105th Congress 2d Session	SENATE	REPORT 105–226

INTERNET FILTERING SYSTEMS

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

on

S.1619

JUNE 25, 1998.—Ordered to be printed

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Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1619]

The Committee on Commerce, Science, and Transportation, to which was referred S. 1619, "A Bill to direct the Federal Communications Commission to study systems for filtering or blocking matter on the Internet, to require the installation of such a system on computers in schools and libraries with Internet access, and for other purposes", having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to protect American children from exposure to harmful material while accessing the Internet from a school or library.

BACKGROUND AND NEEDS

Congressional Concern

Pornography and other material harmful to minors is widespread on the Internet. According to Wired magazine, there are currently some 28,000 adult Web sites promoting hard-and soft-core pornography. Other Web sites depict graphic violence or provide how-to instructions on drug or bomb-making. Still other sites allow Internet users to access online highstakes gambling. Furthermore, sexual predators are using the Internet to entice and traumatize their victims through the use of Internet chat rooms and the transmission of pornographic pictures and materials.

The danger posed by this material is particularly acute for the nation's children, who are unable to guard themselves with the sophistication of an adult. The Milwaukee Journal Sentinel reports how a 39-year-old man, residing in Florida, used Internet chat

rooms to lure 14 and 15-year-old girls, living as far away as Pennsylvania and Wisconsin, to hotel rooms where he sexually assaulted them. The New York Daily News tells how a 14-year-old boy was repeatedly raped by an older man he met in a chat room on America Online. A mother recounts in the Ladies Home Journal how her 13-year-old son suffered first and second degree burns over more than 25 percent of his body after a failed attempt to manufacture a bomb from instructions found on an Internet Web site. In addition, first-hand accounts of educators, parents, and civic groups attest to the harm caused to children by the easy access to Internet pornography, including child pornography, bestiality, sadomasochism, and torture.

There is currently little or no protection for children from harmful material on the Internet. While searching the Internet using innocuous words, such as "teen," "nurse," or "cheerleader," children can inadvertently run into adult, pornographic Web sites. Although some of these sites require a credit card or adult access number to gain access to sexual material, many display pornographic advertisements and sample pictures to entice viewers to adult-rated sites. These pornographic images are readily available to children without the need to present any verification of their age.

Existing Solutions

There is currently no limit on what may be placed on the Internet. In 1996, the Congress passed the Communications Decency Act ("CDA") as part of the Telecommunications Act of 1996.[1] The CDA sought to prohibit the transmission of obscene or indecent messages to minors through the Internet by imposing criminal sanctions on the sender, unless the sender took good faith actions to restrict access by requiring certain designated forms of age verification.[2] The CDA was signed into law by President Clinton on February 8, 1996, and was immediately challenged as unconstitutional. On June 11, 1996, a three-judge District Court entered a preliminary injunction against enforcement of the challenged provisions of the CDA.[3] The case was appealed to the Supreme Court. On June 26, 1997, the Supreme Court agreed with the District Court that the CDA abridged the freedom of speech protected by the First Amendment.[4] The Court found that speech placed on the Internet deserves the highest level of protection under the First Amendment and that, by placing broad prohibitions on what could be put on the Internet, the CDA imposed an unacceptably heavy burden on protected speech and was not narrowly tailored to meet the government's interest in protecting children.

Filtering or blocking what comes out of the Internet is an alternative method of protecting children from harmful material. Filtering or blocking systems restrict what the user may receive over the Internet, rather than what a speaker may put on to the Internet. Several such systems are currently commercially available.[5] There are two main methods employed by filtering or blocking systems to

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[1] See Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).
[2] See Communications Decency Act of 1996, 47 U.S.C. § 223(a) et seq. (Supp. 1997).
[3] See ACLU v. Reno, 929 F.Supp. 824 (E.D. Pa. 1996).
[4] See Reno v. ACLU, 521 U.S. — — (1997) (slip. op.)
[5] Some of the more commonly available examples are CyberPatrol by Microsystems Software, CYBERsitter by Solid Oak Software, Net Nanny by Net Nanny Ltd., and SurfWatch by Spyglass.

restrict minors' access to harmful material. One method restricts access based on the appearance of key words or phrases in the text of Internet material. For example, the user can set the system to block material containing the key word "bestiality" or "teen sex." Certain systems also prevent the transmission of personal data, such as addresses, phone numbers, and credit card numbers. The other method restricts access to sites previously found to be inappropriate. For example, the filtering or blocking system contains a database of sites found to contain objectionable material, such as sexually explicit material, excessive violence, hate speech, gambling, or illicit drug use, and prevents users from accessing those sites. This list is continuously updated by the company which provides the filtering or blocking system.

While neither method is perfect, both provide reasonable means of protecting children from the majority of harmful material on the Internet. These systems promise to become even more effective in the future. Indeed, the Supreme Court in Reno v. ACLU noted that "currently available user-based software suggests that a reasonably effective method by which parents can prevent their children from accessing sexually explicit and other material which parents may believe is inappropriate for their children will soon be widely available." (emphasis omitted).[6] However, these systems can be effective only if they are actually used.

Approach of S. 1619

Although the best protection for children from harmful online content is close supervision by their parents, this supervision is not possible when children use the Internet while away from home in schools and libraries. Therefore, as schools and libraries become increasingly connected to the Internet, it is incumbent on them to assume a supervisory role in protecting children from harmful material encountered on the Internet.

S. 1619 is intended to ensure that schools and libraries will effectively participate in the supervision of children's Internet use by taking the steps necessary to prevent children from being exposed to harmful online content. As the use of the Internet by schools and libraries expands through the receipt of federal universal service assistance, S. 1619 seeks to make sure that schools and libraries will have the tools necessary to protect children from material inappropriate for their age or for the school or library environment.

Constitutional Analysis

S. 1619 seeks to protect children from harmful material in a way that is least intrusive on the self-governance of schools and libraries, and on the right of adults to engage in constitutionally-protected speech.

Spending Power

The requirements of S. 1619 attempt to balance the right of States to administer their schools and libraries with the power of Congress to see that federal funds are appropriately used. The universal service assistance program is a form of subsidy undertaken as part of the spending power of Congress. Although the Supreme Court has recently affirmed that "[education is an area] where

[6] Reno v. ACLU, 521 U.S. at — — .

States historically have been sovereign,"[7] Congress may impose reasonable conditions on the receipt of federal funds or subsidies as part of its spending power.[8] These conditions must be stated clearly and unambiguously.[9] Additionally, the conditions cannot be so coercive as to become compulsive regulation of powers given to the States under the Constitution, nor can the conditions violate any provisions of the Constitution.[10]

The Committee has good reason to believe that the filtering or blocking conditions set on the receipt of universal service assistance to schools and libraries are constitutional. The condition of protecting minors from inappropriate Internet matter through the installation of filtering or blocking systems is reasonably related to the purpose of providing schools and libraries with Internet services to fulfill their educational mission.[11] The certification requirements contained in S. 1619 provide clear notice of the conditions placed on the acceptance of the federal funds. The universal service assistance only provides a discount on the acquisition of telecommunication services; the school or library must still pay for a portion of the acquisition. Thus, ineligibility to receive a discount on services does not rise to the level of impermissible coercion by which failure to meet a condition results in the forfeiture of all funding.[12] Furthermore, S. 1619 intentionally leaves not only the selection of the particular filtering or blocking system, but also the determination of what material constitutes "matter deemed to be inappropriate for minors," to the local school and library authorities.

In two recent cases, Rust v. Sullivan, 500 U.S. 173 (1991) and Rosenberger v. Rector and Visitors of the University of Virginia, 515 U.S. 819 (1995), the Supreme Court has examined the relationship of the First Amendment and the government's right to subsidize speech. In Rust, the Court upheld a governmental prohibition on federally funded family planning projects from advocating, promoting, or advising on abortion. The Court recognized that when the government spends public funds to promote a particular policy, the government is entitled to say what it wishes.[13] Furthermore, when the government disburses public funds to private entities to promote a particular policy, "it may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted . . . ."[14] In Rosenberger, however, the Court held that a University's refusal to reimburse the publication expenses of a Christian student newspaper, while reimbursing the expenses of other student publications, was unconstitutional under the First

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[7] United States v. Lopez, 514 U.S. 549, 564 (1995).

[8] See New York v. United States, 505 U.S. 144 (1992); South Dakota v. Dole, 483 U.S. 203 (1987).

[9] See Pennhurst State Sch. and Hosp. v. Halderman, 451 U.S. 1 (1981).

[10] See 483 U.S. at 209-11.

[11] See 47 U.S.C. § 254(h)(1)(B) (stating that universal service assistance be provided to educational providers and libraries "for educational purposes.")

[12] Compare South Dakota v. Dole, 483 U.S. 203 (1987) (withholding of ten percent of federal highway funds of States that fail to implement a 21-year old minimum drinking age is an incentive, not coercion) with Commonwealth of Virginia Dept of Educ. v. Riley, 106 F.3d 559 (4th Cir. 1997)(en banc) (holding that the withholding of the entirety of a state's sixty million dollar federal education grant due to a failure to meet a condition affecting 126 students was impermissible coercion).

[13] See Rosenberger, 515 U.S. at 833 (citing Rust, 500 U.S. at 194).

[14] See id. (citing Rust, 500 U.S. at 196-200)

Amendment. Although the Court affirmed that the State may make content-based spending decisions,[15] the Court determined that the University was not the speaker or the subsidizer of the message. Instead, the Court found that the University expended the funds to encourage a diversity of views from private speakers, and therefore was required to maintain viewpoint neutrality in its funding decisions.[16] Thus, the key factors appear to be the extent that the government or its agent is the speaker or subsidizer of the message, and to what extent the government has opened the forum to outside, private speakers.[17]

S. 1619 would pass the analyses used in Rust and Rosenberger. Because the Internet material is to be used in the schools as part of their curriculum, the government, through the school, remains the speaker, or at least the subsidizer of the Internet speech. Through universal service assistance the government is seeking to promote a policy of connecting schools and libraries to the Internet for educational purposes. The introduction of inappropriate material, such as pornography, would tend to "garble" and "distort" the educational message the government is seeking to promote. The required installation of filtering or blocking systems is viewed as an appropriate measure to ensure that the government's message is not distorted. If the school or library strongly desires to provide unfiltered access to the Internet, it is free to do so with its own funds, or through other governmental programs. Furthermore, even assuming that the school and library uses the Internet to encourage a diversity of views of private speakers, there is nothing in S. 1619 that necessitates a violation of viewpoint neutrality. S. 1619 seeks to filter or block material based on its inappropriate content, not based on any particular viewpoint. Thus, S. 1619 still meets the constitutional requirements of the spending power, as set forth in Rust and Rosenberger.

First Amendment

S. 1619 is intended to protect children from the harmful effects of inappropriate material consistent with the freedom of speech guaranteed under the First Amendment. Under First Amendment jurisprudence, courts have traditionally examined the forum in which the speech is conducted to determine what, if any, legitimate restrictions may be placed on speech. Additionally, any governmental restriction must be examined for overbreadth and vagueness, in order to ensure that the regulation provides reasonable precision of what speech is to be limited.

Forum Analysis

According to the forum analysis used by the Supreme Court, an elementary or secondary school is a nonpublic forum in which the government may prescribe content-based restrictions on subject matter and speaker identity, so long as the restrictions are reasonable in light of the purpose of the forum and are viewpoint neu-

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[15] "[W]hen the State is the speaker, it may make content-based choices. When the University determines the content of the education it provides, it is the University speaking, and we have permitted the government to regulate the content of what is or is not expressed when it is the speaker or when it enlists private entities to convey its own message." Rosenberger, 515 U.S. at 833.

[16] See id. at 834.

[17] Forum analysis is more fully discussed infra., at II.A.

tral.[18] Although students do not "shed their constitutional rights to freedom of speech . . . at the school house gate,"[19] the rights of students in public elementary or secondary schools are not coextensive with the rights of adults.[20] Thus, the government and its agents have considerable discretion to control what goes on in their schools, so long as their actions are reasonable and viewpoint neutral.

S. 1619 does not require any school to filter or block material based on the viewpoint expressed. It only requires schools to filter or block material because the content of that material is inappropriate for minors in a school setting. In a different context, a court has already upheld a similar policy instituted by a school district that prohibited the showing of films rated "R" by the Motion Picture Association of America ("MPAA").[21] The court found that the school district's reliance on the rating standards of the MPAA was a reasonable way of preventing children from being exposed to films containing excessive sex, violence, or profane language.[22]

A public library, however, is considered to be a public forum for the acquisition of knowledge, and any regulation affecting this purpose must pass strict constitutional scrutiny.[23] Strict scrutiny requires the government to show that the restriction on speech serves a compelling governmental interest and is narrowly tailored to achieve that interest, in such a way least burdensome to constitutionally-protected speech.[24]

Courts have repeatedly found that the protection of minors from harmful materials is a compelling governmental interest.[25] S. 1619 seeks to protect children from harmful materials by filtering or blocking inappropriate material in schools and libraries. According to Supreme Court precedent, this objective would be deemed a compelling governmental interest.

Overbreadth and Vagueness

S. 1619 is also narrowly tailored to achieve this compelling governmental interest. It does not impose any burden on what materials adults may place on to the Internet. In Reno v. ACLU, the Supreme Court suggested that the use of filtering or blocking systems in order to regulate what comes out of the Internet is a more narrowly-tailored method of protecting children from harmful Internet material than an attempt to criminalize what is placed on the Internet.[26] Much of the material sought to be filtered or blocked consists of obscenity or child pornography, neither of which is accorded First Amendment protection.[27] Furthermore, by requiring that only one computer with Internet access in a library needs to employ a filtering or blocking system, S. 1619 does not prevent

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[18] See Perry Educ. Assoc. v. Perry Local Educator's Assoc., 460 U.S.. 37 (1983).
[19] Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969).
[20] See Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988).
[21] See Borger v. Bisciglia, 888 F.Supp. 97 (E.D. Wisc. 1995).
[22] See id. at 100-1.
[23] See Kreimer v. Bureau of Police for Morristown, 958 F.2d 1242 (1992).
[24] See Sable Communications of Cal., Inc. v. F.C.C., 492 U.S. 115, 126 (1989).
[25] See Sable, supra, note 24; New York v. Ferber, 458 U.S. 747, 756-7 (1982); F.C.C. v. Pacifica Found., 438 U.S. 726, 749 (1978); Ginsberg v. New York, 390 U.S. 629, 639 (1968).
[26] See Reno v. ACLU, 521 U.S. at — —.
[27] See Miller v. California, 413 U.S. 15 (1973) (obscenity); Roth v. United States, 354 U.S. 476 (1957) (obscenity); Osborne v. Ohio, 495 U.S. 103 (1990) (child pornography); New York v. Ferber, 458 U.S. 747, 756-7 (1982) (child pornography).

adults from engaging in constitutionally-protected material in public libraries.

The installation of filtering or blocking systems is the least restrictive means of achieving the government's compelling interest. A "standard of use" policy, by itself, would be insufficient to protect children from harmful Internet material. A "standard of use" policy relies on the affirmative pledge of students not to actively seek harmful material on the Internet. It does not address the harm caused to children by the inadvertent access to harmful materials through the use of innocuous search terms, such as "cheerleader," or "nurse." A child may be traumatized by exposure to hard-core pornography using innocuous search terms, even though the child did not violate the school's standard of use policy by intentionally seeking out inappropriate material. In addition, a student who ignores the standard of use policy may expose other children to harmful material found on the Internet at the school or library. Although the student would be subject to disciplinary action after the fact, the damage would be already done to the other children exposed to the harmful material. Thus, a "standard of use" policy is not an alternative, less-restrictive means of achieving the compelling governmental interest in protecting children from harmful Internet material.

Under S. 1619, the government is expressly banned from prescribing what material constitutes "matter deemed to be inappropriate for minors." It is expected that the school and library authorities that install the filtering or blocking systems will clarify and make concrete this standard according to their local community's norms. S. 1619 places the determination of what material is inappropriate for minors in the hands of the local school or library authorities, which are best equipped to make that determination based on their knowledge of the local community and their traditional role of acting in loco parentis.

Schools and libraries can tailor the filtering or blocking systems to meet the standards of their local communities. Authorities can select what key words and phrases, if any, they wish to filter or block. They are able to add and delete Web sites to the database of unapproved sites. They can select system providers whose standards of filtering most match the standards of the local community. Finally, they can temporarily turn off the filtering or blocking system when it is appropriate to do so and the governmental interest would still be met.

LEGISLATIVE HISTORY

Senator McCain, the chairman of the Committee on Commerce, Science, and Transportation, introduced S. 1619 on February 9, 1998. Senators Hollings, Coats, Murray, Stevens, Inouye, Hutchison, Kohl, Bond, and Abraham are cosponsors.

The full Committee held a hearing on Internet indecency on February 10, 1998. The hearing consisted of testimony from Senator Coats and two panels of speakers, which represented the interests of law enforcement, the Internet adult entertainment industry, schools, and Internet industry associations. Witnesses included an undercover police detective assigned to investigate child pornography and child sexual exploitation on the Internet, the president

of a major commercial online supplier of adult entertainment, the coordinator of instructional technologies from an Arizona school district, and representatives of Internet industry associations.

On March 12, 1998, in open executive session the Committee ordered the bill to be reported favorably without amendment.

SUMMARY OF MAJOR PROVISIONS

As reported, S.1619 would: (1) require schools seeking universal service assistance to certify that they have selected and installed a system to block or filter material available on the Internet which is deemed to be inappropriate for minors; (2) require libraries seeking universal service assistance to certify that at least one computer with Internet access employs a system to filter or block matter deemed to be inappropriate for minors; and (3) specify that the determination of what constitutes material deemed to be inappropriate for minors shall be made locally by the school or library seeking certification.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

[Insert CBO letter, attached as page(s) —— through ——]

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

A precise number of schools and libraries applying for universal service assistance under Section 254(h)(1)(B) is not available at this time. As of June 1998, the Schools and Libraries Corporation had received about 45,000 applications. Due to the permissive eligibility standards envisioned by Section 254(h)(1)(B), it is conceivable that a majority of schools and libraries will apply for some sort of universal service assistance. There are currently about 97,000 public elementary and secondary schools in the United States, which are potentially eligible for assistance. In addition, there are currently about 16,000 private elementary and secondary schools in the United States with an endowment of less than $50 million that are also potentially eligible for assistance. There are an estimated 9,000 public libraries in the United States.

ECONOMIC IMPACT

This bill will add marginally to the cost of connecting to the Internet for schools and libraries. Filtering and blocking systems are included in the categories of universal service providers covered by Section 254. Under the need-based matrix, universal service as-

sistance will provide up to a 90% discount on the purchase price of these systems. The remainder will have to be incurred by the schools or libraries. The cost of these systems is anticipated to be minimal, and is not expected to have a significant economic impact on the schools or libraries installing them.

PRIVACY

Because the filtering or blocking system is entirely user-based, there will be no impact on personal privacy as a result of this legislation. In addition, because sites are blocked before children have access to them, there will be less need to trace where children have been on the Internet in order to enforce a "standard of use" policy.

PAPERWORK

Schools and libraries applying for universal service assistance already are required to fill out application forms for the Federal Communications Commission (FCC) in order to qualify for the program. Implementation of this bill will add an additional certification requirement to this application. It is intended that this certification requirement will be minimal, and will consist of no more than an affirmation that the school or library has met the requisite certification requirement. In the case of a library changing its filtering or blocking system, or discontinuing the use of such as system after installation, an additional notification will have to be made to the FCC.

SECTION-BY-SECTION ANALYSIS

Section 1. No universal service for schools or libraries that fail to implement a filtering or blocking system for computers with Internet access

This is the only section of the bill. Section 1 (a) adds a new subsection (l) to section 254 of the Communications Act of 1934 (all section references are to the Communications Act of 1934, unless otherwise noted).

New section 254(l)(1) sets a general condition that no universal service assistance can be provided to any elementary or secondary school, or any library, without meeting the certification requirements of new subsections (l)(2) and (l)(3).

New section 254(l)(2) requires that, before receiving universal service assistance, an elementary or secondary school must certify to the FCC that it has: (A) selected a system for computers with Internet access to filter or block matter deemed to be inappropriate for minors; and (B) installed, or will install as soon as it obtains computers with Internet access, a system to filter or block such matter. This certification can be made by the school board or other authority with responsibility for administration of the school.

New section 254(l)(3) requires that, before receiving universal service assistance, a library that has a computer with Internet access must certify to the FCC that, on one or more of its computers with Internet access, it employs a system to filter or block matter deemed to be inappropriate for minors. If a library that makes a certification changes the system it employs or ceases to employ any such system, it must notify the FCC within 10 days after implementing the change or ceasing to employ the system.

The phrase "a system to filter or block" is intended to provide maximum discretion to the certifying authority in its selection of such a system. The selection is not intended to be limited to software-based systems, but it is intended to encompass all technologies available now and as technology develops. The Committee does not intend to impose the certification requirement on computers that are accessed solely by adults, such as school nurses, or library or school staff, administrators, and teachers. The Committee anticipates that a library possessing only one computer with Internet access will enable adults to turn off the filtering or blocking system during use by adults, in order to preserve the ability of adults to engage in speech constitutionally protected for adults.

New section 254(l)(4) provides that the determination of what matter is inappropriate for minors shall be made by the school, school board, library, or other authority responsible for making the required certification. No agency or instrumentality of the United States Government may: (A) establish criteria for making that determination; (B) review the determination made by the certifying school, school board, library, or other authority; or (C) consider the criteria employed by the certifying school, school board, library, or other authority in the administration of universal service assistance.

Section 1(b) of the bill consists of conforming changes to the text of existing section 254(h)(1)(B) to take into account the certification requirements of the new section 254(l).

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

SEC. 254. [47 U.S.C. 254] UNIVERSAL SERVICE.

(a) PROCEDURES TO REVIEW UNIVERSAL SERVICE REQUIREMENTS.—

(1) FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE.—Within one month after the date of enactment of the Telecommunications Act of 1996, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) and this section, including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations. In addition to the members of the Joint Board required under section 410(c), one member of such Joint Board shall be a State-appointed utility consumer advocate nominated by a national organization of State utility consumer advocates. The Joint Board shall, after notice and opportunity for public comment, make its recommendations to the Commission 9 months after the date of enactment of the Telecommunications Act of 1996.

(2) COMMISSION ACTION.—The Commission shall initiate a single proceeding to implement the recommendations from the

Joint Board required by paragraph (1) and shall complete such proceeding within 15 months after the date of enactment of the Telecommunications Act of 1996. The rules established by such proceeding shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.

(b) UNIVERSAL SERVICE PRINCIPLES.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) QUALITY AND RATES.—Quality services should be available at just, reasonable, and affordable rates.

(2) ACCESS TO ADVANCED SERVICES.—Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) ACCESS IN RURAL AND HIGH COST AREAS.—Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.—All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.—There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.—Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) ADDITIONAL PRINCIPLES.—Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

(c) DEFINITION.—

(1) IN GENERAL.—Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services—

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.

(2) ALTERATIONS AND MODIFICATIONS.—The Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms.

(3) SPECIAL SERVICES.—In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h).

(d) TELECOMMUNICATIONS CARRIER CONTRIBUTION.—Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis. Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.

(e) UNIVERSAL SERVICE SUPPORT.—After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.

(f) STATE AUTHORITY.—A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

(g) INTEREXCHANGE AND INTERSTATE SERVICES.—Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services

to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

(h) TELECOMMUNICATIONS SERVICES FOR CERTAIN PROVIDERS.—

(1) IN GENERAL.—

(A) HEALTH CARE PROVIDERS FOR RURAL AREAS.—A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State. A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.

(B) EDUCATIONAL PROVIDERS AND LIBRARIES.—[All telecommunications] *Except as provided by subsection (l), all telecommunications* carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. A telecommunications carrier providing service under this paragraph shall—

(i) have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or

(ii) notwithstanding the provisions of subsection (e) of this section, receive reimbursement utilizing the support mechanisms to preserve and advance universal service.

(2) ADVANCED SERVICES.—The Commission shall establish competitively neutral rules—

(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries; and

(B) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.

(3) TERMS AND CONDITIONS.—Telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.

(4) ELIGIBILITY OF USERS.—No entity listed in this subsection shall be entitled to preferential rates or treatment as required by this subsection, if such entity operates as a for-profit business, is a school described in paragraph (5)(A) with an endowment of more than $50,000,000, or is a library or library consortium not eligible for assistance from a State library administrative agency under the Library Services and Technology Act.

(5) DEFINITIONS.—For purposes of this subsection:

(A) ELEMENTARY AND SECONDARY SCHOOLS.—The term "elementary and secondary schools" means elementary schools and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(B) HEALTH CARE PROVIDER.—The term "health care provider" means—

(i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;

(ii) community health centers or health centers providing health care to migrants;

(iii) local health departments or agencies;

(iv) community mental health centers;

(v) not-for-profit hospitals;

(vi) rural health clinics; and

(vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi).

(C) PUBLIC INSTITUTIONAL TELECOMMUNICATIONS USER.—The term "public institutional telecommunications user" means an elementary or secondary school, a library, or a health care provider as those terms are defined in this paragraph.

(i) CONSUMER PROTECTION.—The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.

(j) LIFELINE ASSISTANCE.—Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.

(k) SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.—A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Com-

mission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

(l) IMPLEMENTATION OF A FILTERING OR BLOCKING SYSTEM.—

(1) IN GENERAL.—No services may be provided under subsection (h)(1)(B) to any elementary or secondary school, or any library, unless it provides the certification required by paragraph (2) or (3), respectively.

(2) CERTIFICATION FOR SCHOOLS.—Before receiving universal service assistance under subsection (h)(1)(B), an elementary or secondary school (or the school board or other authority with responsibility for administration of that school) shall certify to the Commission that it has—

(A) selected a system for computers with Internet access to filter or block matter deemed to be inappropriate for minors; and

(B) installed, or will install as soon as it obtains computers with Internet access, a system to filter or block such matter.

(3) CERTIFICATION FOR LIBRARIES.—Before receiving universal service assistance under subsection (h)(1)(B), a library that has a computer with Internet access shall certify to the Commission that, on one or more of its computers with Internet access, it employs a system to filter or block matter deemed to be inappropriate for minors. If a library that makes a certification under this paragraph changes the system it employs or ceases to employ any such system, it shall notify the Commission within 10 days after implementing the change or ceasing to employ the system.

(4) LOCAL DETERMINATION OF CONTENT.—For purposes of paragraphs (2) and (3), the determination of what matter is inappropriate for minors shall be made by the school, school board, library or other authority responsible for making the required certification. No agency or instrumentality of the United States Government may—

(A) establish criteria for making that determination;

(B) review the determination made by the certifying school, school board, library, or other authority; or

(C) consider the criteria employed by the certifying school, school board, library, or other authority in the administration of subsection (h)(1)(B).

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