). E-mail archiving is not eligible for discount.
Fiber or Dark Fiber	Lit or dark fiber, provided by any entity, including a non-telecommunications carrier, is eligible. Dark fiber is eligible as long as applicants light the fiber immediately. Certain maintenance and installation costs are also eligible, including charges for installation of dark fiber within the property line. For leased lit fiber, all special construction charges are eligible. When lit fiber is leased as telecommunications, the modulating electronics included as part of that service is eligible as telecommunications. Applicants should apply for the fiber service as Internet access, if they select a non-telecommunications carrier to provide the fiber. Funding requests for fiber must be submitted in the Internet Access category of service if the service will not be provided by a telecommunications carrier.
Interconnected Voice Over Internet Protocol	Costs to subscribe to interconnected Voice Over Internet Protocol (VoIP) are generally eligible for E-rate discounts.
Internet Access	Support in this funding category is generally only available for basic conduit access to the Internet but is not available for content, equipment purchased by applicants, and services beyond basic conduit access to the Internet. Basic conduit access to the Internet may be used for access to Internet-based distance learning and video conferencing services. Basic conduit Access technologies include but are not limited to: • Broadband over Power Lines (BPL)-enabled Internet access service • Cable Modem • Digital Subscriber Line (DSL) • Fiber/Dark Fiber • Satellite service • Telephone dial-up • T-1 lines • Wireless (For more details see the entry for "Wireless Internet access")

	Eligible Internet access may include features typically provided for when provided as a standard component of a vendor's Internet access service. Such features may include: Domain Name Service, Dynamic Host Configuration, and basic firewall protection against unauthorized use and access. Firewall protection may not be provided by a vendor other than the Internet access provider and may not be priced out separately. A Wide Area Network can be eligible for funding as a part of Internet access if the service is limited to basic conduit access to the Internet.
Paging	Paging services are eligible when integral, immediate, and proximate to the education of students.
Telephone Service	Costs to subscribe to a telephone service are generally eligible for discount, including the costs for the following telephone services: • 800 service, *e.g.*, a toll-free telephone number for students to contact school regarding questions about homework • Centrex • Local phone service • Long distance telephone service • POTS ("Plain Old Telephone Service") • Radio loop • Satellite • Wireless telephone services, *e.g.*, cellular service and Personal Communications Services (PCS) ○ See the Internet Access category for the eligibility of Wireless Internet access/e-mail plans for portable electronics Shared telephone service (only that portion of the shared service relating to the eligible use and location may receive discounts) Various payment options may be used with these eligible services, and phone bills may include billing terms, such as, flat rate, local measured service, and message rate service. Phone calling cards may also be eligible, if they are used for an educational purpose. Service to an eligible location for educational or library purposes can provide voice communication, fax connections, modem connections, 911 or an alarm.
Telephone Service Components	Telephone features indicated in this section are eligible for discount if they are a component part of a telephone service. Generally, this requirement means that these charges will appear on the same bill as the telephone service itself. • 900\976 Call blocking • Text messaging • Custom calling services • Direct Inward Dialing (DID) • Directory assistance charges

	An inside wire maintenance plan is eligible as a component part of a telephone service only if charges are minimal.
Voice Mail Service	A voice mail service is eligible. Voice mail equipment may be requested in the Internal Connections category of service, but funding is not available for end user products, such as answering machines.
Web Hosting	A web hosting service that provides a means for a school or library to maintain a website on the Internet is eligible. This will include storage, access, and website administration tools for the creation and maintenance of the website. In addition, web hosting may include password-protected pages, interactive communication features such as blogging and webmail, and other features that facilitate real-time interactive communication, such as instant messaging and chat. Note: Domain name registration is also eligible if it is necessary for the creation of a school or library website.
Wireless Internet Access	A wireless Internet access service is eligible under the same provisions as wired access to the Internet. A wireless Internet access service designed for portable electronic devices is eligible if used for educational purposes. Off-campus use must be removed by cost allocation. Applications (including GPS) for wireless devices are not eligible for discount. Service/Data charges dedicated solely to the provision of these applications are not eligible and require cost allocation. Mobile hotspot service designed for portable electronics is eligible if used for educational purposes. Off-campus use must be removed by cost-allocation. Hardware costs of the mobile hotspot embedded in or connected to the end-user device are not eligible.

NOT Eligible for E-rate Funding as a Priority One service	The following charges are **NOT ELIGIBLE** for E-rate support: -*End User Equipment.* Support is not available for end-user equipment. -*Ineligible Fiber Costs.* Special construction charges to build out dark fiber connections from an applicant's facilities to an off-premises fiber network are NOT eligible. Special construction charges include design and engineering costs, project management costs, digging trenches and laying fiber. -*Modulating Equipment.* The purchase and ownership of modulating electronics associated with lighting dark fiber is NOT eligible as Priority One telecommunications but if it is on premises, it may be eligible under the priority two internal connections category if it meets the definition of internal connections. Modulating electronics on applicant-leased dark fiber that is leaving the school premises is NOT eligible. -*Dark Fiber Warehousing.* Applicants are also not permitted to use E-rate discounts to acquire unneeded capacity or warehouse dark fiber for future use. -The *non-telecommunications components* of a distance learning service, video service, or interactive television service, such as a scheduling service or services for creation, maintenance, and storage of content are not eligible. -Services that provide voice, video, or data connectivity exclusively within school or library grounds are not eligible for Priority One funding but may be eligible as Internal Connections - Services to ineligible locations are not eligible. - Applications (including GPS) for wireless devices are not eligible for discount. Charges for services used solely for the provision of these applications are not eligible. -*Ineligible charges related to telephone service.* • End-user equipment • 900\976 service • Broadcast "Blast" Messaging • Direct Broadcast and other services that provide broadcast content or cable television • Directory advertising • Extra costs for directory listings • Payphone • Reverse directory assistance • Charges for creation, configuration, or maintenance of content • Services that are not related to voice services, such as monitoring services for 911, or an alarm telephone lineTelephone services that connect to a residential facility or home, except as allowed by the Commission in FCC 10-175 for the residential areas of residential schools that serve unique populations

	-*Ineligible charges related to Internet access.* • Internet access that provides features or content that go beyond basic conduit access to the Internet including specialized services such as Virtual Private Network services • Charges for creation, configuration, or maintenance of content • Internet content or charges for the creation or display of information. Applicants may accept an Internet Access service with minimal content included if the content meets the limitations for Ancillary Use. (*See* Special Eligibility Conditions below for further information on Ancillary Use.) • Online backup solutions • Costs attributable to the creation or modification of information, or design such as a web site creation fee or content maintenance fees. • Charges to access Internet content or limited-access information • Charges for distance learning or video conferencing utilities, such as web meetings or online collaboration solutions, even if provided via the Internet • Software, services, or systems used to create or edit Internet content • Internet2 membership fees or dues • Training regarding the use of the Internet • Costs for training provided via the Internet • Electronic library/on-line public access and associated software Separate pricing for the following components when not included in the standard configuration of an Internet access service are also **NOT ELIGIBLE**: • Caching • Content filtering • Web Casting -*Ineligible charges related to web hosting* • Costs attributable to the creation or modification of information, or design such as a web site creation fee or content maintenance fees. • Content supplied as part of a web hosting service created by third-party vendors or the web hosting service provider itself and any features or software involving data input or retrieval other than the provision of applicant-created content for an educational purpose (*e.g.* teacher web pages or blogs).

	• The parts of a web hosting service including, but not limited to, any portion of tools, capabilities or integration with other systems such as: Student Information Systems (SIS); databases; student attendance or grades or grade management; course scheduling; tests or testing systems; on-line/interactive education systems; and learning/education management systems. (An eligible web hosting service will also not include support for the applications necessary to run online classes or collaborative meetings).

Priority Two: Internal Connections

Eligibility Requirements for All Internal Connections:

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

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

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

Funding for Internal Connections is subject to the provisions of the "Two-in-Five Rule."

Function	Description
Cabling/ Connectors	Cabling, connectors, and related components used for eligible voice, video, and data transmission within an eligible location are eligible for discount. Eligible components include: • Cable (*e.g.*, copper, fiber, coax, twisted pair) • Connectors • Jacks, panels, faceplates and wire managers • Conduit and raceway • Other cabling components necessary to transport information to the individual classrooms or public areas of a library. Consumable components are eligible only when included as part of the original installation of eligible components. Eligibility limitations If cabling or cabling components are used for both eligible and ineligible purposes, the cost of the ineligible portion must be cost allocated.
Circuit Cards/ Components	Circuit cards and related components, such as memory modules/Random Access Memory (RAM), are eligible if they are necessary for adequate performance of an eligible component, for example, an eligible PBX, router, or server.

	Network interface cards that are separately priced or used in eligible equipment are eligible. Processors and a processor terminator card are eligible if used in an eligible component. Phone modems may be eligible if used with an eligible server or other eligible device for providing remote dial-in network access, if the remote access is limited to connections from eligible locations.
Data Distribution	Components used to transport information from telecommunication or Internet access facilities to the individual classrooms or public areas of a library are eligible. Such components may include: • Access Points used in a LAN environment • Hubs • Multiplexers used as part of a LAN • Network Switches are eligible for discount when used for an eligible purpose • Routers are eligible for a discount when used for an eligible purpose • Wireless LAN Controllers Voice/Video over IP components are eligible as Internal Connections. Components such as those indicated above are typically configured into a local area network or wireless area network. Some products may have modules or features that are not eligible, (*e.g.*, content filtering, network management, and caching). If these ineligible components are available separately, or the applicant specifically seeks the ineligible functions, their cost must be subtracted from the amount eligible for discount.
Data Protection	Data protection components are used to ensure the continued operation of eligible equipment by protecting equipment and computer files from environmental or security hazards. The following components are eligible if used to provide basic and reasonable measures for data protection: • Firewall • Proxy Server • Tape Backup when used as part of an eligible server • Virtual Private Network • Tape backup cartridge units are eligible when used as part of an eligible server. A cartridge included with a tape backup may be provided as an integral component of the backup unit, if the cartridge is part

	of the standard product configuration and provided at no additional cost. An Uninterruptible Power Supply (UPS)/Battery Backup that protects eligible equipment is eligible as a data protection component, but no funding will be provided for UPS systems that can provide continued backup power for substantial periods in excess of that necessary for basic power protection. The following components used for the reliable operation of a UPS are eligible: • UPS Interface Expander • Relay I/O Module
Interfaces, Gateways, Antennas	Interfaces, gateways, and antennas represent miscellaneous components that are eligible when used for an eligible purpose to transport information from telecommunications or Internet access facilities to the individual classrooms or public areas of a library. The following components are generally eligible: • Bridge • Cable Modem (but not for receipt of cable TV service; may also be leased as part of Internet access service) • Channel Service Unit/Data Service Unit (CSU (may also be leased as part of Priority One service) • Copper-to-Fiber • FRAD • Gateway • Interface/Edge Device • Network Interface Device • Media Converter • Terminal Adapter • Transceiver • Voice/Fax network module Eligibility limitations for antennas Antennas and related components, such as satellite dishes used for eligible purposes, are eligible for discount if they are priced separately on a contract or are sold separately. Antennas embedded in ineligible equipment such as computer workstations are not eligible. While an antenna mast that supports eligible Internal Connections is eligible, large antenna towers are not eligible as Internal Connections.
Servers	Computers used as servers or similar centralized functions are eligible if the use is necessary to transport information to the individual classrooms or public areas of a library.

	A server may be eligible depending on how it is used. An eligible server must serve as a conduit for information rather than as a source for content. Servers typically provide multiple functions. If servers are used for both eligible and ineligible purposes, the cost of the ineligible portion must be removed by cost allocation. The following servers are eligible: • Dynamic Host Configuration Protocol (DHCP) • Domain Name Service (DNS) • E-mail • Firewall, or Proxy Server The following servers are eligible only in certain cases: Remote Access Components— Eligible if steps are taken to ensure that remote access is limited to connections from eligible locations. Remote access cannot be provided to homes or other non-school or non-library sites, other than eligible school-based residences and dorms. Terminal Server— Eligible to the extent that the use meets the other eligible server types indicated in this section, but not eligible as a source for ineligible software applications or other ineligible uses. Web Server— Eligible if used to display content to users of the Internet, but not eligible as a source for software applications, database functions, or storage of end-user files. One monitor per eligible server or other eligible component requiring a visual display is eligible for discount. However, special-purpose devices, such as large screen monitors, are not eligible. A KVM switch ("keyboard-video-mouse" switch) is eligible if cost-effective in comparison to the individual components necessary.
Software	Specific types of computer software are eligible for discount. Operating system software, such as network operating system software required to obtain operation of an eligible component, is eligible, including functionality provided with the core operating system at no cost. Additional software products available separately that provide optional operational features are not eligible for discount. E-mail software that is a server-based, shared product is eligible. If such a software product provides substantial additional functionality that is not eligible, such as archiving, database, workflow, or groupware features, only the e-mail

	portion of the product is eligible and the cost of the ineligible portion must be cost allocated. E-mail software or other eligible components that include content filtering as an integral component part are eligible, but a separately priced content filtering module or product is not eligible. Software for a server-based, shared voice mail system is eligible. Software for server based, VoIP user licenses are eligible. Client Access Licenses for eligible software products are eligible Virtualization software that is a server based, shared product is eligible if used for an eligible server function. If such a software product is used for or provides substantial functionality that is ineligible, such as archiving, applications, network management, a cost allocation to remove the ineligible functionalities is required.
Storage Devices	Storage devices provide electronic data storage on magnetic or other media. Devices include hard disk drives, CD ROM drives, DVD drives, and floppy disk drives. Storage products may be used to store the operating system of an eligible product, such as a network server used for an eligible purpose. (See the entry for Servers for further information.) In addition, storage products may be used for eligible e-mail files but not for e-mail archiving. An eligible server or other eligible component that provides a storage product, such as a DVD drive, as an integral component part, at no additional cost, is eligible.
Telephone Components	Centralized components that are an essential element in the transport of telephone services within a school or library are eligible. This includes: • Private Branch Exchange (PBX) • Key System (KSU) • Voice Mail • Wireless • VoIP Telephony Equipment In addition, the following features are also eligible: • Automatic Route Selection (ARS) • E911 Reader Board • Voice Compression Module • Voice Interface Card

	One switchboard/attendant console necessary for operation of each eligible PBX or eligible Centrex telephone service is eligible. An intercom system that is an integral component of a PBX or other eligible product that is included in the cost of the eligible component is eligible
Video Components	Centralized video necessary to transport information to the individual classrooms or public areas of a library are eligible. This includes: • CODEC • Master Control Unit • Multipoint Control Unit • PVBX • Video Amplifier • Video Channel Modulator • Enhanced Multimedia Interface Equipment that is used to control the programming, distribution, and selection of video content may be eligible, if used in the transport of information to individual classrooms or public areas of a library. However, such components are not eligible if used in end-user equipment and/or are operated directly by end-users.
Other Eligible Internal Connections Components	Documentation in hard copy or electronic form is eligible for discount if it is basic and is provided as part of the purchase of eligible components. Racks are eligible only to the extent that the components they contain are eligible. A surge protector provided as an integral component of a rack or cabinet, without a separately identifiable cost can be included in the cost of the rack or cabinet, but a separately priced surge protector is not eligible. System improvements and upgrades to eligible components are eligible for discount. Memory upgrades, for example, to eligible servers are eligible, but memory upgrades would not be eligible in end-user workstations. Please see the Miscellaneous section of this document for additional entries applicable to Internal Connections, such as charges for installation and configuration.

NOT Eligible for E-rate Funding as Internal Connections Components	Products and services are only eligible as Internal Connections if they are an essential element in the transmission of information within the school or library. The following components are **NOT ELIGIBLE:** • Asbestos removal • Broadcast • Electrical system upgrades • Multimedia content, such as encyclopedias on CD ROM, video information, etc., and also multimedia kits • Intercom and public address (PA) system • Spare parts • External speakers (except when provided at no cost as an integral part of an eligible component) • Test Equipment • Consumable Kits which contain installation tools • Wiring and components providing electrical service or for radio or television broadcast or cable services • Network interface cards that are embedded in ineligible equipment (such as end-user equipment) or included in the pricing for ineligible equipment • Phone modems that are provided in or with end-user equipment, or used to provide dial-in access from ineligible locations such as homes or other non-school or non-library sites • Lightning Arrestor • Surge Protector • Power Distribution Units • Power Strips • Disaster Recovery • Environmental Monitoring • Components that are installed in standby mode, redundant, not active and online, or otherwise not an essential element in the transmission of information within the school or library Ineligible Servers: • Storage of application software, databases accessed by end users, or end-user files other than e-mail files • End-user personal computers/workstations, even if the device also provides server functionality • Caching server and print server. (However, caching and print server features provided by the core network operating system may be utilized if the principal function of the server is for other purposes that are eligible). • Laptop (presumed to not be eligible because a laptop is typically used as an end user workstation). Ineligible Software:

	• All end-user software such as curriculum and productivity software • Softphones for VoIP • Application Software other than server-based, shared e-mail • Software used to develop new applications • Network management software • Operating system software for end-user computers • Security software/Utility software, such as anti-virus and anti-spam software • Client Access Licenses for ineligible software products Ineligible Storage: • Devices used to supplement storage requirements of personal computers on a network. For example, storage devices are not eligible if used to store the following information: end-user files other than eligible e-mail files; application software; other ineligible software; archival information including archived e-mail files; caching information • Storage devices in end-user components, such as end-user computer workstations • Consumable storage, such as floppy disks, recordable CD ROM media, and cartridge magnetic tape • Video Content Storage Ineligible Data Protection Components: • Intrusion Detection/Intrusion Prevention • Online Backup Solutions • Tape backup cartridge units when part of a PC or workstation • Cost of purchasing additional or separate tapes Ineligible Interfaces, Gateways, Antennas: Antennas and other components used for the receipt of over-the-air radio and television broadcast signals or for radio signals from cable television operators. Ineligible Telephone Components: • Automatic Call Distribution System (ACD) • Call Accounting System • Call Sequencer • Homework Hotline • Station Message Detail Recording (SMDR) • An intercom or public address system

	Ineligible End-user Equipment: • Computer workstations including personal computers and laptops • End-user telephone sets • Fax machine • Cameras • Microphones • Videotape recorders • Personal digital assistants, smartphones, and tablets • CD/DVD player • Pager • Printer • Two-way radio • End-user telephones and end-user voice mail such as answering machines are not eligible. In addition, telephone components not essential for the transport of telephone services within the school or library are not eligible (unless included as an integral component of a standard product offering for an eligible product, at no additional cost). • Interactive White Boards Ineligible Video Components: • End-user video equipment and equipment for the creation of video content is not eligible for discount. Examples include video monitors, televisions, video cameras, and video recorders and playback devices. • Broadcast and cable television equipment used for the display or distribution of broadcast and cable television signals See the Miscellaneous section of this document for additional entries applicable to Internal Connections. For example, finance charges and termination charges are not eligible.

Priority Two: Basic Maintenance of Internal Connections	
Basic maintenance of internal connections (BMIC) ensures the necessary and continued operation of eligible internal connection components at eligible locations. Funding will be provided for the eligible portion of a technical support contract that includes services that exceed BMIC, if the ineligible portion of the contract can be cost allocated. Technical support contracts that cannot be cost allocated to remove costs that are beyond BMIC, are ineligible in their entirety. All requests in this category are for services to be delivered within the July 1 to June 30 Funding Year. Although Internal Connections is subject to the provisions of the "Two-in-Five Rule," this rule does not apply to Basic Maintenance of Internal Connections ("BMIC").	
Maintenance and Technical Support of Internal Connections	Necessary basic maintenance services are defined as follows: "but for the maintenance at issue, the connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services without E-rate discounts." 47 C.F.R. § 54.506(b). The following basic maintenance services are eligible: • Repair and upkeep of eligible hardware • Wire and cable maintenance • Basic technical support • Configuration changes Basic maintenance is eligible for discount only if it is a component of a maintenance agreement or contract for eligible components. The agreement or contract must specifically identify the eligible components covered, including product name, model number, and location. Reimbursements for BMIC will be paid for the actual work performed under the agreement or contract.
NOT Eligible for E-rate Funding as Basic Maintenance of Internal Connections	The following products and services are **NOT ELIGIBLE**: • Unbundled Warranties, including prepaid retainers for service that may not actually need to be performed. • On-site technical support (*i.e.*, contractor duty station at the applicant site) when off-site technical support can provide basic maintenance on an as-needed basis, unless applicants present sufficient evidence demonstrating that on-site technical support is more cost-effective than utilizing off-site support. • Services such as network management and 24-hour network monitoring.

	• Help desks that provide a comprehensive level of support beyond basic maintenance of only eligible components. In addition, software Client Access Licenses are not eligible as Basic Maintenance. However, Client Access Licenses for eligible software products may be eligible in the Internal Connections funding category. Eligible basic maintenance does not include services to maintain ineligible equipment, to enhance the utility of equipment beyond the transport of information, or to provide diagnostic services in excess of those necessary to maintain the equipment's ability to transport information.

Miscellaneous	
Additional miscellaneous services associated with Priority One and Priority Two services are eligible for funding. When requesting these services on the FCC Form 471, applicants should list these miscellaneous services in the same category as the product or service being installed or obtained—Telecommunications Services, Internet Access, Internal Connections, or Basic Maintenance of Internal Connections. The miscellaneous services and products in this section related to Telecommunications should be requested in the Telecommunications Services or Internet Access category, depending upon the nature of the service provider.	
Product Type (Function)	**Description**
Installation and Configuration	Installation, activation, and initial configuration of eligible components are eligible if they are part of a contract or bid for those eligible components. Such eligible services may include basic design and engineering costs and basic project management costs, if these services are provided as an integral component of the installation of the relevant services. In addition, on-site training is eligible as a part of installation services but only if it is basic instruction on the use of eligible equipment, directly associated with equipment installation, and a part of the contract or agreement for the equipment. Training must occur coincidently or within a reasonable time after installation.
Miscellaneous Fees and Charges	Fees and charges that are a necessary component of an eligible product or service are generally eligible, including: • Change fees • Freight assurance fees • Shipping charges The following fees and charges are eligible only if a contract with a vendor for eligible product or services specifically provides for these costs: • Per diem • Travel time A manufacturer's multi-year warranty for a period up to three years and provided as an integral part of an eligible component, without a separately identifiable cost, can be included in the cost of the component. Lease fees to rent or lease eligible components are eligible.

	Taxes, surcharges, and other similar, reasonable charges incurred in obtaining an eligible product or service are eligible. This includes customer charges for universal service fees, but does not include additional charges for universal service administration. A reasonable contingency fee is eligible only if it is a regular business practice of the service provider. This fee will be reimbursed only if the work is performed.
Other Miscellaneous Components that are NOT Eligible	In addition to items indicated in other sections of this Eligible Services List, the following items are **NOT ELIGIBLE** for discount: • Interest or finance charges • Late payment fees • Performance bond • Termination charges Any product or service that is duplicative of a service for which funding has already been requested. Services that provide necessary bandwidth requirements, such as multiple T-1 lines, when appropriate for the population served and the services to be received, are not duplicative. Failover products or services are not eligible. Any stand alone products or services that are only utilized when the primary fails are not eligible. Broadcast television, cable television, Instructional Television Fixed Service (ITFS), and satellite television are not eligible for discount. Creation of software programs or functions, such as through computer programming is not eligible. Ineligible Installation and Configuration: Consulting services not directly tied to and coincident with basic installation and configuration of eligible services are not eligible. Services and components that are **NOT ELIGIBLE** include, but are not limited to the following: • Initial planning to determine the technology and/or components to be deployed. • Network architecture design. • Development of technology plans. • Application assistance, program advice, and other activities not tied directly to actual installation and initial configuration of components. • Labor costs for school and library personnel. • Costs for contractor personnel to operate components.

	• Costs for network management software, services, and equipment. • Test equipment and tools. • End-user training, such as training of teachers and staff in the use of covered services in their programs of instruction or for professional development. • Construction costs, other than incidental charges to restore a facility to pre-installation conditions.

Special Eligibility Conditions

The following section lists additional requirements relating to eligible services and products. The Universal Service Administrative Company also maintains documents providing more details regarding the administration of the E-rate program on the Schools and Libraries Division website, available at http://www.usac.org/sl/. These documents are not included by reference in this Eligible Services List.

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

File Servers	simultaneously for multiple purposes, some of which are eligible and some not eligible. Cost allocation is required to remove any ineligible functionality from funding requests. However, the exact usage of a file server or other product with multiple uses may be difficult to determine before the product is installed and utilized. A simplified method of cost allocation is available to accommodate this situation. It is based on a simple averaging process of the different functions of the product and is described more fully in the web document "Cost Allocation."
Eligible Users and Locations	***Educational purposes.*** E-rate support may be provided only for eligible products or services that will be used primarily for educational purposes. Activities that are integral, immediate, and proximate to the education of students or the provision of library services to patrons, qualify as "educational purposes." The presumption is that activities on school or library property meet this standard. Residential schools that serve students with special circumstances – schools on Tribal lands; schools designated to serve students with medical needs; schools designed to serve students with physical, cognitive or behavioral disabilities; and schools where 35 percent or more of their students are eligible for the National School Lunch Program (NSLP) – are eligible for support. Some services outside of a school or library location may also be eligible for discount in certain cases, such as use by teachers or other school staff while accompanying students on a field trip or sporting event. The term "school or library property" includes a district office or similar facility, but does not include businesses or organizations separate from a school or library organization. For example, the facilities of a business that has contracted with a school to provide bus service do not constitute a location eligible for E-rate support. Employees of a school or library with a normal duty station at an eligible location are eligible users. Employees of a non-school or non-library activity, even if located on school or library property, such as a state government office with responsibilities other than education or library services (*e.g.*, a division of motor vehicles), are not eligible users.
Special Regulatory Requirements	**Telecommunications Services:** If the applicant seeks a telecommunications service, support will be available only if the telecommunications service is provided by a telecommunications carrier, that is, a company that offers

	telecommunications services on a common carriage basis. A telecommunications service is "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public…." All telecommunications carriers must be common carriers and are required by the Commission to file FCC Form 499A (*Telecommunications Reporting Worksheet*). Supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services. **Telecommunications:** Supported telecommunications can be provided in whole or in part via lit or dark fiber by any entity, including non- telecommunications carriers. Telecommunications is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." **Internet access.** If the applicant seeks Internet access, support will generally be available only for basic conduit access to the Internet. "Internet access" is defined in section 54.5 of the Commission's rules. Some Internet Access services may include features that are not themselves eligible, such as specialized content, caching services, and/or filtering services. In general, funding requests that provide only a single price for a product or service that contains both eligible and ineligible functionality are fully ineligible. However, cost allocation may be used to provide separate pricing for the eligible and ineligible components.
Two-in-Five Rule	The "Two-in-Five Rule" allows each eligible entity to obtain support for Internal Connections funding requests every two out of five years. This limitation applies only to Internal Connections and not to requests appropriately categorized as Telecommunications Services, Internet Access, or Basic Maintenance of Internal Connections.
Wide Area Networks	• WAN Restriction. WANs cannot be built or purchased using E-rate support but WAN facilities may be leased. • Lease of Wide Area Network Infrastructure. Facilities that provide a Wide Area Network may be leased by applicants as a Priority One service. Limitations apply to the reimbursements that are available for initial implementation costs (leased equipment and its installation) of service provider infrastructure. The Wide

	Area Network Fact Sheet has further details about exclusive access limitations, amortization requirements, and other eligibility conditions for lease of Wide Area Network functionality. • WAN Versus LAN Components (On-Premise Priority One Equipment). For data and other networks, the distinction between Wide Area Network (WAN) functionality and Local Area Network (LAN) functionality is important. FCC rules establish a rebuttable presumption that a connection does not constitute an Internal Connection if it crosses a public right of way. In order to determine what may be properly funded as Internal Connections, a demarcation point between a Wide Area Network service and the Local Area Network components must be established. This approach is described more fully in the web document On-premise Priority 1 Equipment located in the SLD Reference Area of the USAC web site.

Glossary

800 Service (Telephone Service)	800 Service provides toll calling that is paid by the called party rather than the calling party. The name comes from the original Area Code used for all toll-free numbers. Current and future "800 Service" area codes use the convention 8NN, when N is a specific digit, for example 888, 877, and 866.
900/976 Call Blocking (Telephone Service Components)	Call Blocking is a monthly or recurring telephone company charge for the blocking of calls, such as to 900 or 976 numbers. The blocking prevents callers from completing calls to 900 or 976 numbers.
900/976 Charges (NOT Eligible for Funding as Telecommunications Services)	"900" is an area code used to reach a wide range of information providers. Examples of the information that may be provided via a 900 number are adult content programming, weather reports, lottery results, or caller voting for various topics such as television polls. 900 service calls are charged to the party originating the call. Charges for accessing 900 calls are often included in the toll charges on the local telephone bill. 976 service provides a local, pay-per-call telephone service.
911/E911 Trunks/Lines (Telephone Service)	911 and E911 trunks or lines are dedicated telecommunications links specifically or exclusively used for connection between a school/library and a Public Safety Answering Point (PSAP).
Access Point (Data Distribution)	An Access Point is a base station in a wireless LAN. Access points are typically stand-alone devices that may plug into an Ethernet hub or server or may provide a repeater function for wireless networks.
Alarm Telephone Line (Telephone Service)	An alarm telephone line is a telecommunications line specifically dedicated to a school or library burglar or fire alarm system. It may be the equivalent of a POTS line or a dedicated line between the school or library and the alarm company.
Antennas (Interfaces)	An antenna is a device for transmitting and/or receiving radio frequency signals.
Application Software (Not Eligible for E-rate	Application software applies to software accessed directly by end users, such as word

Funding as Internal Connections Components)	processors, spreadsheets, utility, anti-virus, and graphics programs.
Asbestos Removal (Not Eligible for E-rate Funding as Internal Connections Components)	Some older buildings were constructed using products that contain asbestos, which has been determined to be harmful to health. Renovations and installations in such buildings require special treatment, such as, asbestos removal.
Asynchronous Transfer Mode (ATM) (Digital Transmission Services)	ATM is a high-speed Digital Transmission Service that can provide bandwidth of 622 Megabits per second or higher.
Automatic Call Distribution System (ACD) (Telephone—Ineligible)	An Automatic Call Distribution (ACD) system, typically used with a PBX, provides a means of automatically distributing calls evenly on a next available agent basis, so that productivity is maintained and inbound calls are handled efficiently. The system also allows the monitoring of operation on a real-time basis. Additionally, some systems compile historic reports that may enable better utilization of resources for handling incoming calls.
Automatic Route Selection (ARS) (Telephone Components)	Automatic Route Selection (ARS) is a PBX and Centrex service that allows for automatic selection of the most efficient and cost-effective route. It may also be referred to as "least cost routing". By using the ARS feature, outgoing phone calls from PBX and Centrex stations are routed to the most cost-efficient service or facilities.
Bridge (Interfaces)	A bridge is a data communications device that connects two or more network segments, often translating information from one type of network protocol to another.
Broadband over Power Lines (BPL) (Digital Transmission Services) (Internet Access)	Broadband over Power Lines (BPL) is a carrier current system installed and operated on an electric utility service as an unintentional radiator that sends radio frequency energy on frequencies between 1.705 MHz and 80 MHz over medium voltage lines or low voltage lines to provide broadband communications. It is also located on the supply side of the utility service's points of interconnection with customer premises.
Broadcast and Cable Television Equipment (Video Components—Ineligible)	Broadcast/cable equipment applies to equipment used in the transmission or receipt of broadcast TV, broadcast radio, broadcast satellite, or cable television service.

Broadcast "Blast" Messaging (NOT Eligible for Funding as Telecommunications Services)	Broadcast "Blast" Messaging is a service that allows for a message to be created and delivered to a user defined group typically via voice or text message.
Cable Modem (Internet Access) (Interfaces)	A cable modem is a modem designed for use on a TV coaxial cable circuit and provides a high-speed data path. It can provide high-speed access to the Internet over a cable television line.
Cabling (Cabling)	Cabling refers to the wires or groups of wires capable of carrying voice, video, or data transmissions. Cabling provides electrical (or, in the case of fiber optics, lightwave) connectivity between points.
Caching (Servers—Ineligible) (Storage Devices—Ineligible)	Caching is a method that stores recently accessed information. Caching components, such as, caching servers, store information locally so that the information is accessible more quickly than if it must be transmitted across a network from a distant server.
Caching Service (Not Eligible for E-rate Funding as Internet Access Services)	A caching service is a special high-speed storage mechanism at the border of a network and the Internet that holds frequently accessed Internet information, thereby reducing retrieval times for information often requested from the Internet.
Call Accounting System (Not Eligible for E-rate Funding as Internal Connection Components)	A Call Accounting System records information about telephone calls. It can provide comprehensive information about call costs by associating call records with users, phone extensions, or profiles. Such systems may include Station Message Detail Recording (SMDR) or Call Detail Recording (CDR), which are software/hardware PBX components that provide the capability to generate reports on call details such as call duration, PBX station number, time and date, dialed number, and cost of call.
Call Sequencer (Not Eligible for E-rate Funding as Internal Connections Components)	An Automatic Call Sequencer is a component used with a PBX or Key system. The call sequencer distributes incoming telephone calls among a select number of stations or telephones. Some call sequencers are designed to generate statistical reports on number of calls and how calls were handled.
Cartridge Magnetic Tape (Not Eligible for E-rate	Cartridge magnetic tape is used in tape backup devices, and provides replaceable and archive

Funding as Internal Connections Components)	storage capacity.
CD/ DVD Player (Not Eligible for E-rate Funding as Internal Connections Components)	A Compact Disc or Digital Video Disc (CD/DVD) Player is a device that plays or reproduces the music, voice, and/or video from a CD or Digital Video Disc.
Cellular Service (Telephone Service)	Cellular Service uses radio transmissions to provide a wireless telephone service.
Centrex (Telephone Service)	Centrex is a business telephone service that consists of a wide variety of features, such as, call forwarding and call transfer, provided by central office software.
Change Fees (Miscellaneous Fees and Charges)	Change fees are charges imposed for the modification of an existing service.
Channel Service Unit /Data Service Unit (CSU/DSU) (Interfaces)	A CSU/DSU is a device that terminates a digital channel at a customer's premises. A CSU/DSU often serves as a demarcation between a local network and wide area network facilities.
Circuit Cards (Circuit Cards)	Circuit cards provide microprocessors, transistors, and other components on a circuit board. Circuit cards often are designed to fit into a slot of a larger component, such as a telephone PBX, router, or computer.
Client Access Licenses (Software)	A Client Access License is a software licensing approach used by some vendors that provides authorization to access a software product.
CODEC / Video Encoder (Video Components)	A CODEC (coder/decoder), also known as a video encoder, is a device comprising an encoder and decoder in the same equipment. The CODEC produces a coded output and compresses and decompresses audio and video signals.
Conduit and Raceway (Cabling)	Conduit and raceway are metal or plastic pipe or channels used to protect cable.
Conferencing Services (Other Eligible Telecommunications)	Conferencing Services provide a means for multiple users to participate in group discussions via telephone circuits or video facilities.
Connectors (Cabling)	Connectors are devices that connect wires or fibers.
Consumable Components (Cabling)	Consumables consist of miscellaneous components that are depleted with use, such as tape, splicing materials, labels, and wire wrap.

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

	555-1212 for information. Typically charges are assessed on a per call basis.
Directory Listings (NOT Eligible for Funding as Telecommunications Services)	A telephone company directory contains an alphabetical listing, by name, of all telephone subscribers (except those requesting unlisted or non-published service). Typically, the initial directory listing is provided free of charge to the subscriber, but extra-cost services are available, such as additional listings, unlisted or non-published numbers, and bolded entries.
Disaster Recovery (Not Eligible for E-rate Funding as Internal Connections Components)	Disaster recovery describes a means of restoring service to a computer network that has suffered a disaster. Such costs may include the rental of a site that houses links and equipment that is modeled after the damaged network.
Distance Learning (Digital Transmission Services)	Distance Learning utilizes video and audio technologies to allow students who are remotely located from other students or the lecturer to participate interactively with the class.
Documentation (Other Eligible Internal Connections Components)	Documentation includes support material provided in the form of paper or electronic media. It may include diagrams, blueprints, equipment specifications, or instruction manuals for services and products.
Domain Name Registration (Internet - Related Services)	A Domain Name indicates an address of location on the Internet. For the e-mail address portion of a symbolic abc@xyz.org, the domain name is xyz.org. Domain Name Registration is the registering of the name and the charge associated with the registration process.
Domain Name Service (DNS) (Internet Access) (Servers)	Domain names, such as www.fcc.gov, are alphabetic, so they are easier to remember than the IP addresses on which the Internet is based. A Domain Name Service translates the alphabetical names input by users into the IP addresses used by Internet devices.
DS-1 (Digital Transmission Services)	DS-1 is a type of Digital Transmission Service, and stands for "Digital Signal, level 1." It operates at a bandwidth of 1.544 megabits per second. Other DS levels—DS-2, DS-3, and DS-4—operate at higher bandwidths.
Duplicative Services (Other Miscellaneous Ineligible Components)	Duplicative services are those that deliver the same functionality, to the same population, in the same location, during the same period of

	time.
Dynamic Host Configuration Protocol (DHCP) (Internet Access) (Servers)	Standard networks need each computer to have a unique address for communication to occur. Dynamic Host Configuration Protocol (DHCP) is a system that provides this unique address from a central computer so that each individual computer does not need to be separately configured.
E911 Reader Board (Telephone)	The E911 Reader Board is adjunct hardware for a PBX and is used to access E911 Emergency service.
Electrical System Upgrades (Not Eligible for E-rate Funding as Internal Connections Components)	Electrical system upgrades refer to products and services that provide, upgrade, or enhance the provision of electrical power.
E-mail (Software) (Servers)	E-mail stands for "electronic mail." E-mail or electronic mail, is a system for sending text messages and other information across a network.
E-mail Archiving (E-mail) (Servers) (Storage Devices)	E-mail archiving is a form of electronic recordkeeping that often includes compressing e-mail files to make greater inbox space available.
E-mail Service (E-mail)	An e-mail service provides for the transmission of text messages and other embedded data such as file attachments. It also enables the transmission of messages over a local network or the Internet.
Enhanced Multimedia Interface (EMMI) (Video Components)	The EMMI is an interface that gives PC and workstation users on ATM networks the ability to send and receive full-motion, high quality video, CD quality stereo and high speed data. Signals are transformed into ATM cells and transported optically, using the Synchronous Optical Network (SONET) standard.
Environmental Monitoring Components (Not Eligible for E-rate Funding as Internal Connections Components)	Environmental monitoring components provide information about heat, humidity, or other factors in order to provide a warning system for conditions that may affect the correct operation of equipment. For example, an environmental monitoring card is sometimes available as an optional feature of an uninterruptible power supply and is used to monitor the environmental conditions of a rack, computer room, or data center.

Ethernet (Digital Transmission Services)	Ethernet is a type of Digital Transmission Service. Traditionally, Ethernet operates at a bandwidth commonly known as 10Base-T which is equivalent to 10 megabits per second (Mb/s). 100Base-T at 100 Mb/s and Gigabit (1,000Mb/s) are also available.
Faceplates (Cabling)	Faceplates are covers that fit over a jack, outlet, or dial.
Failover (Other Miscellaneous Ineligible Components)	Failover is generally a component or service which is activated if the primary component or service loses its capability to function.
Fax Machine (Not Eligible for E-rate Funding as Internal Connections Components)	A facsimile, or fax, machine is a device in which the image of a document is electronically transferred over the telephone network and printed out elsewhere.
Fiber Optics or Fiber (Digital Transmission Services)	Fiber Optics is a technology that uses light to transport information and can provide a Digital Transmission Service.
Filtering Service (Not Eligible for E-rate Funding as Internet Access Services)	A filtering service protects users from dangerous or inappropriate content most often by selectively blocking certain words or certain Internet sites.
Firewall (Internet Access) (Data Protection) (Servers)	A firewall is a hardware and software combination that sits at the boundary between an organization's network and the outside world, and protects the network against unauthorized access or intrusions.
Flat Rate (Telephone Service)	Local telephone companies use several methods to bill customers for local phone service, such as Flat Rate, Message Rate, and Local Measured Service. Flat Rate is a billing method for telephone service that, for a set price per month, provides a user an unlimited number of local calls.
FRAD (Interfaces)	A Frame Relay Assembler/Disassembler (FRAD) is a communications device that breaks a data stream into frames for transmission over a Frame Relay network and recreates a data stream from incoming frames. A Frame Relay router serves the same purpose but provides more intelligence in avoiding congestion.
Frame Relay (Digital Transmission	Frame relay is a type of Digital Transmission Service. Frame relay networks in the United

Services)	States support data transfer rates at T-1 (1.544 Mbps) and T-3 (45 Mbps) speeds.
Freight Assurances (Miscellaneous Fees and Charges)	Freight assurance fees are fees assessed to the purchaser for the guarantee of safe delivery to their premises of goods, *i.e.*, they provide shipping insurance.
Gateway (Interfaces)	A gateway is a network device that acts as an entrance to another network and often is used to connect two otherwise incompatible networks.
Hard Disk Drives (Storage Devices)	Hard disk drives are storage devices that consist of magnetic platters that spin like a record player and magnetic pickup devices, called heads, that are like the needle of a record player. The magnetic platters and heads are sealed in a vacuum in order to maintain tight tolerances and enhance service life.
Homework Hotline Equipment (Ineligible for E-rate Funding for Internal Connections Components)	Homework Hotline equipment includes an automated response or call routing system that provides information to callers about school assignments.
Homework Hotline Service (Other Eligible Telecommunications)	A Homework Hotline Service is typically provided as a toll-free telephone number for students to contact the school regarding questions on homework.
Hub (Data Distribution)	Hubs are central connection points for some types of local area networks with interconnecting cabling from many individual devices, such as computer workstations, printers, servers, and other hubs.
Inside Wire Maintenance Plan (Telephone Service)	An Inside Wire Maintenance Plan is a monthly recurring charge that provides for the repair, replacement, and maintenance of customer owned inside-premise wire. Cost of the service is sometimes included in regular monthly bills for local and long distance telephone services.
Integrated Services Digital Network (Digital Transmission Services)	Integrated Services Digital Network (ISDN) is a type of Digital Transmission Service that uses traditional phone lines to transmit digital voice and data over telephone lines. There are two types of service. Basic Rate Interface (BRI) provides a total bandwidth of 144 kilobits per second. Primary Rate Interface (PRI) provides a total bandwidth of 1.544 megabits per second.
Interactive Television	Interactive TV (ITV) provides a means for a

(Digital Transmission Services)	viewer to interact with the television set in ways other than controlling the channels, volume, and/or handling videotapes. In an educational setting, such as in a school, ITV provides a means for teachers and students who are remotely located in different places to conduct a class and to interact with each other. ITV also requires a special "set-top box" to be added to the existing television set.
Interactive White Board (Not Eligible for E-rate Funding as Internal Connections Components)	An Interactive White Board is a device that allows for end-users to display information with a vast array of interactive features such as online annotation, the ability to control a personal computer, and distance learning.
Intercom (Not Eligible for E-rate Funding as Internal Connections Components)	An intercom is an internal communication system, originally consisting of multiple speaker/microphone devices connected into an amplifier system. Currently, most intercoms are a part of telephone systems, although separate intercom systems continue to be used in many schools.
Interconnected Voice over Internet Protocol (Interconnected VoIP) (Telephone Service) (Internet - Related Services)	Interconnected VoIP is defined as a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.
Interface/Edge Device (Interfaces)	An Interface or Edge Device is a physical device that can pass packets between some types of networks and an Asynchronous Transfer Mode (ATM) network. The device may be a router or Ethernet-to-ATM switch that directly connects to an ATM network.
Internet Access (Internet Access)	Internet access provides a connection to the Internet, which is the publicly available worldwide system of interconnected computer networks that uses agreed-upon technical standards based on the Internet Protocol (IP). Internet access provides a connection to a vast quantity of information and services, such as electronic mail and the documents and features of the World Wide Web. Service Providers for Internet access need not be telecommunications carriers.

Internet Content (Not Eligible for E-rate Funding as Internet Access Services)	Internet Content refers to all forms of information that are available on the Internet, such as text, pictures, sound recordings, animation, and video clips.
Internet2 (Not Eligible for E-rate Funding as Internet Access Services)	Internet2 is a consortium of universities, industry, and government members that develop and deploy advanced network applications and technologies.
Intrusion Detection/Intrusion Prevention (Ineligible Internal Connections Components)	Intrusion Detection/Intrusion Prevention functions in addition to firewalls to monitor, detect, and deter threats to a network from external and internal attacks.
Key System (KSU) (Telephone Components)	A Key System, also known as Com Key System or a KSU, is a type of phone system that permits more than one telephone line, PBX extension, private line, or intercom line to appear on a single telephone.
KVM Switch (Servers)	A keyboard-video-mouse (KVM) switch is a switchbox that is used to control two or more computers from a single keyboard, monitor, and computer mouse.
Laptop / Notebook Computer (Servers—Ineligible)	A laptop or notebook computer is a lightweight, portable computer designed for mobility.
Lightning Arrestor (Data Protection—Ineligible)	A lightning arrestor is a device that protects equipment from lightning strikes and static.
Lit Fiber (Telecommunications)	Lit fiber refers to fiber optic cable for which the service provider provides modulating electronics to light the fiber.
Local Area Network (Data Distribution)	A Local Area Network (LAN) is a short distance data communications network used to link together computers and peripheral devices under some form of standard control. The LAN is most often connected by cabling or wireless links within the same building. A LAN consists of several components, including cabling, servers, computer workstations, network interface cards, printers, and data distribution equipment, such as network switches, hubs, and routers.
Local Measured Service (Telephone Service)	Local telephone companies use several methods to bill customers for local phone service, such as Flat Rate, Message Rate, and Local Measured Service. Local Measured Service typically allows an unlimited number of incoming calls. Outgoing calls beyond a certain

	threshold result in extra charges.
Local Phone Service (Telephone Service)	Local phone service is a service provided by a local exchange carrier (LEC). Phone lines from homes and businesses terminate at a central office of a LEC, which in turn connects to other local exchanges and to carriers for long distance service.
Long Distance Telephone Service (Telephone Service)	Long distance telephone service is provided by interexchange carriers and provides telephone service outside of a local calling area.
Mast (Interfaces)	A mast is a pole or structure on which an antenna is placed.
Master Control Unit (Video Components)	A Master Control Unit (MCU) is a device that controls the main operating functions of a video system.
Media Converter (Interfaces)	A media converter is a module that converts one type of media to another type of media for network compatibility. The actual media can vary, such as fiber, coax, or twisted pair.
Memory Modules / Random Access Memory (RAM) (Circuit Cards)	A memory module is the electronic holding place for instructions and data that a computer's microprocessor can reach quickly. The module usually holds multiple Random Access Memory (RAM) chips. Common types are SIMM, DIMM, RDRAM, and SDRAM.
Message Rate Service (Telephone Service)	Local telephone companies use several methods to bill customers for local wireline service, such as Flat Rate, Message Rate, and Local Measured Service. Message Rate Service provides a certain number of "call units." Various call lengths and distances can use a different number of call units. Calls in excess of the message rate allocation result in additional charges.
Mobile Hotspot Service (Internet Access)	Mobile hotspot service allows certain mobile devices to share their high speed mobile broadband with other users wirelessly.
Monitor (Servers)	A monitor is the video display unit (television screen) that is used to display information from a computer.
Multimedia Kits (Ineligible Internal Connections Components)	Multimedia kits provide a package of hardware and software that adds multimedia capabilities to a computer. A multimedia kit may include a CD ROM or DVD player, a sound card, speakers, and a bundle of CD ROMs.

Multiplexer (Data Distribution)	A multiplexer is electronic equipment that allows two or more signals to pass over one communications circuit. The circuit may be a telephone line, dedicated line, or radio signal. It provides an economic approach for transporting, for example, up to 24 voice-grade lines on a single circuit.
Multipoint Control Unit (Video Components)	A Multipoint Control Unit (MCU) is a bridging or switching device used for multipoint videoconferencing.
Network Interface Cards (NICs) (Circuit Cards)	Network interface cards (NICs) are electronic devices that connect workstations, servers, or other devices to a network. NICs work with the network software and computer operating system to transmit and receive messages on the network.
Network Interface Device (Interfaces)	A Network Interface Device (NID) is a component installed between a telephone network and the inside wire of a customer premises. The NID is usually provided by the telephone company and is the transition, or demarcation point, between the company's network and the customer's inside wiring.
Network Management (Software—Ineligible)	Network Management is a system of equipment or software used in monitoring, controlling, and managing a communications network.
Network Switch (Data Distribution)	A switch is a mechanical or electronic device that completes or breaks an electrical path or that selects the paths for communication. More specifically, network switches provide capability similar to a network hub but provide a dedicated bandwidth at each network port, rather than shared bandwidth among all ports.
OC-1 (Digital Transmission Services)	OC-1 stands for "optical carrier 1," which is a Digital Transmission Service that operates at 51.84 Megabits per second. Multiples of this bandwidth are also available, such as, OC-3 and OC-12.
Online Backup Solution (Not Eligible for E-rate Funding as Internet Access Services) (Ineligible Internal Connection Components)	An Online Backup Solution provides off-site data storage generally accessible from any Internet connection.
Operating System Software (Software)	Operating System software enables the basic operations of a computer system or other electronic device. For example, it can

	configure the communication paths between memory and storage, and provides basic functions for other software to operate correctly.
Pager (Ineligible Internal Connections Components)	A Pager (also known as a Beeper) is the receiving end of a paging service and is a small device worn on the belt or carried in a handbag. Pagers may provide text or voice messages, or both.
Paging Services (Paging)	Paging is a service designed to deliver a message to a person whose exact location is unknown. The service employs radio signals that activate a paging receiver carried by the intended recipient to deliver a text, numeric, or voice message.
Payphone Telephone Service (NOT Eligible for Funding as Telecommunications Services)	Payphone (or coin) telephone service is provided in a public or semi-public place and requires the use of coins, credit card, pre-paid card, or other means of payment at the time of placing the call.
Per Diem (Miscellaneous Fees and Charges)	Per diem is a dollar amount designated to a vendor for daily expenses, such as, lodging and food. It may or may not include travel time.
Performance Bond (Other Miscellaneous Ineligible Components)	A Performance Bond, also known as a Bid Bond, is a legal obligation, generally obtained by the vendor or contractor from a third party, that guarantees the terms of the contract or agreement will be met. In the event of default or failure to meet the terms, the bond would be used to complete the contracted work.
Permanent Virtual Circuit (PVC) (Digital Transmission Services)	Permanent Virtual Circuits (PVCs) are shared connections between end-points. PVCs play a central role in Frame Relay networks. They are also supported in some other types of networks, such as, X.25.
Personal Communications Services (PCS) (Telephone Service)	Personal Communications Services (PCS) is a digital wireless telecommunications service, similar to cellular service, but operating on different radio frequencies.
Personal Computers/ Workstations (Servers—Ineligible) (Ineligible Internal Connections Components)	Personal computers, or workstations, are computers designated or designed as end-user equipment. They may operate in a stand-alone environment or may be connected to a host computer as part of a network. They are differentiated from computers configured as servers that are designed to route information to and from end-user equipment.

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

Public Address (PA) System (Telephone—Ineligible) (Ineligible Internal Connections Components)	A Public Address System allows the user to make announcements through the use of amplifiers and speakers.
PVBX (Video Components)	A Private Video Branch Exchange (PVBX) is a PBX designed for video information. A PVBX can link classrooms or other locations together and can interconnect end-user and other equipment, such as cameras, monitors, and videocassette recorders.
Racks and Cabinets (Other Eligible Internal Connections Components)	A rack is a metal supporting framework for mounting cables, equipment, and/or wires. A cabinet is an enclosure for equipment, terminating cables, connection devices, and/or wires.
Radio Loop (Telephone)	Radio Loop is provided by a local exchange telecommunications carrier and is also called Basic Exchange Telecommunications Radio Service (BETRS). BETRS is used by local telephone companies to provide dial tone to subscribers in certain circumstances, such as when it is either not technically possible or not cost-effective to provide the service by conventional means.
Relay I/O Module (Data Protection)	A Relay I/O Module allows protection by an Uninterruptible Power Supply (UPS) for equipment not pre-designed for a UPS interface.
Remote Access Components (Servers)	Remote access components, such as a remote access router or communications server, allow users to access network resources by dialing in from an off-site location in order to connect their local computer with network devices. Dialing in most cases typically utilizes standard telephone lines but, in some cases, may be based on other technologies.
Reverse Directory Assistance (NOT Eligible for Funding as Telecommunications Services)	Reverse Directory Assistance is a service that can use a phone number to provide the name and, in some cases, the address of the subscriber of that phone number.
Router (Data Distribution)	Routers are switching devices that can act as an interface between two networks and connect different segments, such as departments or floors in a building. Functionally, routers select the routing path for traffic, may provide features such as load balancing, and can provide trouble-shooting diagnostic capabilities.

Satellite Dishes (Interfaces)	Satellite Dishes are antennas capable of receiving signals from and, in some cases, transmitting signals to communications satellites.
Satellite Service (Digital Transmission Services)	Satellite service provides communication between points on Earth by using an orbiting satellite as a communications relay point.
Servers (Servers)	Servers are computers on a local area network that can provide access to files, software, printers, or other features that are shared among multiple users.
Shipping Charges (Miscellaneous Fees and Charges)	Shipping Charges are the charges associated with the delivery of products from their point of origin to the customer premises.
Smartphone (Not Eligible for E-rate Funding as Internal Connections Components)	Mobile phone that offers more advanced computing ability and connectivity than a contemporary feature phone.
Softphone (Not Eligible for E-rate Funding as Internal Connections Components)	A Softphone is end-user application software that allows users the use of a personal computer's microphone and speakers to make telephone calls.
Software (Software)	Software is distinct from physical computer hardware and refers to the detailed instructions that operate a computer.
Spare Parts (Not Eligible for E-rate Funding as Internal Connections Components)	Spare parts are components on hand to replace hardware that fails.
Speakers (Not Eligible for E-rate Funding as Internal Connections Components)	Speakers are the components that provide sound from a computer, phone, intercom, or other device.
Station Message Detail Recording (SMDR) (Not Eligible for E-rate Funding as Internal Connections Components)	Station Message Detail Recording (SMDR) and Call Detail Recording (CDR) are software/hardware PBX components that provide the ability to generate reports on call details. Those details include, but are not limited to, call duration, PBX station numbers, time and date, trunk route, dialed number, and cost of call.
Storage Media (Not Eligible for E-rate Funding as Internal Connections Components)	Storage media includes products such as floppy disks and recordable CD ROM that provide replaceable storage.

Surge Protector (Not Eligible for E-rate Funding as Internal Connections Components)	Surge protectors provide electrical AC power outlets with circuitry that protects equipment against voltage spikes and electrical disturbances.
Switchboard / Attendant Console (Telephone Components)	The operation of a PBX or Centrex system may require the use of a switchboard or attendant console for the transfer of incoming calls to the appropriate extension when systems are not equipped with Direct Inward Dialing. The switchboard or attendant console may include Direct Station Selection (DSS), which provides an easy means for transferring calls.
Switched Multimegabit Data Service (SMDS) (Digital Transmission Services)	Switched Multimegabit Data Service (SMDS) is a type of Digital Transmission Service offered by telephone companies that operates at speeds of from 1.544 Megabits per second to 45 Megabits per second or even more.
System Improvements and Upgrades (Other Eligible Internal Connections Components)	A system improvement or upgrade provides enhanced functionality to an existing product or configuration of products.
T-1 (Digital Transmission Services)	T-1, which stands for Trunk Level 1, is a Digital Transmission Service that operates at 1.544 Megabits per second. Greater speeds are available from other Trunk Levels, such as T-2 (6.312 Mbps) or T-3 (44.736 Mbps). Slower speeds are known as Fractional T-1.
Tablet (Not Eligible for E-rate Funding as Internal Connections Components)	A complete mobile computer, larger than a mobile phone or personal digital assistant, integrated into a flat touch screen and primarily operated by touching the screen. It often uses an onscreen virtual keyboard or a digital pen rather than a physical keyboard.
Tape Backup (Data Protection)	Tape Backup units provide copies of computer files on magnetic tape, for protection against a catastrophic failure. Tape backup technologies include QIC, DAT, 8mm, DLT, AIT, and ADR.
Telephones (Not Eligible for E-rate Funding as Internal Connections Components)	Telephones, also known as telephone sets, telephone instruments, digital voice terminals, and voice terminals, are the end-user equipment used to transmit and receive telephone communications.
Terminal Adapter (Interfaces)	A Terminal Adapter (TA) is a device that connects a computer to an external digital communications line, such as, an ISDN line.
Terminal Server	A Terminal Server is a specialized server that

(Servers)	connects multiple terminals into a network. Traditionally, terminal servers were used to connect multiple "dumb" terminals into network resources. Today, they are also used to provide increased connectivity and performance for older computers workstations.
Termination Charges (Other Miscellaneous Ineligible Components)	Termination charges are fees assessed for the removal or discontinuation of a product or service.
Test Equipment (Not Eligible for E-rate Funding as Internal Connections Components)	Test Equipment is used to test hardware, software, cable continuity, telecommunications links, etc.
Text Messaging (Telephone Service Components)	Text messaging or short message service (SMS) is a service that enables the transmission of alphanumeric messages, typically up to 160 characters.
Transceiver (Interfaces)	A transceiver is a device that transmits and receives analog or digital signals. The term is used most frequently to describe the component in local area networks (LANs) that actually applies signals onto the network wire and detects signals passing through the wire. For many LANs, the transceiver is built into the network interface card (NIC).
Travel Time (Miscellaneous Fees and Charges)	Travel time refers to the time required for service provider personnel to travel to and/or from locations to provide eligible services.
Trunk lines (Digital Transmission Services)	A trunk line is a communications path between two switching systems, such as equipment in a telephone company central office and a Private Branch Exchange (PBX). Central Office trunks connect a PBX to the central office switching system at the central office. Tie trunks connect two PBXs together.
Two-Way Radio (Not Eligible for E-rate Funding as Internal Connections Components)	Two-way radios are wireless end-user devices used to communicate, typically over short distances.
Unbundled Warranty (Not Eligible for E-rate Funding as Basic Maintenance of Internal Connections)	A separately priced warranty allowing for broken equipment to be fixed or, in the event that the problem is beyond repair, replaced.
Uninterruptible Power Supply (UPS) / Battery Backup (Data Protection)	An Uninterruptible Power Supply (UPS), also called a battery backup, is a device that provides backup electric energy to a piece of equipment in the event of a power failure.

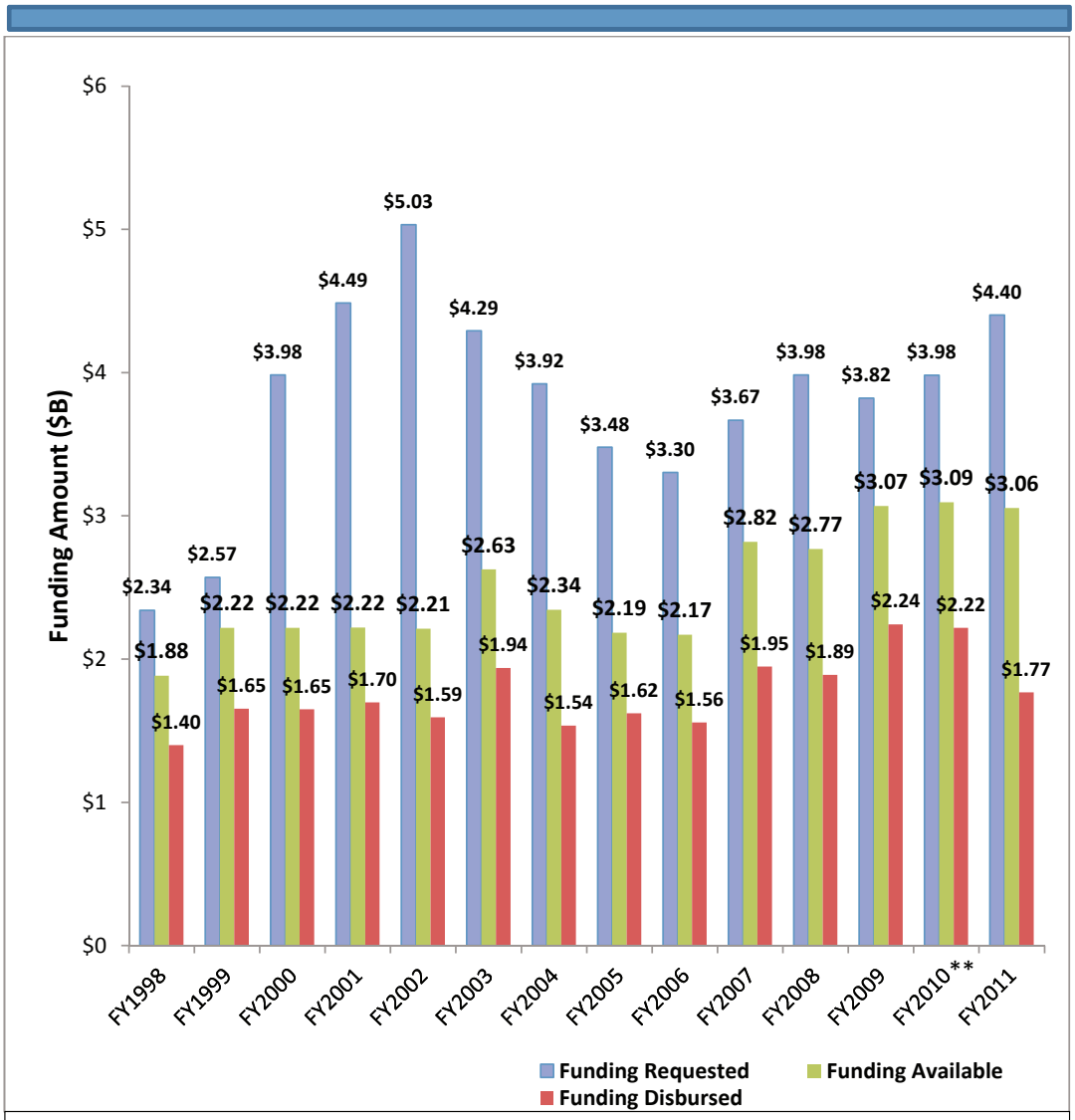
UPS Interface Expander (Data Protection)	A UPS Interface Expander allows an Uninterruptible Power Supply (UPS) to provide power management to multiple devices.
Video Amplifier (Video Components)	A Video Amplifier is a device that strengthens the level of a video signal.
Video Channel Modulator (Video Components)	A Video Channel Modulator is a distribution box that takes standard video and audio input from video cameras, recorders, and other video components and distributes the signals to end users.
Video Components (Video Components)	Video components provide the capabilities and technologies to enable moving images on television screens or computer monitors.
Video Content Storage (Other Eligible Internal Connections Components)	Video content storage enables the storage of videos and makes such videos available for retrieval at any given time.
Video Service (Digital Transmission Services)	Video services involve the transmission of visual images.
Virtualization software (Software)	Virtualization software allows for the creation of multiple virtual servers on a single server. The virtual servers share the hardware of the server upon which the software is installed.
Virtual Private Network (VPN) Components (Data Protection)	A Virtual Private Network (VPN) uses encryption and/or tunneling services in order to provide highly secure communication over the public Internet or in some cases over point-to-point links.
Voice Compression Module (Telephone Components)	A Voice Compression Module allows voice and fax traffic to share the same lines as data and LAN traffic.
Voice Interface Card (Telephone Components)	Voice Interface Cards (VIC) are usually components of a router or PBX system that interface with internal systems and the public switched telephone network. Examples include FXO Cards, E&M Cards, and FXS Cards.
Voice Mail Components (Telephone Components)	Voice mail components allow users to receive voice messages left by telephone callers and may have other features, such as message forwarding.
Voice Mail Service (Voice Mail Service)	A voice mail service allows users to receive voice messages left by telephone callers and may have other features such as message forwarding. A voice mail service is classified as an information service that is distinct from a

	telecommunications service or Internet access.
Voice/Fax Network Module (Interfaces)	A Voice/Fax module is an access product that enables the transmission of multiprotocol data—voice, fax and LAN--over telecommunications services.
Voice/Video over IP (VoIP) Components (Data Distribution)	Voice/video over IP (VoIP) components refer to equipment that utilizes the TCP/IP suite of protocols to provide voice and/or video communications.
Web Casting (Not Eligible for E-rate Funding as Internet Access Services)	Web Casting is a service provided over the Internet that delivers news or other content via web browser software or to an E-mail address. A user accesses a Web Casting site and chooses what news or content he/she wants to be informed about. Information content is then periodically delivered by the Web Casting supplier.
Web Hosting (Internet - Related Services)	A web hosting service is one that hosts a school's or library's website.
Web Server (Not Eligible for E-rate Funding as Internal Connections Components)	A web server is a computer server used to provide information to Internet users and can also be used to provide web-based software applications and other web-based functions.
Web Site Creation Fee (Not Eligible for E-rate Funding as Internet Access Services)	A web site creation fee is a separate charge for creating a website.
Wide Area Networks (WANs) (Digital Transmission Services)	A wide area network is a voice, data, and/or video network that provides connections from within an eligible school or library to other locations beyond the school or library.
Wire Managers (Cabling)	Wire managers are wire restraints to house or arrange wiring and cabling. They can be aluminum or plastic and may be rack-mountable.
Wireless Internet Access Service	Wireless Internet Access Service provides Internet access to portable devices or other devices capable of receiving a wireless service.
Wireless Local Area Network (Data Distribution)	A Wireless Local Area Network provides the functionality of a local area network using wireless components rather than cabling.
Wireless Local Area Network Controller (Data Distribution)	A Wireless Local Area Network Controller is used in conjunction with access points to create a wireless local area network.
Wireless PBX Adjunct	A Wireless PBX Adjunct functions in conjunction

(Telephone Components)	with a Private Branch Exchange to enable use of cordless telephones on an organization's premises.
Wireless Telephone Services (Telephone Service)	Wireless telephone services provide connection to the public switched telephone network similar to traditional phone service, but utilize portable electronic devices and radio frequencies rather than hard-wired handsets.
Workstation (Not Eligible for E-rate Funding as Internal Connections Components)	See the entry for Personal Computers/Workstations for additional information.

APPENDIX C

Funding Requested vs. Available and Disbursed Chart



*Funding for the most recent funding years is not fully disbursed yet.
**The Wireline Competition Bureau directed USAC to fund all eligible requests for E-rate support for Funding Year 2010. *See Funds For Learning, LLC Petition to Reject the Administrator's Discount Threshold Recommendation for Funding Year 2010*, *Schools and Libraries Universal Service Support Program*, CC Docket No. 02-6, Order, 26 FCC Rcd 11145, 11148-49, para. 9 (Wireline Comp. Bur. 2011).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[3]

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.[4] 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.[5] 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.[6]

A. Need for, and Objectives of, the Proposed Rules

3. This NPRM is a part of the Commission's continual efforts to improve the E-rate program. In it, we propose specific goals and measures by (1) ensuring that schools and libraries have affordable access to 21st Century broadband that supports digital learning, (2) maximizing the cost-effectiveness of E-rate funds and (3) streamline the administration of the E-rate program. The rules we propose in this NPRM are directed at enabling us to meet these goals.

B. Legal Basis

4. 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.

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

5. 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.[7] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[8] In addition, the term "small business" has the

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

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.*

[4] *See generally* 47 U.S.C. § 254.

[5] *Universal Service First Report and Order* 12 FCC Rcd 8776.

[6] 47 C.F.R. § 54.502.

[7] 5 U.S.C. § 603(b)(3).

[8] 5 U.S.C. § 601(6).

same meaning as the term "small business concern" under the Small Business Act.[9] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[10] Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.[11] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[12]

6. Nationwide, as of 2002, there were approximately 1.6 million small organizations.[13] 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."[14] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[15] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[16] Thus, we estimate that most governmental jurisdictions are small.

7. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services.[17]

1. Schools and Libraries

8. As noted, "small entity" includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law."[18] 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.[19] A library includes "(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library [] 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."[20]

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[9] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[10] Small Business Act, 15 U.S.C. § 632.

[11] U.S. Small Business Administration, Office of Advocacy, Frequently Asked Questions, http://web.sba.gov/faqs/faqindex.cfm?areaID=24 (last visited July 15, 2013).

[12] 5 U.S.C. § 601(4).

[13] Murray S. Weitzman, The New Nonprofit Almanac & Desk Reference (Jossey-Bass 2002).

[14] 5 U.S.C. § 601(5).

[15] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, Table 415, page 272, *available at* http://www.census.gov/compendia/statab/2006/state_local_govt_finances_employment/stlocgov.pdf (last visited July 15, 2013).

[16] We assume that the villages, school districts, and special districts are small, and total 48,558. *Id. at* Table 417, page 273. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[17] *See* 47 C.F.R. §§ 54.501-54.502, 54.504.

[18] 47 C.F.R. § 54.500(c).

[19] 47 C.F.R. § 54.500(k).

[20] 47 C.F.R. § 54.500(d).

For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.[21] Certain other statutory definitions apply as well.[22] The SBA has defined for-profit, elementary and secondary schools and libraries having $6 million or less in annual receipts as small entities.[23] In funding year 2007, approximately 105,500 schools and 10,950 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 105,500 schools and 10,950 libraries might be affected annually by our action, under current operation of the program.

2. Telecommunications Service Providers

9. *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.[24] According to Commission data, 1,307 incumbent carriers reported that they were engaged in the provision of local exchange services.[25] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees[26]. Thus, under this category and associated small business size standard, we estimate that the majority of entities are small. 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."[27] 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.[28] 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.

10. *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.[29] This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.[30] According to the Commission's *2010 Trends Report*, 359 companies reported that they were engaged in

[21] 47 C.F.R. § 54.500(a), (b).

[22] *Id.*

[23] 13 C.F.R. § 121.201;NAICS codes 611110 and 519120 (NAICS code 519120 was previously 514120).

[24] 13 C.F.R. § 121.201 ; NAICS code 517110.

[25] Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3, Page 5-5 (September 2010) (*2010 Trends Report*) (using data that is current as of Oct. 13, 2008).

[26] *Id.*

[27] 5 U.S.C. § 601(3).

[28] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Business Administration, to William E. Kennard, Chairman, Federal Communications Commission, CC Docket No. 98-147 et al., at 2 (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) ; 5 U.S.C. § 601(3) . SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[29] 13 C.F.R. § 121.201; NAICS code 517110.

[30] *Id.*

the provision of interexchange services.[31] Of these 300 IXCs, an estimated 317 have 1,500 or few employees and 42 have more than 1,500 employees.[32] Consequently, the Commission estimates that most providers of interexchange services are small businesses.

11. *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.[33] This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.[34] According to the *2010 Trends Report*, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services.[35] Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[36] Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

12. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[37] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[38] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[39] 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.[40] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[41] 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.[42] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of

[31] *2010 Trends Report*, Table 5.3, page 5-5.

[32] *Id.*

[33] 13 C.F.R. § 121.201 ; NAICS code 517110.

[34] *Id.*

[35] *2010 Trends Report*, Table 5.3, page 5-5.

[36] *Id.*

[37] U.S. Census Bureau, 2012 NAICS Definitions, 517210 Wireless Telecommunications Categories (Except Satellite), *available at* http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007 (last visited July 15, 2013).

[38] U.S. Census Bureau, 2002 NAICS Definitions, 517211 Paging, *available at* http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517211&search=2002 (last visited July 15, 2013); U.S. Census Bureau, 2012 NAICS Definitions, 517212 Cellular and Other Wireless Telecommunications, *available at* http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517212&search=2002 (last visited July 15, 2013).

[39] 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

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

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

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

1,000 employees or more.[43] Thus, we estimate that the majority of wireless firms are small.

13. *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).[44] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[45] According to the *2010 Trends Report*, 413 carriers reported that they were engaged in wireless telephony.[46] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[47] We have estimated that 261 of these are small under the SBA small business size standard.

14. *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).[48] Prior to that time, such firms were within the now-superseded category of "Paging."[49] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[50] 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.[51] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[52] Thus, we estimate that the majority of paging firms are small.

15. 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.[53] 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.[54] The SBA has approved this definition.[55] An initial auction of Metropolitan Economic Area

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

[44] 13 C.F.R. § 121.201(b) ; NAICS code 517210.

[45] *Id*.

[46] *2010 Trends Report* at Table 5.3, page 5-5.

[47] *Id*.

[48] U.S. Census Bureau, 2007 NAICS Definitions, 517210 Wireless Telecommunications Categories (Except Satellite), *available at* http://www.census.gov/naics/2007/def/ND517210.HTM#N517210 (last visited July 15, 2013).

[49] U.S. Census Bureau, 2002 NAICS Definitions, 517211 Paging, http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517211&search=2002 (last visited July 15, 2013).

[50] 13 C.F.R. § 121.201 ; NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[51] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Establishment and Firm Size Including Legal Form of Organization, Table 5, pages 160-197 (issued Nov. 2005); NAICS code 517211.

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

[53] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2810-15, paras. 178-186 (*Paging Second Report and Order*); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

[54] *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.[56] Fifty-seven companies claiming small business status won 440 licenses.[57] 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.[58] 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.[59]

16. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 291 carriers reported that they were engaged in the provision of "paging and messaging" services.[60] Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees.[61] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

3. Internet Service Providers

17. 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,[62] which has an SBA small business size standard of 1,500 or fewer employees.[63] The latter are within the category of All Other Telecommunications,[64] which has a size standard of annual receipts of $25 million or less.[65] The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.[66] 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

(Continued from previous page)

[55] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau , Federal Communications Commission (Dec. 2, 1998) (*Alvarez Letter 1998*).

[56] *See 929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (Wireless Telecomm. Bur. rel. Mar. 6, 2000).

[57] *See id.* at 4866, Attachment A.

[58] *See Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (Wireless Telecomm. Bur. rel. Dec.11, 2001).

[59] *See* Lower and Upper Paging Bands Auction Closes, Public Notice, 18 FCC Rcd 11154 (Wireless Telecomm. Bur. rel. May 30, 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[60] *2010 Trends Report* at Table 5.3, page 5-5.

[61] *Id*.

[62] U.S. Census Bureau, 2012 NAICS Definitions, 517110 Wired Telecommunications Carriers, *available at* http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012 (last visited July 15, 2013).

[63] 13 C.F.R. § 121.201; NAICS code 517110 (updated for inflation in 2008).

[64] U.S. Census Bureau, 2012 NAICS Definitions, 517919 All Other Telecommunications, *available at* http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2012 (last visited July 15, 2013).

[65] 13 C.F.R. § 121.201; NAICS code 517919 (updated for inflation in 2008).

[66] U.S. Census Bureau, 2002 NAICS Definitions, 518111 Internet Service Providers, *available at* http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=518111&search=2002 (last visited July 15, 2013).

for the entire year.[67] 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.[68] Consequently, we estimate that the majority of ISP firms are small entities.

4. Vendors of Internal Connections

18. *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."[69] The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees.[70] According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year.[71] Of this total, 511 had employment of under 1,000, and an additional seven had employment of 1,000 to 2,499.[72] Thus, under this size standard, the majority of firms can be considered small.

19. *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."[73] The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.[74] According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.[75] Of this total, 1,010 had employment of

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[67] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Establishment and Firm Size (Including Legal Form of Organization), Table 4, pages 117-59, NAICS code 518111 (issued Nov. 2005).

[68] *Id.* An additional 45 firms had receipts of $25 million or more.

[69] U.S. Department of Commerce, Census Bureau, 2002 NAICS Definitions, 334210 Telephone Apparatus Manufacturing, *available at* http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334210&search=2002 (last visited July 15, 2013).

[70] 13 C.F.R. § 121.201, NAICS code 334210.

[71] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334210 (rel. May 26, 2005); *available at* http://factfinder2.census.gov (2002 Economic Census). The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 450.

[72] *Id.* An additional four establishments had employment of 2,500 or more.

[73] U.S. Census Bureau, 2007 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing," http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334220&search=2007 (last visited July 15, 2013).

[74] 13 C.F.R. § 121.201, NAICS code 334220.

[75] 2002 Economic Census, NAICS code 334220. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

under 500, and an additional 13 had employment of 500 to 999.[76] Thus, under this size standard, the majority of firms can be considered small.

20. *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)."[77] The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is having 750 or fewer employees.[78] According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.[79] Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999.[80] Thus, under this size standard, the majority of firms can be considered small.

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

21. Several proposals under consideration in the NPRM may, if adopted, result in additional recordkeeping requirements for small entities. It is possible that an increase in purchasing consortia could result in an increase in consortia-imposed additional reporting requirements. Additionally, reducing competitive bidding that results in a single bid would increase the number of price matrices E-rate recipients would be required to prepare.

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

22. The RFA requires an agency to describe any significant, specifically small business, 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 or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[81]

23. In this NPRM, we seek comment on a package of potential reforms to the E-rate program that can be implemented in funding year 2013 (July 1, 2013 – June 30, 2014). We seek to improve and modernize the program by proposing the goals of (1) ensuring that schools and libraries have affordable access to 21st Century broadband that supports digital learning, (2) maximizing the cost-effectiveness of E-rate funds and (3) streamlining the administration of the E-rate program.

24. We recognize that several of our proposed rules would impact small entities. Most of the rules we propose would lessen reporting burdens on small entities. In those instances in which a proposed rule would increase these burdens on small entities, we have determined that the benefits from these rules outweigh the increased burdens on small entities.

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[76] *Id*. An additional 18 establishments had employment of 1,000 or more.

[77] U.S. Census Bureau, 2007 NAICS Definitions, 334290 Other Communications Equipment Manufacturing, *available at* http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334290&search=2007.

[78] 13 C.F.R. § 121.201, NAICS code 334290.

[79] 2002 Economic Census, NAICS code 334290. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 471.

[80] *Id*. An additional 3 establishments had employment of 1,000 or more.

[81] 5 U.S.C. § 603(c)(1) – (c)(4).

1. Proposed rules that lessen reporting burdens

25. *Single filing for multi-year contract.* Our proposal to allow E-rate applicants with multi-year contracts that are no more than three years in length (including any voluntary extensions) to file a single FCC Form 471 application for the funding year in which the contract commences would lessen reporting burdens on E-rate recipients by relieving them of the obligation to file an FCC Form 471 for some funding years.

26. *Internal connections applications by school district.* Requiring all schools and libraries that are part of the same school district to submit applications for priority two internal connections by school district, rather than by individual school, would streamline the process and simplify the discount calculation for the applicant. Rather than making a discount calculation for each school within a district, an applicant would merely be required to make a district-wide discount calculation.

27. *Phasing out support for certain services.* Phasing out support for certain services would lessen reporting burdens on small entities because, under this proposal, E-rate applicants would no longer be required to comply with E-rate rules for phased-out services. There would be no change to reporting burdens for services that are being phased down because E-rate applicants and recipients would still be required to comply with E-rate rules.

28. *Priority two services*. Our proposal to require that any school that is part of an organized school district must apply for priority two internal connections by school district, rather than by school, would lessen reporting burdens by simplifying the discount calculation for schools.

29. *Regulatory classification*. Likewise, our proposal to adopt a rule that allows funding for eligible services regardless of regulatory classification would simplify reporting requirements because E-rate applicants would no longer be required to designate regulatory classifications to seek eligible services from any entity.

30. *Invoicing and disbursement process*. We propose to permit applicants who submit a Billed Entity Application for Reimbursement (BEAR) Form to receive reimbursement directly from USAC, rather than receiving reimbursement from the service provider after USAC reimburses it. This proposal would lessen reporting burdens because the service provider would no longer serve as the pass-through for the reimbursement of funds.

2. Proposed rules that increase reporting burdens

31. *Compliance burdens.* Implementing any of our proposed rules would impose some burden on small entities by requiring them to become familiar with the new rule to comply with it. For many proposed rules, such as those to refresh funding priorities, streamline the Eligible Services List, increase matching funds, redefine "rural," institute per-student or per-building caps, provide priority one support for the modulating electronics necessary to light dark fiber and amend the formula for determining what discounts some schools and libraries receive, this is the sole additional burden on small entities. The importance of accomplishing our goals of (1) ensuring that schools and libraries have affordable access to 21st Century broadband that supports digital learning, (2) maximizing the cost-effectiveness of E-rate funds and (3) streamlining the administration of the E-rate program outweighs the minimal burden requiring small entities to comply with new rules would impose.

32. *Increasing transparency of prices.* Our proposal to increase transparency of prices by either publicly disclosing all bids for E-rate supported services or disclosing all purchase prices would increase reporting burdens on entities required to provide this information to the Administrator, the Universal Service Administrative Company (USAC). Because E-rate applicants would already have this information, the additional burden reporting it to USAC would be minimal. The benefit other E-rate applicants would enjoy from being able to compare bids and purchases would far outweigh this minimal burden.

33. *Electronic filing*. Requiring all users to file all E-rate-related forms electronically should benefit E-rate applicants because it would provide a streamlined process and make forms easily

accessible. We recognize that requiring electronic filing may burden users who do not have Internet access due to unreliable Internet access or emergency situations. Because of this, we seek comment on alternative filing requirements for these users. Ultimately, the cost savings for USAC and added efficiency of requiring electronic filing outweigh but burden of electronic filing on E-rate applicants and recipients.

34. *Separate filing windows*. Separating filing windows for priority one and priority two services would increase reporting requirements for the limited number of E-rate recipients who receive priority two services but would decrease reporting burdens for those E-rate recipients whose discount percentage prevents them from receiving priority two services. The benefit of simplifying the application process for those who will not receive priority one services justifies the added burden of filing separate applications for those who will receive priority two services.

35. *Document retention period*. Extending the E-rate document retention requirement from five years after the last day of the delivery of services to ten years after the last day of the delivery of services would increase administrative burdens on E-rate recipients by requiring them to retain documents for a longer period of time. The Commission's interest in combating waste, fraud and abuse by litigating matters under the False Claims Act, which can involve conduct that relates back substantially more than five years, justifies this additional burden.

36. *Competitive bidding documentation*. We propose to require applicants to submit to USAC competitive bidding documents, including a copy of each bid received, the bid evaluation criteria, bid sheets, a list of people who evaluated bids, memos, board minutes, or similar documents, and any correspondence with vendors during the bidding, evaluation, and award phase of the process. Providing such documents would impose additional burdens on E-rate applicants and could increase application review time and administrative costs. The benefit of allowing USAC to evaluate more fully the competitive bidding process conducted by E-rate applicants and ensure that documentation of the competitive bidding process was retained in the event of an audit outweighs this burden.

37. *FCC Form Signatories.* Our proposal to require that an officer of the service provider make the required certifications on the FCC Form 472 (BEAR Form), FCC Form 473 (Service Provider Annual Certification Form) and the FCC Form 474 (SPI Form) as well as certify compliance with the lowest corresponding price rule and state and local procurement laws would impose minimal additional burdens on small entities because these entities are already required to ensure compliance with E-rate rules. The only new requirement under this proposal is for officers to certify that they have complied with E-rate rules. The benefit of ensuring that the certification reflects the service provider's commitment to understand and comply with the E-rate program rules and requirements outweighs this burden. Additionally, we propose to require all E-rate forms submitted by E-rate applicants be signed by someone with authority equivalent to that of a corporate officer. This proposal would impose the additional burden of requiring corporate officers of small entities to become familiar enough with E-rate applications that they can make the certifications. The Commission's interest in combatting waste, fraud and abuse outweighs this burden. Because of the burden this proposal may impose on small entities, we seek comment on alternatives to it.

38. *National emergencies*. The proposed procedures for national emergencies would require the Commission to waive document retention requirements for E-rate recipients whose records are destroyed in an Emergency or Major Disaster if the recipients document the loss of their records. Other proposals would require applicants affected by an Emergency or Major Disaster to make certifications regarding the extent of the damage they incurred, the extent of planned repairs, funding for repairs, population changes and funding demand changes to receive additional assistance after an Emergency or Major Disaster. E-rate recipients affected by an Emergency or Major Disaster would not incur additional requirements if they do not seek additional assistance. The Commission's strong interest in preventing waste, fraud and abuse justifies the minimal burdens that documenting the loss of records and making these certifications would impose.

39. As noted, we believe the proposals and options being introduced 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 processes, ensuring access to broadband, maximizing cost-effectiveness and maximizing efficiency. 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.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

40. None.

IT IS ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

STATEMENT OF
ACTING CHAIRWOMAN MIGNON L. CLYBURN

Re: Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184.

This is a pivotal moment. As we've heard from Secretary Spellings, Professor Steyer, and Dr. Word technology has the power to revolutionize education in America.

But we are not where we need to be relative to other nations and to the rate of technology adoption in this nation. And one of the biggest obstacles to seizing the opportunities of digital learning in America is inadequate bandwidth at our schools and libraries. Simply put, they need faster high-capacity connections and they need them now.

Today, however, we take an important step toward ensuring that our schools and libraries have the bandwidth they need: we launch a modernization of E-Rate that the times demand and our children deserve.

E-rate is one of the FCC's biggest success stories. This public-private partnership has helped connect nearly every U.S. library and school to the Internet. This includes places like Kenmore Middle School in Arlington, which I visited two years ago. That is where I first met Dr. Word and saw some of the amazing things he and his staff have achieved. It also includes schools like Loris Elementary in my home state of South Carolina.

You've heard about Kenmore so let me tell you a little about Loris, South Carolina. It is a town of about 2,400 people, almost half of whom live in poverty. But the local elementary school is using technology to help their children rise above these circumstances.
Every student in grades three through five has been assigned a laptop loaded with learning software. Teachers are using digital tools to assess each student's progress in real time and offer differentiated instruction to meet each student's individual needs. Now, test scores are up and in state rankings of similar schools Loris Elementary rose from 41st into the top 20.

Places like Kenmore Middle and Loris Elementary remind us that broadband has the potential to be the great equalizer for our children. It doesn't matter whether you live in a rural, low-income area or in a wealthy urban community, connecting a child to the Internet links them to cutting-edge instruction and new learning opportunities.

Our goal should be to make this the rule and not the exception.

We also need to ensure, similar advances for libraries. These reference centers are key pieces of the overall education picture because they support kindergarten-through-12th grade students after school hours with online research resources, interactive online homework help, and digital learning labs. They also support home-schooled students, distance learners, GED preparation and test-taking, job retraining, and other lifelong learning.

Libraries are the civic hubs for the information age providing the public with digital literacy training and free Internet access so community members may apply for jobs, learn new skills, and access critical government resources.

While E-rate has made a significant impact on connectivity for schools and libraries over the past 15 years, today's cutting-edge educational tools and learning platforms were not part of the landscape when the Commission first implemented this Congressional directive.

As educators increasingly integrate digital content into their lesson plans, faster speeds and additional capacity are needed to accommodate all of the interactive, educational uses the Internet offers. Although some schools have sufficient capacity to implement digital learning tools and strategies, too many do not. In fact, in a 2010 FCC survey of schools and districts, nearly half of respondents reported lower speed Internet connectivity than the average American home. Similarly, forty-one percent of libraries reported that their connectivity was inadequate to meet patron demand in 2012, and fewer than 10 percent of America's libraries offer Internet speeds of 100Mbps or faster.

This is simply not good enough. We must ensure that our young people, teachers, and the millions of citizens that use libraries each year have access to the tools they need to compete and succeed in the digital age. We need to do this for our children and we need to do this for our nation. The U.S. will fall behind in the 21st century economy if our classrooms don't evolve beyond a 19th century model.

Last month, President Obama went to Mooresville High School in North Carolina and issued a call for action to close our education system's bandwidth deficit. He announced his ConnectED initiative and called on the FCC to bring high-speed Internet to 99% of U.S. students within five years.

Answering the President's call will require modernizing E-Rate.

Fortunately, the Commission began the process of updating E-Rate in 2010, starting with recommendations outlined in the National Broadband Plan to cut red tape and give schools and libraries flexibility to get higher-capacity and more cost-effective broadband services.

But now is the time for a more significant revamp.

Once again, we will roll up our sleeves and do what it takes to ensure that our nation's schools and libraries have the broadband connections needed to meet their current and future requirements. This item is the critical first step.

Today, we propose clear goals and seek comment on a variety of options for modernizing E-rate. This item advocates providing our schools and libraries with affordable access to high-capacity broadband, maximizing the cost effectiveness of purchases, and ensuring the administrative efficiency of E-rate. It also explores how to get better data, and how to use that data to make the best use of the E-rate funds. It inquires about the best ways to distribute funding fairly, considers phasing out support for outdated services and using any savings toward investments in more bandwidth.

The questions posed offer a starting point from which schools and libraries, state and local officials, and all interested stakeholders can share their views with the Commission. We look forward to this conversation and the leveraging of their knowledge and investments in order to establish the foundation for real, positive change in our classrooms and libraries.

I join my colleagues in calling on all stakeholders to work cooperatively to ensure that the culmination of our efforts will be the beginning of a modernized E-rate program that fulfills its promise to our nation's schoolchildren and library patrons.

As I close, I wish to thank Secretary Spellings and Professor Steyer for joining us today, and for all of your work over the past 16 months. The LEAD Commission's blueprint embodies serious thinking about the opportunities education technology puts within the grasp of our Nation's children and teachers and how we can seize those opportunities as a nation.

Dr. Word, thank you for all that you do each day. Often when I think that I have a hard job, I think about my father, a former high school teacher and my sister Jennifer, a middle school teacher in South Carolina. You have the really hard job. For having 700 kids in your care every day, Dr. Word, we owe you much, and many thanks for coming by on one of your few days off.

Thank you to E-rate's supporters on Capitol Hill, in particular Senator Rockefeller and Senator Markey, and former Senator Snowe, who have been champions of E-Rate from its beginning.

Thank you to my fellow Commissioners, in particular Commissioner Rosenworcel whose passionate advocacy for a vital E-Rate goes back to her days as a Congressional staffer. And thank you, of course, to the incredibly dedicated and overworked staff of the Wireline Competition Bureau, and my wireline advisor Rebekah Goodheart, we all truly appreciate the tireless work that went into the presentation of this item.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL

Re: *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184.

This is big—because here comes E-Rate 2.0.

Over the last several months I have had the opportunity to talk about the E-Rate program at length with teachers, librarians, superintendents, school administrators, education technology providers, network engineers, device manufacturers, and content creators. They obviously have different interests. They spend their days in everything from classrooms to cubicles to corner offices. They work with different educational systems in different communities across the country. But they have one thing in common. They believe in the power of E-Rate to bring connectivity to our nation's schools and libraries. They believe it is absolutely essential for digital age opportunity—and digital age success.

I agree. E-Rate is the nation's largest education technology program. Launched seventeen years ago through the vision and leadership of Senator Jay Rockefeller, Senator Olympia Snowe, and then Congressman, now Senator, Ed Markey, E-Rate has helped connect more than 95 percent of classrooms to the Internet.

Impressive! But laurels are not good resting places. Because we are quickly moving from a world where what matters is connectivity to a world where what matters is capacity. Already, year-in and year-out, the demand for E-Rate support is double the roughly $2.3 billion the Commission now makes available annually. Moreover, the agency's own survey indicates that 80 percent of schools and libraries believe that their broadband connections do not meet their current needs.

Let's be honest. Those needs are only going to grow. School administrators are facing tough choices about limited bandwidth in the classroom. How to divvy it up, what grades and classrooms get it, and what programs they can run on it. This means that without adequate capacity our students are going to fall short. They will be unable to realize the full potential of digital learning. That's a serious problem.

But this is not just a matter of getting schools and libraries connected; it's a matter of our global competitiveness. Welcome to the world that is flat. Knowledge, jobs, and capital are going to migrate to places where workers have digital age skills, especially those in science, technology, engineering, and math—or STEM fields. In fact, the Bureau of Labor Statistics tells us that here at home over the next five years we will have over 1 million STEM-related job openings. STEM jobs are growing at a rate three times faster than all other occupations. And even opportunities outside of STEM will be increasingly digitized, and students will need technology skills to become competitive in the worldwide workforce.

But we fail our students if we expect digital age learning to take place at near dial-up speeds. A recent Harris survey found that roughly half of E-Rate schools access the Internet at speeds of 3 Megabits or less. That is too slow for streaming high-definition video and not fast enough for the most innovative teaching tools. Add to this that in the United States, out of 42,000 high schools, only 2100—five percent—offer computer science courses.

Contrast this with efforts underway in some of our world neighbors. They are pouring resources into these subjects, into schools, and connectivity.

For example, in Singapore 100 percent of schools are wired with high-speed broadband. In South Korea, 100 percent of schools are also connected to high-speed broadband. With so much capacity, an effort is underway to transition all students from traditional textbooks to digital readers in 2016. In

Uruguay, through a national program, nearly all primary and secondary schools have been connected and every primary school student has access to a free laptop. Uruguay also has revamped its secondary school science and math curricula adding robotics and national math competitions. In Turkey, the Prime Minister is seeking a provider to supply 10 million tablets to Turkish students by 2015. In Thailand, the government has established a one tablet per child policy in effort to reduce the education gap between the nation's urban and rural children. By the end of next year, the government will have distributed devices to 13 million school children.

For now, we can recognize that these countries are smaller than the United States. They have different cultures. They have different education systems. But we can still take from these examples that improving broadband capacity to schools for digital age learning must be a national priority. If we fracture this effort and leave it to every local school jurisdiction we will miss opportunities for scale and savings. Yet in the end the point is a simple one. Access to adequate broadband is not a luxury—it is a necessity for our next generation to be able to compete. Just like in my day you wouldn't have a classroom without a blackboard, today we shouldn't have a classroom without broadband.

We are at a crossroads. We have a choice. We can wait and see where the status quo takes us and let other nations lead the way. Or we can choose a future where all American students have the opportunity to gain the skills they need to compete, no matter who they are, where they live, or where they go to school.

For my part, I believe that it is time to compete. It is time for E-Rate 2.0. We need to protect what we have already done, build on it, and put this program on a course to provide higher speeds and greater opportunities in the days ahead.

So I am especially pleased that today we begin this process with this rulemaking. In keeping with our tradition here at the FCC, this document is comprehensive. It reflects the diligent work of many dedicated lawyers. It covers a lot of important issues. But there are two issues I believe deserve our immediate focus if we want to see E-Rate 2.0 up and running fast. We need to focus on setting capacity goals and simplifying the application process.

First, E-Rate 2.0 must be built on clear capacity goals. The fact that we have connected so many schools and libraries with E-Rate is good. But the job is not done. A recent survey from Project Tomorrow tells us that only 15 percent of schools believe they have the bandwidth they need for instructional purposes. It means they are unable to use the most up-to-date educational materials. We can fix this with capacity goals.

Furthermore, capacity goals will signal to markets that the Unites States is serious about making digital education a priority. This will yield more opportunities through greater scale for new services, teaching tools, and devices—everywhere. We can use them to facilitate public-private partnership opportunities that will bring education enhancing technology to classrooms in communities across the country.

Today's rulemaking sets out some capacity goals that I have proposed in the past—and fully support. By the 2015 school year, every school should have access to 100 Megabits per 1000 students. Before the end of the decade, every school should have access to 1 Gigabit per 1000 students. Libraries, too, will need access on par with these capacity goals. And this provides more than just scale for content and device providers. Because the spillover effect for this kind of broadband in local communities is substantial. Building Gigabit capacity to anchor institutions like schools and libraries is the ticket to Gigabit cites and the ticket to digital education and economic growth.

To get to these goals, we need to take a hard look at the existing program. We need to collect better data from each of our applicants about what capacity they have and what capacity they need. Then I think we can make adjustments to how we prioritize funding to ensure that schools shorter on capacity get greater access to support.

As part of this hard look, we should phase down the estimated $600 million we currently spend on outdated services like paging and free up those funds for more high-capacity broadband. But growing this program is about growing national infrastructure and enhancing educational opportunity for the next generation. It is a conversation we need to have, because it is where we need to invest now.

Second, we need ideas from stakeholders far and wide about how to simplify the application process. I can tell you from my experiences speaking about E-Rate during the last several months that nothing gets applause like the promise of simplifying the process. I hope we can take a fresh look at how the complexity of our existing system can deter small and rural schools from applying. To this end, in our rulemaking we ask about the feasibility of multi-year applications. This could substantially reduce paperwork and administrative expense. We also ask how to encourage greater use of consortia applications. This could mean greater scale and more cost-effective purchasing. I think these are good ideas. We should be open to others—especially from those who know the challenge of filling out these forms year-in and year-out.

As we move forward with our rulemaking, I think E-Rate 2.0 requires us to think big and reach beyond Washington. We need to hear from educators and technology experts on the front lines in classrooms across the country. Because as President Obama put it in Mooresville, North Carolina last month, we are "at a moment when the rest of the world is trying to out-educate us[.]" But it is within our reach to make sure that our young people have every tool they need to go as far as their talents and dreams and ambitions and hard work will take them.

So let's do something audacious. Let's seize the powerful combination of broadband, plummeting device costs, and increasing opportunity for cloud-based educational content. Call it ConnectED, call it E-Rate 2.0, but let's do it.

Thank you to the Wireline Competition Bureau for your hard work on this rulemaking. Thank you to Professor Jim Steyer and Secretary Margaret Spellings and the LEAD Commission for fostering an important national conversation about the seismic shifts coming in education and technology. Thank you also Principal John Word for your powerful statement today and of course, your work with students every day.

Finally, thank you to Chairwoman Clyburn and Commissioner Pai for engaging with me on this issue. I look forward to working together to reboot, reinvigorate, and recharge the E-Rate program.

STATEMENT OF
COMMISSIONER AJIT PAI

Re: *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184.

Sixteen years ago, the FCC established the Schools and Libraries Universal Support Mechanism, or E-Rate program, to bring advanced services to schools and libraries across America.[1] In many ways, the program has been a success. Internet access in public schools has almost tripled since E-Rate's creation, and speeds have grown alongside availability.[2] Today, schools across the country depend on E-Rate for connectivity.

But like all federal programs, E-Rate has had its share of difficulties. Most of those problems stem from the program's complexity and lack of transparency. The application process is too complicated for schools and libraries. Some give up and don't bother to apply; others apply but get tangled in red tape and don't receive their money until years later. The complicated scheme for distributing funds causes many other challenges. Money isn't distributed fairly among schools. Schools with higher discounts stand at the front of the funding line and have an incentive to overspend, leaving less for everyone else. And funds for long-distance telephone calls and bandwidth to bus garages are given priority over funds for connecting classrooms. Meanwhile, we at the FCC can't get enough information to oversee the program. Three years ago, the National Broadband Plan observed that the Commission doesn't have the means to identify "the different types or capacities of broadband services that are supported through the E-Rate program."[3] We can see the forest—say, whether funds were spent on telecommunications services or basic maintenance—but we can't see the trees when it comes to specific schools and particular spending practices. In short, as the E-Rate program has evolved over the years, we have lost sight of what's important. A program meant to help kids has instead become too heavily focused on bureaucracy.

But that's not how it has to be. This morning, we begin the process of reinvigorating, revitalizing, and revamping E-Rate. I'm pleased to support today's Notice for Proposed Rulemaking because it seeks comment on a wide variety of ideas that hold the potential to transform the program. Earlier this week, I shared my vision for a student-centered E-Rate program at the American Enterprise Institute.[4] I'm grateful that my colleagues agreed to seek comment in this item on the plan I outlined.

What is that plan? Here's an abridged version. In order to create a student-centered E-Rate program, I think that we need to do four things. *First*, we need to simplify the application process. Let's make it easy for all schools (and libraries) to apply for the program. Under my plan, they would only need to fill out two forms, and the initial application form would only be one page. Less red tape means fewer delays and more predictability. Schools also wouldn't need to rely so heavily on outside help, which would mean more money to spend on kids.

Second, we need to focus funding on next-generation technologies for kids. Connecting classrooms should no longer be the program's lowest priority. Let's get rid of the current priority

[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997).

[2] *See* U.S. Department of Education, Institute of Education Sciences, Internet Access in U.S. Public Schools and Classrooms: 1994–2005, at 4–5 (2006), *available at* http://go.usa.gov/jWpH.

[3] FCC, National Broadband Plan at 256 (2010), *available at* http://go.usa.gov/jWpV.

[4] *See* Remarks of Commissioner Ajit Pai, "Connecting the American Classroom: A Student-Centered E-Rate Program," American Enterprise Institute (July 16, 2013), *available at* http://go.usa.gov/jbD3.

one/priority two system. Place all eligible services on one consolidated menu and let local schools pick the services that best meet their local needs.

That also means no more funding for stand-alone telephone service. In the last few years, the program has committed about $600 million annually to voice telephony services—more than a quarter of its annual budget. But in 2013, E-Rate should be about funding next-generation infrastructure that will facilitate digital learning, not subsidizing long-distance phone calls. States and localities are of course free to spend their own money on that. But federal funds should be focused on connecting kids in the classroom. Congress itself demanded as much when it instructed that the E-Rate program be focused on providing "advanced . . . services" to schools and libraries.[5]

Third, we need to distribute E-Rate funding more fairly. As the current program stands, the savviest of schools walk away with the lion's share of funding while students attending other schools that need funding are deprived year after year. We need to retire the complicated discount matrix that distributes money in a haphazard manner and replace it with a simple student-centered system. Each school should get funding based on its number of students. Rural students should receive more money than urban students, and low-income students should receive more money than their wealthier counterparts. And when kids change schools, they should take their funding allocation with them. The money should follow the child.

In line with recent reforms to the rural Healthcare Connect Fund, we should also institute a three-to-one matching requirement for local schools. For every three dollars provided by E-Rate, the local school should be required to spend one. With real skin in the game and a school-by-school budget, we will end the "more you spend, more you get" phenomenon that has led to waste, fraud, and abuse. And we will encourage more prudent spending.

Now, if we switch to a simplified-allocation approach, some might wonder how very small schools or schools in remote areas would fare. Well, I believe that universal service means what it says: service for everyone. Its promise extends from city schools with thousands of students to villages in northern Alaska with just a few. This is why my plan includes a funding floor for small schools and extra money for schools in remote areas. Indeed, a student-centered E-Rate program would treat rural America far better than the status quo. In 2011, for example, South Dakota received 30% less E-Rate funding per student than New Jersey, despite the fact that South Dakota is far more rural and has a higher poverty rate than New Jersey. That would change under my plan.

Fourth, we need to increase transparency. By publishing all funding and spending decisions on a centralized, easy-to-access website, we could allow anyone to check on how any school in America was spending its federal funds. That way, the whole community—parents, school board members, journalists, and government watchdogs—can be involved in effective oversight to make sure that money is being used to actually help kids.

This plan would fulfill E-Rate's statutory mission of bringing advanced services to schools and libraries across this country. And it would do all of this without collecting an extra dime.

On that last point: I should say a word about the size of the E-Rate program. I don't believe that expanding the program is the same as reform. Instead, what would make for a new E-Rate program is some old-fashioned fiscal responsibility. Each year, we have hundreds of millions of dollars available for

[5] 47 U.S.C. § 254(b)(6).

the E-Rate program that we aren't spending—over $800 million last year alone. As a result of this "red-tape funding gap," as I've called it, billions have been collected from the American people and have been sitting in the E-Rate account, for years in some cases. And we're spending hundreds of millions of dollars on outdated services. If we simplify the program and focus on the right priorities, we can do a lot more with the money we are already collecting. Indeed, under the first year of my plan, we should be able to spend $1 billion more on next-generation technologies for kids without collecting more money from the American people. And as we debate expanding the program's budget, let's also remember this: The Universal Service Fund contribution factor has already increased from 9.5% to 15.1% in just the last four-and-half years.[6] That's an increase of almost 60%. Over that same period, median household income has fallen each year. We cannot ask American consumers to bear an even heavier burden when they pay their monthly phone bills, especially when well-considered structural reforms would obviate the need for us to pose the question.

As I see it, we stand this morning at a crossroads with respect to the future of the E-Rate program, and this NPRM tees up some fundamental questions. Will we simplify the application process? Will we provide flexibility so that different communities can meet their different needs? Will we rectify the unfair distribution of E-Rate funding? Will we end the incentives for wasteful spending? Will we practice fiscal responsibility and use more wisely the funds that we are already collecting? Will we measure educational outcomes and performance in order to better manage the program? In short, will we be creative and bold?

My approach is to embrace the spirit of our 35th President. To borrow from President Kennedy, we should answer yes to each of these questions, "not because they are easy, but because they are hard," because the goal of linking technology and education "will serve to organize and measure the best of our energies and skills, because that challenge is one that we are willing to accept, one we are unwilling to postpone, and one which we intend to win."[7] When it comes to our children's education, we should not be afraid of the hard choices. We should not tinker around the edges. We should shoot for the moon. And we should aim to win.

If we receive the input we need from educators, librarians, parents, and service providers, and if we make the right choices, a student-centered E-Rate program is now within our grasp. I hope we can make it happen by the time our children return to school in the fall of 2014.

This proposed rulemaking is a major undertaking, and it would not have been possible without our excellent staff in the Wireless Competition Bureau. A special thanks to Julie Veach, James Bachtell, Rebekah Bina, Bryan Boyle, Dana Bradford, Katori Brown, Regina Brown, Soumitra Das, Chas Eberle, Trent Harkrader, Christopher Holliman, Lisa Hone, Mike Jacobs, Carol Mattey, Erica Myers, Mark Nadel, Anita Patankar-Stoll, Naomi Riley, Kim Scardino, Michael Steffen, Cara Voth, and Adrian Wright for all their hard work on administering the E-Rate program and especially for drafting this item.

I would like to conclude by sharing an e-mail that I received on Wednesday from an IT specialist for a rural California school district after I introduced my proposals. She expressed her support and told me: "minimizing the complexity of the process as well as increasing the flexibility of how the funds are

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[6] *Compare Proposed First Quarter 2009 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 08-2706, *with Proposed Third Quarter 2013 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 13-1361 (OMD 2013).

[7] Remarks of President John F. Kennedy, "Moon Speech," Rice University (Sept. 12, 1962), *available at* http://go.usa.gov/jWpj.

spent will make a big difference to all students." That's exactly what our goal should be in this endeavor: to make a difference for our kids. And that's why I look forward to working together with my FCC colleagues and administrators, teachers and technologists, parents and others to put in place a student-centered E-Rate program.