

52. *It is further ordered* That GCI's Petition for Clarification of the *Tariff Forbearance Order* is granted.

53. *It is further ordered* That TTS's Motion for Acceptance of Petition for Reconsideration is hereby *denied*, and TTS's Petition for Reconsideration is hereby *dismissed*.

54. *It is further ordered* That TTS's Motion to Accept Supplement to Petition for Reconsideration is hereby *denied*, and TTS's Supplement to Petition for Reconsideration is hereby *dismissed*.

55. *It is further ordered* That the United Homeowners Association and United Seniors Health Cooperative's Petition for Rulemaking is hereby *denied*.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97-28613 Filed 10-28-97; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 96-45; FCC 97-380]

#### Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this Order, we adopt a filing window period that begins on the date that the Schools and Libraries Corporation and the Health Care Corporation begin to receive applications for support. We also conclude that the administrative corporations will determine the length of the window and resolve other administrative issues necessary to implement our decision to adopt a window filing period consistent with our guidance set forth below. Therefore, we amend our rules to implement this change. In addition, we delegate authority to the Chief, Common Carrier Bureau to resolve unanticipated technical and operational issues relating to the new universal service mechanisms that may arise in the future.

**EFFECTIVE DATE:** All policies and rules adopted herein shall be effective November 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** Valerie Yates, Legal Counsel, Common Carrier Bureau, (202) 418-1500, or Sheryl Todd, Common Carrier Bureau, (202) 418-7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Report and Order adopted on October 10, 1997 and released on October 14, 1997, including changes made in an erratum released October 15, 1997. The full text of the Third Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. Pursuant to the Telecommunications Act of 1996, the Commission released a Notice of Proposed Rulemaking and Order Establishing Joint Board, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 on March 8, 1996 (61 FR 10499 (March 14, 1996)), a Recommended Decision on November 8, 1996 (61 FR 63778 (December 2, 1996)), a Public Notice on November 18, 1996 (61 FR 63778 (December 2, 1996)), and a Report and Order that was adopted on May 7, 1997 and released on May 8, 1997 (62 FR 32862 (June 17, 1997)) implementing rules for §§ 254 and 214(e) of the Act relating to universal service. Also pursuant to the Telecommunications Act of 1996, the Commission released a Report and Order in CC Docket 97-21 on July 18, 1997 (62 FR 41294 (August 1, 1997)). The Common Carrier Bureau released a Public Notice seeking comment on additional issues addressed in the Third Report and Order on September 10, 1997 (62 FR 48280 (September 15, 1997)).

#### Summary of the Third Report and Order

1. On March 8, 1996, as required by the Telecommunications Act of 1996 (1996 Act), the Commission released a Notice of Proposed Rulemaking and Order Establishing a Joint Board on Universal Service. As required by the RFA, the NPRM included an Initial Regulatory Flexibility Analysis (IRFA). At that time, the Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. On May 8, 1997 the Commission released a Report and Order that included a Final Regulatory Flexibility Analysis (FRFA). On September 10, 1997, the Common Carrier Bureau issued a Public Notice seeking comment on several issues with respect to the application process and the distribution of federal universal service support funds for schools, libraries, and rural health care providers. This FRFA supplements the FRFA that was included in the First Report and Order and incorporates the comments with respect to the proposal to adopt a filing window that were received in response to the Bureau's

September 10 Public Notice. This present FRFA conforms to the RFA.

2. In the Universal Service Order, we concluded that the Administrator would commit funds to applicants on a first-come first-served basis. We now conclude, based on the nearly unanimous comments received in response to the September 10 Public Notice, that all applications filed during the window will be treated as if simultaneously received. For the reasons discussed below, we find that adopting such a window period will best serve the needs of applicants for universal service discounts, and will assist the administrative corporations in processing these requests in a timely manner.

3. In response to commenters' requests, we clarify that an applicant's "place in line," or seniority, with respect to funds will be determined by the date on which an applicant submits a contract to the applicable administrative corporation. An applicant's submission of its initial request for services, which one of the administrative corporations will post on its website, does not determine the applicant's seniority for the purposes of allocating funding. We clarify that the Schools and Libraries Corporation, as administrator, will allocate funds reasonably and in accordance with the rules of priority set forth in § 54.507(g) of our rules.

4. In light of our decision to adopt a window filing period, we also conclude that the administrative corporations should determine the length of the window and resolve other administrative matters necessary to implement a window filing period. We conclude that this responsibility entails "administering the support mechanisms for eligible schools and libraries and rural health care providers," a function already within the scope of the corporations' general duties. We find that the goals of the universal service mechanisms will best be served if the administrative corporations are responsible for implementing the window filing periods because they will be performing the day-to-day functions of the schools, libraries, and rural health care universal service mechanisms and thus are better able to determine an appropriate window periods in light of their needs and resources. We remain committed to the general principle that funds will be allocated to applicants on a first-come first-served basis. Consistent with this principle, we direct the corporations to adopt a reasonable window period that is of sufficient duration to effectuate the administrative purposes of the window, as set forth

above, but is short enough to ensure that funds are allocated without unnecessary delay and to encourage applicants to file requests for support without undue delay. In addition, to ensure that all applicants will be informed of the window periods with sufficient time to adjust their plans accordingly, we direct the administrative corporations to make a determination with respect to the initial window filing periods by October 31, 1997 and to publicize that decision promptly using appropriate media and other avenues that will notify the educational, library, and rural health care communities. In order to facilitate notification to the public, we direct the Bureau to issue a public notice announcing the administrative corporations' decisions.

5. We further find that unanticipated technical and operational issues may arise that will require prompt attention, but will not warrant Commission review. To the extent clarification of our rules are necessary, however, we delegate to the Chief, Common Carrier Bureau the authority to issue orders interpreting our rules as necessary to ensure that support for services provided to schools and libraries and rural health care providers operate to further our universal service goals. We find that this action is "necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business." 47 U.S.C. 155(c)(1). Any action taken pursuant to this delegation of authority "shall have the same force and effect and shall be made, evidenced, and enforced in the same manner as actions of the Commission." 47 CFR 0.203; see also 47 U.S.C. 155(c)(3).

#### **Final Federal Regulatory Flexibility Analysis**

6. On March 8, 1996, as required by the Telecommunications Act of 1996 (1996 Act), the Commission released a Notice of Proposed Rulemaking and Order Establishing a Joint Board on Universal Service. As required by the RFA, the NPRM included an Initial Regulatory Flexibility Analysis (IRFA). At that time, the Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. On May 8, 1997 the Commission released a Report and Order that included a Final Regulatory Flexibility Analysis (FRFA). On September 10, 1997, the Common Carrier Bureau issued a Public Notice seeking comment on several issues with respect to the application process and the distribution of federal universal service support funds for schools, libraries, and rural health care providers. This FRFA supplements the

FRFA that was included in the First Report and Order and incorporates the comments with respect to the proposal to adopt a filing window that were received in response to the Bureau's September 10 Public Notice. This present FRFA conforms to the RFA.

7. *Need for, and Objectives of, this Third Report and Order.* The Commission is required by sections 254(a)(2) and 410(c) of the Act, as amended by the 1996 Act, to promulgate these rules to implement promptly the universal service provisions of section 254. The goal of this *Third Report and Order* (Order) is to ease the burden on schools, libraries, and rural health care providers that will submit requests for funding to the universal service administrator by adopting a filing window. All applications filed during the window will be treated as if simultaneously received.

8. *Summary of Significant Issues Raised by Public Comments.* Commenters overwhelmingly recommended adoption of a filing window in order to ease the administrative burdens on schools, libraries, and rural health care providers, particularly smaller entities with fewer administrative resources. Some commenters urged the Commission to ensure that applicants in all states would receive some opportunity to receive funding.

9. *Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order will Apply.* The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). As noted, the RFA also applies to nonprofit organizations and to governmental organizations such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000. As of 1992, the most recent figures available, there were 85,006 governmental entities in the United States.

10. For "small business" determinations in this context, the SBA

has established a definition of small elementary and secondary schools and small libraries as those with under \$5 million in annual revenues. Other entities of this sort may be considered small under the other two prongs of the RFA. The most reliable source of information regarding the total number of kindergarten through 12th grade (K-12) schools and libraries nationwide of which we are aware appears to be data collected by the United States Department of Education and the National Center for Educational Statistics. Based on that information, it appears that there are approximately 86,221 public and 26,093 private K-12 schools in the United States (SIC 8211). It further appears that there are approximately 15,904 libraries, including branches, in the United States (SIC 8231). Although it seems certain that not all of these schools and libraries would qualify as small entities under the SBA's determination, we are unable at this time to estimate with greater precision the number of small schools and libraries that would qualify as small entities under the definition. Consequently, we estimate that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in this Order.

11. Neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term "health care provider" and sets forth the seven categories of health care providers eligible to receive universal service support. We estimate that there are: (1) 625 "post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools," including 403 rural community colleges, 124 medical schools with rural programs, and 98 rural teaching hospitals; (2) 1,200 "community health centers or health centers providing health care to migrants;" (3) 3,093 "local health departments or agencies" including 1,271 local health departments and 1,822 local boards of health; (4) 2,000 "community mental health centers;" (5) 2,049 "not-for-profit hospitals;" and (6) 3,329 "rural health clinics." We do not have sufficient information to make an estimate of the number of consortia of health care providers at this time. The total of these categorical numbers is 12,296. Consequently, we estimate that there are fewer than 12,296 health care providers potentially affected by the rules in this Order. For the purposes of "small business" analysis, we note that

according to the SBA definition, hospitals must have annual gross receipts of \$5 million or less to qualify as a small business concern. There are approximately 3,856 hospital firms, of which 294 have gross annual receipts of \$5 million or less. Although some of these small hospital firms may not qualify as rural health care providers, we are unable at this time to estimate with greater precision the number of small hospital firms which may be affected by this Order. Consequently, we estimate that there are fewer than 294 hospital firms affected by this Order.

12. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* This order will impose no additional reporting, recordkeeping or other compliance requirements on small entities.

13. *Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered.* As explained in the Order, based on the nearly unanimous comments received in response to the *September 10 Public Notice*, the Commission concludes that all applications filed during the window will be treated as if simultaneously received. We find that adopting such a window period will best serve the needs of applicants for universal service discounts, and will assist the administrative corporations in processing these requests in a timely manner. The Commission finds that the window will reduce pressure on applicants to submit their contracts at the earliest possible moment and, thus, will improve the accuracy and care with which these contracts are negotiated and the accompanying forms are completed. By providing additional time to complete contract negotiations after the four-week competitive bid waiting period, a window will allow schools to negotiate their contracts with greater care. Further, this window will reduce disparities between applicants with substantial administrative resources and applicants with fewer resources, such as small schools, libraries, and health care providers. We recognize, as noted by the commenters, that this window will not eliminate all disparities among applicants. The Commission adopted annual funding caps, \$2.25 billion for schools and libraries and \$400 million for health care providers, because it estimated that these monies would be sufficient for all applicants during the funding year. We emphasize that we have no reason to revise these estimates and have no reason to believe that either of the caps will be reached during the initial filing period, nor at any other point during the

funding period. We are adopting a window primarily to allow applicants sufficient time to negotiate contracts properly and submit complete filings.

14. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. A copy of the Order and this FRFA will also be published in the **Federal Register** and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

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

Libraries, Schools, Healthcare providers, Telecommunications, Telephone.

Federal Communications Commission.

**William F. Caton,**  
*Acting Secretary.*

**Rule Changes**

1. Part 54 of Title 47 of the Code of Federal Regulations (CFR) is amended as follows:

**PART 54—UNIVERSAL SERVICE**

2. Section 54.507 is amended by adding the last three sentences to paragraph (c) to read as follows:

**§ 54.507 Cap.**

\* \* \* \* \*

(c) *Requests.* \* \* \* The Schools and Libraries Corporation shall implement an initial filing period that treats all schools and libraries filing within that period as if they were simultaneously received. The initial filing period shall begin on the date that the Schools and Libraries Corporation begins to receive applications for support, and shall conclude on a date to be determined by the Schools and Libraries Corporation. The Schools and Libraries Corporation may implement such additional filing periods as it deems necessary.

\* \* \* \* \*

3. Section 54.623 is amended by adding the last three sentences to paragraph (c) to read as follows:

**§ 54.623 Cap.**

\* \* \* \* \*

(c) *Requests.* \* \* \* The Rural Health Care Corporation shall implement an initial filing period that treats all health care providers filing within that period as if they were simultaneously received. The initial filing period shall begin on the date that the Rural Health Care Corporation begins to receive applications for support, and shall conclude on a date to be determined by the Rural Health Care Corporation. The Rural Health Care Corporation may

implement such additional filing periods as it deems necessary.

\* \* \* \* \*

[FR Doc. 97-28612 Filed 10-28-97; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 69**

[CC Docket Nos. 96-262, 94-1, 91-213; FCC No. 97-368]

**Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for waiver.

**SUMMARY:** On October 8, 1997, the Commission adopted a Memorandum Opinion and Order in this proceeding granting a petition for waiver filed by the National Exchange Carrier Association, Inc. (NECA). In its petition, NECA sought an order waiving § 69.105(b)(2)-(3) for NECA's pool, so as to allow NECA to reflect revised long term support formula amounts in its carrier common line (CCL) tariff rates effective January 1, 1998. The Commission granted the waiver on condition that NECA compute the CCL charge in the manner prescribed by the Commission.

**EFFECTIVE DATE:** November 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard Lerner, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418-1530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order adopted October 8, 1997, and released October 9, 1997. The full text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at [http://www.fcc.gov/Bureaus/Common\\_Carrier/Orders/fcc.97368.wp](http://www.fcc.gov/Bureaus/Common_Carrier/Orders/fcc.97368.wp), or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

**Paperwork Reduction Act**

N/A. This Memorandum Opinion and Order does not require an information collection.