

(202)267-4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

Dated: May 21, 1999.

**J.P. High,**

Acting Assistant Commandant for Marine Safety and Environmental Protection.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

[CC Docket No. 96-45; FCC 99-121]

**Federal-State Joint Board on Universal Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, we reconsider, on our own motion, the Commission's decision governing the amount of money that may be collected during the second six months of 1999 and the first six months of 2000 to fund the second year of the federal universal service support mechanisms for schools, libraries, and rural health care providers. In this Order, we direct the Universal Service Administrative Company (USAC or the Administrator) to collect no more than \$562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism, and to limit collections to no more than \$3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the rural health care universal service support mechanism.

**DATES:** Effective June 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Matthew Vitale, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room, CY-A257, 445 Twelfth Street, SW, Washington, DC 20554.

**I. Introduction**

1. In this Order, we reconsider, on our own motion, the Commission's decision governing the amount of money that

may be collected during the second six months of 1999 and the first six months of 2000 to fund the second year of the federal universal service support mechanisms for schools, libraries, and rural health care providers. We find that we should set the collection rate for the schools and libraries support mechanism at the \$2.25 billion cap adopted in the *Universal Service Order*, 62 FR 32862 (June 17, 1997), and that we should modify the collection rate for the rural health care support mechanism by setting a collection level of \$12 million. Although we modify the collection rate for the rural health care support mechanism, we do not revise the annual \$400 million cap for the rural health care support mechanism adopted in the *Universal Service Order*. In addition, we do not revise the rules of priority adopted in the *Fifth Order on Reconsideration*, 63 FR 43088 (August 12, 1998), and the *Eleventh Order on Reconsideration* to govern the schools and libraries support mechanism.

2. In this Order, we direct the Universal Service Administrative Company (USAC or the Administrator) to collect no more than \$562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism, and to limit collections to no more than \$3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the rural health care universal service support mechanism. Furthermore, we direct USAC neither to commit nor disburse more than \$2.25 billion for the schools and libraries support mechanism during the third and fourth quarters of 1999 and the first two quarters of 2000 or more than \$12 million for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care support mechanism.

**II. Collections During the Second Funding Year**

9. The Commission is committed to setting collection levels for the second funding year at an amount that will ensure that the Administrator is able to allocate support to schools and libraries at a level that is equal to or greater than the level of support that was allocated in the first funding year. Accordingly, given this commitment and estimated demand at \$2.435 billion, we believe that the collection level should be set at the \$2.25 billion cap recommended by the Joint Board on Universal Service in the *First Recommended Decision*, 61 FR 63778 (December 2, 1996), and adopted

by the Commission in the *Universal Service Order*. Consistent with the Commission's conclusion in the *Universal Service Order*, we believe that setting the collection level at \$2.25 billion reasonably balances the desire to provide support to eligible schools and libraries against the costs associated with establishing larger support mechanisms. While we recognize that some applicants' needs will not be met in full (i.e., for funding of all internal connection requests), a collection rate of \$2.25 billion will be sufficient to fund fully all requests for priority one services (telecommunications services and Internet access) and to fund fully requests by the neediest schools and libraries for internal connections to the same level of discount as was funded in the first program year. This approach is consistent with the Commission's commitment to ensuring that support will be directed toward the most economically disadvantaged schools and libraries, as well as those located in rural areas. Accordingly, we direct USAC to collect only as much as required by demand, but in no event more than \$562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism. We also direct the Administrator to commit to applicants no more than \$2.25 billion for disbursement during the second half of 1999 and the first half of 2000 to support the schools and libraries support mechanism.

10. We have determined that demand for funding will not increase significantly during the second funding year of the rural health care support mechanism. As projected by USAC, we anticipate that demand is not likely to exceed \$12 million total annual support for the second funding year. We conclude therefore that we should establish a maximum collection level at \$12 million for the third and fourth quarters of 1999 and the first and second quarters of 2000. This collection level is consistent with projected demand, and there is no evidence that eligible health care providers will require funding beyond this level for the second funding year. Accordingly, we direct USAC to limit collections to no more than \$3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care universal service support mechanism. We also direct USAC to commit to applicants no more than \$12 million for disbursement during the second half of 1999 and the

first half of 2000 to support the rural health care support mechanism.

### III. Regulatory Flexibility Analysis

#### A. Final Regulatory Analysis

13. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order*, and the Supplemental Final Regulatory Flexibility Analyses in the *Fifth Reconsideration Order* and the *Eighth Order on Reconsideration*, 63 FR 70564 (December 21, 1998), only to the extent that changes to the Order adopted here on reconsideration require changes in the conclusions reached in the FRFA and the two previous Supplemental FRFAs. In the previous analyses, we sought written public comment on the potential economic impact on small entities.

#### 1. Need for and Objectives of This Order

14. The Commission is required by section 254 of the Act to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principal goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider one aspect of those rules. We reconsider, on our own motion, the amounts that will be collected during the second six months of 1999 and the first six months of 2000 for the schools and libraries and rural health care support mechanisms.

#### 2. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Order Will Apply

15. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (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). A small organization is generally "any not-for-

profit enterprise which is independently owned and operated and is not dominant in its field."

16. In the FRFA of the *Universal Service Order*, we estimated and described in detail the number of small entities that might be affected by the new universal service rules. The rules adopted in this Order, however, would affect primarily schools, libraries, and rural health care providers. Moreover, the adopted rules will allow schools, libraries, and rural health care providers to benefit more fully from the schools and libraries and rural health care universal service support mechanisms, constituting a positive economic impact on these small entities.

17. As noted, small entities includes "small businesses," "small organizations," and "small governmental jurisdictions." All three types of small entities may also constitute schools, libraries, or rural health care providers for the purpose of this analysis. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. As for "small organizations," as of 1992, there were approximately 275,801.

18. Also, as the Commission specifically noted in the *Universal Service Order*, the SBA defined small elementary and secondary schools and small libraries as those with under \$5 million in annual revenues. The Commission has further estimated 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 the *Universal Service Order*. We believe that these same small entities may be affected potentially by the rules adopted in this Order.

19. In addition, the Commission noted in the *Universal Service Order* that 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 estimated that there are

fewer than 12,296 health care providers potentially affected by the rules in the *Universal Service Order*. We note that these small entities may potentially be affected by the rules adopted in this Order.

#### 3. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The modifications to the Commission's rules that are set forth in this Order relate only to actions that need to be taken by the Administrator of the universal service support mechanisms. As a result, we do not anticipate any additional burdens or costs associated with these proposed rules on any entities, including on small entities.

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

21. In the FRFA to the *Universal Service Order*, the Commission described the steps taken to minimize the significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order*. As described, our current action to amend our rules will benefit schools, libraries, and rural health care providers, by ensuring that funds are allocated first to the neediest schools and libraries and that schools, libraries, and rural health care providers will be able to receive any support approved by the Administrator that is not the subject of an appeal. We believe that these amended rules fulfill the statutory mandate to enhance access to telecommunications services for schools, libraries, and rural health care providers, and fulfill the statutory principle of providing quality services at "just, reasonable, and affordable rates," without imposing unnecessary burdens on schools, libraries, rural health care providers, or service providers, including small entities.

22. *Report to Congress.* The Commission will send a copy of the Twelfth Order on Reconsideration in CC Docket No. 96-45, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Twelfth Order on Reconsideration in CC Docket No. 96-45, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Twelfth Order on

Reconsideration in CC Docket No. 96-45, and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

#### IV. Ordering Clauses

23. Accordingly, it is ordered that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201-205, 218-220, 254, 303(r), 403, and 405, 47 CFR 1.108, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR Part 54, are revised as set forth, effective upon publication in the **Federal Register**.

24. *It is furthered ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Twelfth Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

**Magalie Roman Salas**,  
Secretary.

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 54 as follows:

#### PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Revise § 54.507(a)(1) to read as follows:

#### § 54.507 Cap.

(a) \* \* \*

(1) No more than \$562.5 million shall be collected or spent per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism. No more than \$2.25 billion shall be collected or disbursed during the twelve month period from July 1, 1999 through June 30, 2000.

\* \* \* \* \*

3. Revise § 54.623(a) to read as follows:

#### § 54.623 Cap.

(a) *Amount of the annual cap.* The annual cap on federal universal service support for health care providers shall be \$400 million per funding year, with the following exceptions. No more than \$3 million shall be collected or spent per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care universal service support mechanism. No more than \$12 million shall be committed or disbursed during the twelve month period from July 1, 1999 through June 30, 2000.

\* \* \* \* \*

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#### DEPARTMENT OF VETERANS AFFAIRS

#### 48 CFR Parts 803 and 852

RIN 2900-AJ06

#### VA Acquisition Regulations; Improper Business Practices and Personal Conflicts of Interest; Solicitation Provisions and Contract Clauses

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs Acquisition Regulations (VAAR) concerning the requirement to include an Ethics in Government Act certification in solicitations. This amendment is necessary to delete this requirement due to the Clinger-Cohen Act, Section 4301, which stipulates that all certification requirements not required by law be eliminated from agency supplemental acquisition regulations. The implementing regulations of the procurement integrity provisions of the Act have eliminated any requirement for such certifications in solicitations. Therefore, since the certification is not required by law, it must be removed from the VAAR.

**DATES:** *Effective Date:* June 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Rita Williams, Office of Acquisition and Materiel Management, Acquisition Policy Team (95A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8774.

**SUPPLEMENTARY INFORMATION:** On April 7, 1998, we published in the **Federal Register** (63 FR 16955) a proposal to eliminate the Ethics in Government Act certification requirement from solicitations in accordance with the Clinger-Cohen Act, 41 U.S.C. 425.

Comments were solicited concerning the proposal for 60 days, ending June 7, 1998. We did not receive any comments. The information presented in the proposed rule document still provides the basis for this final rule. Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, except for nonsubstantive changes to reflect the date of this final rule.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-602, since it does not contain any substantive provisions. This final rule would not cause a significant effect on any entities. This final rule deletes a requirement for contracting officers to include a particular provision in solicitations, internal guidance which does not impact the public. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

#### OMB Review

This document has been reviewed by OMB pursuant to Executive Order 12866.

#### List of Subjects

48 CFR Part 803

Antitrust, Conflict of Interests, Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Approved: March 17, 1999.

**Togo D. West, Jr.**,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is amended as follows:

#### PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for part 803 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

#### 803.101-3 [Amended]

2. In section 803.101-3, paragraph (c) is removed.