

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE****45 CFR Parts 2531 and 2533**

RIN 3045-AA40

**Innovative and Demonstration Programs and National Service Fellowships****AGENCY:** Corporation for National and Community Service.**ACTION:** Final rule.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation") hereby amends its regulations that require the Corporation to announce in the **Federal Register** its grant application procedures, selection criteria, timing, and other requirements. The Grants.gov FIND module is now used by all Federal agencies to post electronically synopses of funding opportunities under Federal financial assistance programs that award discretionary grants and cooperative agreements. In addition, each agency must post the full announcement electronically. (See 68 FR 58146, October 8, 2003) The Corporation fulfills this requirement by posting its grant announcements on its Web site: <http://www.cns.gov.whatshot/notices.html>. These revisions will eliminate provisions in certain regulations that state that the Corporation will publish announcements in the **Federal Register**.

Because the Corporation is required to post its funding opportunities on Grants.gov, and post its full funding announcement electronically on its Web-site (68 FR 58146), the Corporation considers these changes to be administrative in nature. Further, this rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

**DATES:** These changes are effective as of February 10, 2004.**FOR FURTHER INFORMATION CONTACT:** Mr. William L. Hudson, Telephone: (202) 606-5000 ext. 265 or via Internet: [whudson@cns.gov](mailto:whudson@cns.gov).**SUPPLEMENTARY INFORMATION:****List of Subjects***45 CFR Part 2531*

Grant programs-social programs, Volunteers.

*45 CFR Part 2533*

Scholarships and fellowships, Volunteers.

■ For the reasons discussed in the Summary, the Corporation for National and Community Service amends Parts 2531 and 2533 of title 45 of the Code of Federal Regulations as follows:

**PART 2531—INNOVATIVE AND SPECIAL DEMONSTRATION PROGRAMS**

■ 1. The authority citation for Part 2531 continues to read as follows:

**Authority:** 42 U.S.C. 12501 *et seq.*

**§ 2531.30 Other innovative and model programs.**

■ 2. In § 2531.30, remove paragraph (c).

**PART 2533—SPECIAL ACTIVITIES**

■ 1. The authority citation for Part 2533 continues to read as follows:

**Authority:** 42 U.S.C. 12501 *et seq.*

■ 2. Revise § 2533.10 to read as follows:

**§ 2533.10 National service fellowships.**

The Corporation may award national service fellowships on a competitive basis.

Dated: February 4, 2004.

**Frank R. Trinity,**  
*General Counsel.*

[FR Doc. 04-2799 Filed 2-9-04; 8:45 am]

**BILLING CODE 6050--\$-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 54**

[CC Docket No. 02-6; FCC 03-323]

**Schools and Libraries Universal Service Support Mechanism****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission addresses several matters related to the administration of the schools and libraries universal service mechanism (also known as the e-rate program). The adopted rules will advance the goals of the schools and libraries program by making support for internal connections regularly available to a larger number of applicants and by discouraging waste, fraud, and abuse. The Commission also adopts rules that provides additional certainty to applicants by clarifying existing rules and procedures.

**DATES:** Effective March 11, 2004 except for § 54.513(c) which contains information collection requirements that have not been approved by the Office of

Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that paragraph.

**FOR FURTHER INFORMATION CONTACT:**

Kathy Tofigh, Attorney, at (202) 418-1553, Karen Franklin, Attorney, at (202) 418-7706, or Jennifer Schneider, Attorney, at (202) 418-0425 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Report and Order in CC Docket No. 02-6; FCC 03-323, released on December 23, 2003. There was also a Companion Second Further Notice of Proposed Rulemaking released in CC Docket No. 02-6; FCC 03-323, on December 23, 2003. 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 and Summary**

1. In this Third Report and Order, we address several matters related to the administration of the schools and libraries universal service mechanism (also known as the e-rate program). First, we adopt rules that will limit the ability of schools and libraries to engage in wasteful or fraudulent practices when obtaining internal connections. Specifically, we conclude that eligible entities should be precluded from upgrading or replacing internal connections on a yearly basis. Instead, our rules will permit a particular eligible entity to receive support for discounted internal connections services no more than twice in every five years. We will permit, however, entities to receive discounts on basic maintenance associated with internal connections on a yearly basis, but clarify our rules regarding permissible maintenance costs to ensure that such discounts are appropriately narrow. We also prohibit a school or library from transferring equipment purchased with universal service discounts, as part of eligible internal connections services, for a period of three years except in limited circumstances. These rules will advance the goals of the schools and libraries program by making support for internal connections regularly available to a larger number of applicants and by discouraging waste, fraud, and abuse. We also adopt a rule creating a more formal process for updating annually the list of services eligible for support. In addition, we codify the Universal Service Administrative Company's (USAC or the Administrator) current

practices for allocating costs of services between eligible and ineligible components consistent with Commission rules and requirements, codify a prohibition on the provision of free services to entities receiving discounts, and codify with one modification procedures for service substitutions. We also clarify existing requirements for eligibility of certain equipment and services. Finally, we adopt rules to implement our prior decision to carry forward unused funds from the schools and libraries mechanism for use in subsequent funding years. All rule changes and clarifications shall be implemented upon the effective date of this Order, unless specified otherwise.

2. This Order is one of a series of orders designed to simplify program administration, ensure equitable distribution of funds, and protect against waste, fraud, and abuse. In taking these additional steps today, we draw on information from a number of sources, including issues raised in a public forum held in May 2003 on ways to improve the schools and libraries support mechanism, the Office of the Inspector General's semi-annual reports, beneficiary audit reports, and the recommendations of USAC's Waste, Fraud, and Abuse Task Force. We remain committed to making ongoing changes to ensure that this program continues to benefit school children and library patrons across America.

## II. Third Report and Order

### A. Limits on Use of Internal Connections

3. In this Order, we adopt a rule limiting each eligible entity's receipt of discounts on internal connections to twice every five funding years. We exempt basic maintenance services from this restriction. We also clarify the types of maintenance services that are eligible for discounts. In addition, we adopt a rule that limits an entity's ability to transfer equipment purchased with universal service funds.

4. *Frequency of Discounts.* We conclude that each eligible entity may receive commitments for discounts on Priority Two services, except as discussed further, no more than twice every five funding years. The practical effect of this rule will be to permit applicants to receive funding once every three years for internal connections, as supported by the record, but will allow applicants to obtain internal connections in two consecutive years as part of a staged implementation of internal connections. In order to give applicants sufficient planning time, we conclude that this rule will become

effective beginning with support received in Funding Year 2005. Commitments for Priority Two services received in years prior to Funding Year 2005 will not be considered in determining an applicant's eligibility to receive support for Priority Two services.

5. For the purpose of determining whether an applicant is eligible to receive a funding commitment for Priority Two services under this rule, the five-year period begins in any year, starting with Funding Year 2005, in which the entity receives discounted Priority Two services. The rule is applicable to discounts for services that are site-specific to the entity and for services that are shared by the entity with other entities. Thus, if an entity receives support only for shared services in a particular funding year, that funding will be counted as one of the two years out of five that it may receive support. The restriction does not apply to consortium members who do not actually receive Priority Two funding when other members of the consortium receive discounts in specific funding periods.

6. We find that, by limiting the frequency in which applicants may receive Priority Two discounts, funds will be made available to more eligible schools and libraries on a regular basis. Specifically, we find that the twice-every-five-years rule we adopt balances this goal with the need to ensure that the most disadvantaged schools and libraries are able to maintain functioning internal connections networks. Permitting applicants to receive support more often than twice every five years would not make funds available to significantly more eligible schools and libraries, while limiting applicants to support less frequently than twice every five years could prevent applicants from updating their internal connections as necessary.

7. We are not persuaded by those commenters that assert that the most disadvantaged applicants will suffer from a policy restricting receipt of internal connections discounts. The Commission remains committed to ensuring that discounts continue to flow to schools and libraries that are economically disadvantaged. Indeed, program rules continue to provide greater discounts for the most economically disadvantaged schools and libraries. We recognize, however, that many applicants below the very highest discount levels are also economically disadvantaged and also unable to acquire internal connections without universal service support. We also recognize that demand for universal

service discounts will likely continue to exceed the annual funding cap. Thus, we agree with commenters that without revising our existing policies, some economically disadvantaged applicants will continue to be denied Priority Two funding. We find that the twice-every-five-years restriction is appropriate and necessary to make advanced technologies more accessible to all schools and libraries. We further find that the twice-every-five-years policy will increase the mechanism's funding reach to a greater number of economically disadvantaged schools and libraries.

8. It is important to note that even with this revised policy on the funding of internal connections, funding commitments will continue to be made in accordance with the annual funding cap. Thus, it is conceivable that an applicant may be eligible to apply for discounts on Priority Two services and still be denied funding because demand for discounts exceeds available funding. In this instance, we encourage applicants to reapply for discounts during the following funding year. We further note that it is the receipt of support for Priority Two services, rather than the application for support, that counts toward the limitation that an entity may receive in only two out of five years.

9. Furthermore, we conclude that, by precluding a particular entity from receiving support for Priority Two discounts every year, our modified rule strengthens incentives for applicants to fully use equipment purchased with universal service funds. Our current rules permit applicants in the highest discount bands to upgrade their equipment on a yearly basis, even when existing equipment continues to have a useful life. By limiting each eligible entity's ability to receive support for internal connections, recipients will have greater incentive not to waste program resources by replacing or upgrading equipment on an annual basis.

10. A few commenters maintain that limiting funding of internal connections will disrupt applicants' planning and budgets. We recognize that our modified rule will limit applicant flexibility to some extent, particularly for those applicants that wish to make modest infrastructure investments on a yearly basis. But, we conclude that the benefits of the rule—namely, making support available to more applicants on a regular basis and preventing wasteful and abusive practices—outweigh the potential impact on such applicants. We find that the twice-every-five-years restriction provides sufficient flexibility

for applicants to make efficient use of Priority Two funding, and thus is reasonable. In particular, we recognize that for a variety of different reasons, an applicant may not be able to make efficient use of program discounts in a single year. For example, an applicant's annual resources may require the applicant to extend its costs over a period of years. Our modified rule allows an applicant to seek internal connections discounts in two consecutive years, thus, enabling an entity to spread its costs over two funding years. We conclude that providing applicants the flexibility to implement internal connections over two consecutive years is sufficient to accommodate the differing planning and budgetary needs of most applicants. We expect applicants to assume the responsibility of adequately planning and budgeting to make the most effective use of discounts available to them.

11. USAC also suggests that in an effort to counter funding limitations, some applicants may request more funding than they will be able to use in a given funding year. We emphasize that existing program rules require applicants to examine their technology needs and budgetary resources before making funding requests to ensure that applicants make effective use of any discounted services that they receive. Failure to have an approved technology plan is a violation of our current rules. We expect funding requests to be based on an applicant's technology plan, not based on a scheme to maximize funding. A funding request that is not reasonably based on a technology plan does not constitute a *bona fide* request for services. Further, the Administrator's review and enforcement of the necessary resources certification must and will continue to serve as a safeguard against unreasonable funding requests.

12. *Maintenance Costs.* We agree with commenters that maintenance costs should be exempt from the twice-every-five-years restriction. The *Universal Service Order*, 62 FR 32862, June 17, 1997, provides that support for internal connections includes "basic maintenance." Maintenance costs associated with internal connections services are currently eligible for discounts as a Priority Two service. Proper maintenance of internal connections products ensures that equipment functions properly, thereby limiting uneconomical replacement of equipment. We therefore continue to allow applicants to apply for discounts for maintenance of equipment each funding year.

13. We instruct USAC to revise Block 5 of the FCC Form 471 to include a separate category of service for maintenance requests, with this form change to take effect for Funding Year 2005. Maintenance requests will continue to be funded as Priority Two funding. However, maintenance requests will be considered for funding separately from other requests for Priority Two funding and, therefore, will not be subject to the twice-every-five years funding rule we adopt in this Order. The revision of the FCC Form 471 will allow efficient review of the Priority Two funding requests.

14. In response to allegations of waste, fraud, and abuse, we prospectively clarify the services eligible for Priority Two support as basic maintenance costs for internal connections. Although the *Universal Service Order* allows support for those internal connections services that are "necessary to transport information all the way to individual classrooms" and public areas of a library, and specifically authorizes support for "basic maintenance services" that are "necessary to the operation of the internal connections network," our rules do not expressly specify the types of maintenance costs that are eligible for support. In light of our concerns about allegations of waste, fraud, and abuse in this area and our changes, we conclude that we should provide further clarity on what maintenance services are "necessary" under the terms of the *Universal Service Order*, and thus eligible for support and exempt from the twice-every-five-years rule.

15. Basic maintenance services are "necessary" if, 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. Basic maintenance services do not include services that maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information. For example, basic maintenance will include repair and upkeep of previously purchased eligible hardware, wire and cable maintenance, and basic technical support, including configuration changes. On-site technical support is not necessary to the operation of the internal connection network when off-site technical support can provide basic maintenance on an as-needed basis. Services such as 24-hour network monitoring and management also do not

constitute basic maintenance. Such services are therefore ineligible for discounts under the schools and libraries universal service mechanism.

16. We also provide greater clarity as to how USAC should address requests for discounts on technical support for internal connections. When confronted with products or services that contain both eligible and ineligible functions, USAC, in the past, has utilized cost allocation to determine what portion of the product price may receive discounts. We generally endorse this practice as a reasonable means of addressing mixed use products and services. At the same time, however, we are concerned that it is administratively difficult and burdensome to derive reasonable cost allocations for the eligible portions of services provided under a technical support contract. In a rapidly-changing marketplace, with vendors supplying complex packages of services, it simply is not administratively feasible to determine what portion of a technical support contract is directed to basic maintenance. Therefore, we hereby clarify prospectively that technical support, including on-site Help Desks, is not eligible under our rules if it provides any ineligible features or functions. A Help Desk system typically goes beyond the level of support authorized by the Commission in the *Universal Service Order*, which stated that "[s]upport should be available to fund discounts on such items as routers, hubs, network file services, and wireless LANs and their installation and *basic maintenance* \* \* \*." There is no language in the *Universal Service Order* that contemplates the provision of discounts for the comprehensive level of support typically provided by a Help Desk. On the contrary, the *Universal Service Order* indicates that support will be provided for a product or service "only if it is necessary to transport information all the way to individual classrooms. That is, if the service is an essential element in the transmission of information within the school or library \* \* \*." We conclude that if a technical support contract provides more than basic maintenance, it shall be ineligible for discounts under our modified rules. We instruct USAC to review and fund requests for discounts on maintenance services in accordance with this clarification, as of the effective date of this Order.

17. *Equipment Transfers.* We also find it appropriate to amend our rules expressly to prohibit, except as provided below, the transfer of equipment purchased with discounts from the schools and libraries universal

service support mechanism. The Act prohibits the sale or transfer of equipment purchased with discounts from the universal service program in consideration of money or anything else of value. Here, in order to promote the goal of preventing waste, fraud, and abuse, we extend that prohibition to all transfers, without regard to whether money or anything of value has been received in return for a period of three years after purchase.

18. 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. Purchasing equipment with universal service discounts and then replacing or upgrading that equipment annually or almost annually is unnecessary and not economically rational. Unnecessary replacement of equipment suggests that entities are not fully utilizing the equipment purchased with universal service discounts. We agree with commenters that such practices deprive other eligible entities of the full benefits of the schools and libraries universal services program. Moreover, the practice of purchasing equipment with universal service funds, then transferring that equipment to other schools and libraries with lower discount rates would undermine the intent of the Commission's priority rules, and is therefore prohibited. We find, however, that it would be wasteful to prevent recipients from transferring equipment that, after a reasonable period of time, has been replaced or upgraded. We therefore permit recipients freely to transfer equipment to other eligible entities three years or more after the purchase of such equipment. Consistent with the Act, however, such transfers must not be in consideration of money or anything else of value.

19. We agree also with commenters that argue that applicants may have legitimate reasons to transfer internal connections equipment due to the closing of a school or other eligible facilities. For example, due to a natural disaster, a school district may conclude that its needs are best served by temporarily or permanently closing a particular school and transferring its students, as well as any valuable equipment purchased with supported discounts, to other locations. Similarly, a school district may choose to close, remodel, or consolidate a particular school to meet changing demographic needs or fiscal realities, and thereby transfer the students and useable school property to a nearby school. Likewise, a county or municipality may choose to close a library branch for financial

reasons. Under these circumstances, we find that it would be economically rational and consistent with the goals of the schools and libraries program for the support recipient to transfer any equipment it has purchased with universal service discounts to another eligible location where the equipment may be used effectively. We therefore conclude that a recipient may transfer equipment purchased with universal service discounts to other eligible entities if the particular location where the equipment was originally installed is permanently or temporarily closed. In these limited circumstances, we note that it is not necessary for the transferring and receiving entities to have comparable discount levels, as long as each is eligible under the schools and libraries program.

20. In the event that a recipient is permanently or temporarily closed and equipment is transferred, the transferring entity must notify the Administrator of the transfer, and both the transferring and receiving entities must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years. We instruct the Administrator to verify compliance with this requirement as part of its beneficiary audit reviews. In order to enable the Administrator to verify compliance with this transfer prohibition, we require all recipients of internal connections support to maintain asset and inventory records for a period of five years sufficient to verify the actual location of such equipment.

21. This rule change shall be implemented upon the effective date of this Order. To facilitate enforcement of this rule, we will amend the FCC Form 471 for Funding Year 2005 to include a reasonable use certification. In order to receive discounts, applicants must certify that they will use all equipment purchased with universal service discounts at the particular location for the specified purpose. Applicants will thereafter be held accountable for their compliance with the reasonable use certification.

22. We decline to institute useful life criteria for equipment purchased with universal service funds. Useful life criteria could provide a more equitable distribution of Priority Two funding and ensure that more applicants receive the full benefit of the program by ensuring that applicants did not replace equipment components of internal connections services more frequently than necessary. We believe, however, that measures adopted, including the restriction of transfers and our revised policy governing the funding of Priority Two equipment, will provide similar

results in achieving these goals. We also conclude that developing and enforcing useful life criteria would add a significant degree of complexity to the program, which would result in increased administrative costs and burden for both recipients and USAC.

#### *B. Eligible Services*

23. Although the current cost allocation approach used by the Administrator reasonably implements the Commission's rules and requirement regarding eligible and ineligible services, we conclude that administration of the schools and libraries support mechanism would benefit from an explicit rule regarding the cost allocation for services with mixed eligibility. We also conclude that the eligibility process would be improved by adopting a rule for the yearly updating of the eligible services list. Additionally, we codify rules prohibiting the provision of "free" services to recipient schools and libraries by service providers that also provide supported services to those schools and libraries and codify procedures for applicants to modify funding requests that have been granted but not yet funded. Finally, we provide additional guidance on the provision of discounts on services that include the lease of on-premises equipment.

24. *Cost Allocation.* We specifically amend our rules to make clear how applicants and service providers should allocate costs of a service or product that, although generally eligible for universal service support, contains both eligible and ineligible components. In the *Universal Service Order*, the Commission concluded that, when a school or library signs a contract for both eligible and ineligible services, the contract must break out the price of eligible services separately from ineligible services. Since that time, the marketplace has seen an evolution of products and services that contain both eligible and ineligible features but which are not commercially available on an unbundled basis. Thus, the issue has evolved from merely separately listing eligible services and products from ineligible services and products to one of determining what components or features of an otherwise eligible service or product may be ineligible when the service or product is not commercially available on an unbundled basis. Consistent with the Commission's directive to separate these costs, the Administrator has generally required schools, libraries, or the service provider to separate the costs of an ineligible component from what generally would be an eligible service or

product. As explained, the Administrator has provided reasonable guidance, consistent with Commission rules and requirements, to schools, libraries, and service providers in determining the allocation approach.

25. As part of our efforts to improve the operation of the eligibility determination process, we explicitly amend our rules to include cost allocation rules for services and products that contain mixed eligible and ineligible components, features, or functions to provide greater clarity in this area. Under these rules, if a product or service contains ineligible components, costs should be allocated to the extent that a clear delineation can be made between the eligible and ineligible components. The clear delineation must have a tangible basis and the price for the eligible portion must be the most cost-effective means of receiving the eligible service. If the ineligible functionality is ancillary, the costs need not be allocated to the ineligible functionality. An ineligible functionality may be considered "ancillary" if (1) a price for the ineligible component that is separate and independent from the price of the eligible components cannot be determined, 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.

26. These cost allocation rules address the widespread availability of products and services with mixed eligibility and are fully consistent with the overriding requirement that support be provided for eligible services, while preventing support for ineligible services. By providing service providers and applicants a means of allocating costs between eligible and ineligible components, features or functions of what would otherwise be an eligible service, the cost allocation method increases the variety of service options available to schools and libraries, improving each school or library's ability to purchase the most useful and cost-effective service possible. Without this cost allocation approach, applicants may fail to pursue the purchase of certain advanced telecommunications and information services, contrary to the intent of section 254. Our E-rate rules should not drive the development of communications services and technologies, but rather should permit the marketplace to flourish and innovate in ways that meet consumer needs and facilitate access to these innovations. Schools and libraries should continue to allocate eligible and ineligible costs in their contracts with service providers. In

the interests of ensuring that support be provided only for eligible services, the Administrator also should continue to employ the use of the cost allocation method when necessary.

27. The Commission recently addressed those circumstances where an applicant erroneously identifies certain costs as eligible for support by adopting the 30 percent rule. Specifically, we concluded in the *Second Report and Order*, 68 FR 36931, June 20, 2003, that where less than 30 percent of a request for support is ineligible, the Administrator is permitted to grant support, reduced by the amount of ineligible services. We clarify that the Administrator may rely on the cost allocation methods we adopt today in applying the 30 percent rule and performing any resulting adjustments.

28. *Eligible Services List.* We now adopt a more formalized process for updating the eligible services list, beginning with Funding Year 2005. Under the new rule, USAC will be required to submit by June 30 of each year a draft of its updated eligible services list for the following funding year. The Commission will issue a Public Notice seeking comment on USAC's proposed eligible services list. At least sixty days prior to the opening of the window for the following funding year, the Commission will then issue a public notice attaching the final eligible services list for the upcoming funding year. The Commission anticipates that this public notice will be released on or before September 15 of each year. This process will provide greater transparency to the development of the eligible services list. The yearly updated list will interpret what may be funded under current rules, and will represent a safe harbor that all applicants can rely on in preparing their applications for the coming funding year. It will provide interested parties, both recipients and service providers, an opportunity to bring to the Commission's attention areas of ambiguity in the application of current rules in a rapidly changing marketplace. Currently, the only way an applicant can determine whether a particular service or product is eligible under our current rules is to seek funding for that service or product, and then seek review of the Administrator's decision to deny discounts. The rule we adopt today will simplify program administration and facilitate the ability of both vendors and applicants to determine what services are eligible for discounts.

29. *Prohibition of "Free" Services.* We also take this opportunity to clarify and amend our rules to codify a prohibition on the provision of free services to an

eligible entity by a service provider that is also providing discounted services to the entity. The Commission requires that an entity must pay the entire undiscounted portion of the cost of any services it receives through the schools and libraries program. For the purpose of this program, the provision of unrelated free services by the service provider to the entity constitutes a rebate of the undiscounted portion of the costs, a violation of the Commission's rules. Codifying this existing restriction will clarify the obligations of schools and libraries that receive discounted services under the schools and libraries program and improve the ability of the Commission to take appropriate enforcement action.

30. *Service Substitution.* Again, as part of our efforts to improve the operation of the schools and libraries support mechanism, we also formally adopt and codify the Administrator's current procedures relating to requests for service or equipment changes. These procedures provide flexibility to applicants where it has become necessary to make a minor modification to their original funding request. We find that the Administrator's service substitution procedures are consistent with the Commission's goal of affording schools and libraries maximum flexibility to choose the offering that meets their needs most effectively and efficiently. We conclude that codifying these existing procedures in our rules will facilitate USAC's administration of the schools and libraries support mechanism. In codifying USAC's procedures in our rules, we make one modification, however. USAC's current procedures permit a service substitution only if the substitution does not result in an increase in the pre-discount price of the eligible service. We will permit applicants to substitute an eligible service with a higher pre-discount price, but will provide support based on the lower, original price, rather than the higher price for the substituted service. We agree with commenters that this will further maximize flexibility for schools and libraries to meet their needs effectively and efficiently, without additional cost to the E-rate program.

31. Accordingly, we amend our rules to specify that service change requests will be granted for a substitute service or product where (1) that service or product has the same functionality; (2) the substitution does not violate any contract provisions or state or local procurement laws; (3) the substitution does not result in an increase in the percentage of ineligible services or functions, but (4) support shall be provided based on the lesser of the pre-

discount price of the original service or the substitute service. In order to ensure the integrity of the competitive bidding process, we require the applicant's request for a service change to include a certification that the requested change in service is within the scope of the controlling Form 470, including any associated Requests for Proposal (RFP), for the original services. We also require that support not be provided in excess of the amount for which the applicant originally would have been eligible. By adopting these procedures as rules, we recognize that events may occur between the time of the original funding request and the time when commitments are made that make the original funding request impractical or even impossible to fulfill.

32. *Eligibility of On-Premises Equipment as Part of Priority One Service.* In the *Schools and Libraries NPRM*, 67 FR 7327, February 19, 2002, the Commission sought comment on whether to modify its policies regarding the funding of Priority One services (telecommunications service and Internet access) that include service provider charges for capital investments for wide area networks. Those policies were established in the *1999 Tennessee Order* and the *Brooklyn Order*.

33. We decline at this time to modify our existing policies in this area, and in the companion Further Notice of Proposed Rulemaking seek more focused comment on specific rule changes that would limit the availability of discounts for service provider charges that recoup the cost of significant infrastructure investment. We do, however, clarify the scope of the existing requirements in this area to facilitate USAC's processing of applications.

34. In the *1999 Tennessee Order*, the Commission addressed the issue of whether certain facilities located on the applicant's premises (namely, routers and hubs) are part of an end-to-end Internet access service or part of internal connections. The Commission determined that facilities located on an applicant's premises should be presumed to be internal connections, but that an applicant may rebut that presumption. In analyzing the facts presented in the *1999 Tennessee Order*, the Commission concluded that this presumption had been rebutted. In support of the rebuttal, the Commission noted that the hub sites at issue constituted the Internet access provider's points of presence and that the applicant's internal connections networks would continue to function without the hub sites, indicating that the hub sites were not necessary to

transport information within the schools' instructional buildings on a single campus. Further, the Commission found that other indicia—the ownership of the facility, the lack of a lease-purchase arrangement, the lack of an exclusivity arrangement, and the fact that the service provider was responsible for its maintenance—supported its conclusion that, on balance, the facilities should be deemed part of an end-to-end service. The Commission found that these factors weighed against a finding of internal connections, even though the cost of leasing those facilities represented nearly 67 percent of the total funding request. The decision was based on the facts presented; the Commission did not establish a per se requirement that an applicant must meet all factors in order to receive discounts on service provider charges for the cost of leasing on-premises equipment.

35. We conclude it is administratively efficient for USAC to use the factors relied upon in the *1999 Tennessee Order* as a processing standard. USAC has posted an advisory on its website providing guidance to help applicants and service providers understand how it has implemented the *1999 Tennessee Order*. Specifically, USAC has provided guidance that a private branch exchange (PBX) that routes calls within a school or library is not eligible for support as Priority One on-premises equipment. This guidance is consistent with our *1999 Tennessee Order* because a PBX, like most on-premises equipment, is presumed to be Priority Two internal connections. Moreover, it is unlikely that an applicant would be able to establish a rebuttal to that presumption, because the PBX functions to transmit information from and between multiple locations within a local network. If the PBX were removed from a school, the school would lose its ability to route phone calls within the building or campus, but could maintain its access to the public switched telephone network. In other words, the PBX is necessary to maintain the internal communications network, but not its end-to-end access to telecommunications services.

36. We now clarify that the *1999 Tennessee Order* does not preclude the provision of support for on-premises equipment that constitutes basic termination equipment. Accordingly, an applicant may receive a discount for the lease of a cable modem as part of Priority One Internet access. A cable modem is a type of basic terminating component. It is analogous to a channel service unit/data service unit (CSU/DSU) or a network interface device (NID) in that it functions as the

termination point for a Priority One service. The language in the *1999 Tennessee Order* stating that facilities located on the school premises are presumed to be internal connections was enunciated in the context of considering the status of network hubs and routers, and should not be read to encompass basic termination equipment. A basic terminating component, though normally located on a customer's premises, is necessary to receive the end-to-end Internet access service because it provides translation of the digital transmission using the appropriate protocols. In the case of a cable modem, it would not be possible to receive the Internet access service in question without the cable modem on the customer's premises. Conversely, the internal connections on the site would continue to function without the cable modem. Moreover, while customers may obtain cable modems from other sources, providers of cable modem service typically offer customers the opportunity to lease a cable modem in conjunction with the provision of cable modem service. We also note that the cost of leasing a cable modem is a relatively low proportion of the yearly cost of the service. The fact that technical limitations would, as a practical matter, preclude the service provider from using the cable modem to deliver service to other customers, creating a *de facto* exclusivity arrangement, in our view does not support a finding that such equipment must be viewed as internal connections. Rather, we conclude that it is appropriate to provide discounts on the lease of a single basic terminating component used at a site as a Priority One service.

37. We also clarify that it is appropriate to provide Priority One discounts on service provider charges to recoup the cost of leasing optical equipment to light fiber, when that optical equipment is the single basic terminating component of an end-to-end network and it is necessary to provide an end-to-end telecommunications or Internet access service. We reach that conclusion even though the optical equipment on the customer's end, as a technical matter, is dedicated to the customer's sole use.

### C. Carryover of Funds

38. We adopt the procedures for carrying forward unused funds for the schools and libraries program proposed in the *Schools and Libraries Further Notice*, 68 FR 36961, June 20, 2003. Specifically, we amend our rules to require the Administrator to provide quarterly estimates to the Commission

regarding the amount of unused funds that will be available for carryover in the subsequent full funding year. We further amend our rules so that the Commission will carry forward available unused funds from prior years on an annual basis. We find that, in light of the high demand for discounts, such action is consistent with section 254 and the public interest, as well as the framework established in the *Schools and Libraries Order*, 67 FR 41862, June 20, 2002. Accordingly, we amend § 54.507(a) of our rules.

39. The Administrator shall continue to estimate unused funds as the difference between the amount of funds collected, or made available for that particular funding year, and the amount of funds disbursed or to be disbursed. We note that the Administrator already considers the remaining appeals for a funding year when identifying unused funds. Therefore, we do not believe that the carryover of unused funds will detract from the funding of outstanding appeals.

40. Consistent with the proposed rules in the *Schools and Libraries Further Notice*, we also amend the rules to require the Administrator to file with the Commission quarterly estimates of unused funds from prior years of the schools and libraries support mechanism when it submits its projection of schools and libraries program demand for the upcoming quarter. This amendment codifies the Administrator's existing reporting practice and reporting cycle. The quarterly estimate serves to prepare the Administrator for the annual release of carryover funds and provides schools and libraries with general notice regarding the amount of unused funds that may be made available in the subsequent year. We disagree with the National Association of Independent Schools (NAIS) that the quarterly reporting procedure would become too cumbersome and hinder the "overall integrity of the program." We do not believe that the Administrator will be overburdened by this requirement because it has been reporting quarterly estimates of unused funds for six quarters without a problem.

41. We further amend the rules to make unused funds available annually in the second quarter of each calendar year for use in the next full funding year of the schools and libraries mechanism. Based on the estimates provided by the Administrator, the Commission will announce a specific amount of unused funds from prior funding years to be carried forward in accordance with the public interest to increase funds for the next full funding year in excess of the

annual funding cap. For example, the Commission will carry forward the unused funds as of second quarter 2004 for use in the Schools and Libraries Funding Year 2004, thereby increasing the available funds in Funding Year 2004 above the annual funding cap of \$2.25 billion. The Wireline Competition Bureau will announce the availability of carryover funds during the second quarter of the calendar year, when it announces the universal service contribution factor for the third quarter of each year. The amount of unused funds to be carried forward will be deemed approved by the Commission if it takes no action within 14 days of release of the public notice announcing the contribution factor and the amount of unused funds.

42. We determine that it is in the public interest to carry forward unused funds for disbursement on an annual basis in the second quarter of the calendar year. Distribution of unused funds on an annual basis allows the Administrator to refine its calculation of available funds over four reporting quarters as the funding year progresses starting with the third quarter of the calendar year. The annual carryover of funds during the second quarter of the calendar year also coincides with the time of year the Administrator begins making funding commitment decisions for the upcoming funding year. We believe that the timing of this process provides certainty regarding when unused funds will be carried forward for use in the schools and libraries program with minimal disruption to the administration of the program.

43. In order to implement the Commission's prior decision to carry over funds beginning April 1, 2003, we modify the schedule for this year only in order to implement the process for Funding Year 2003. We direct the Administrator to carry forward unused funds as projected for the first quarter of 2004 for use during the remainder of Funding Year 2003. While there will be an increase in the amount of funds available in Funding Year 2003, we note that no decisions previously made by USAC concerning the distribution of funds for Funding Year 2003 will be reversed or revisited. Only funding requests that are currently pending will be considered for the Funding Year 2003 carryover funding. Henceforth, starting with the second quarter of 2004, funds will be carried over on an annual basis as described in the previous paragraph.

44. Finally, we take this opportunity to revise § 54.509(b) of the Commission's rules to conform to the *Fifth Order on Reconsideration*, 63 FR

43088, August 12, 1998. Section 54.509(b) provides that, if the estimates of future funding needs of schools and libraries lead to a prediction by the Administrator that total funding requests will exceed available funding for a funding year, the Administrator shall adjust the discount matrix by calculating a percentage reduction of support to all schools and libraries, except those in the two most disadvantaged categories, in order to permit all requests in the next funding year to be fully funded. The technical correction we make to § 54.509(b) clarifies that the reduction in percentage discounts explained in § 54.509(b) does not apply within a filing window or period, as described in § 54.507(c). Priority within a filing window is determined in accordance with § 54.507(g)(1) of the rules. Thus, § 54.509(b) applies only during a funding year in which the Administrator is acting in accordance with § 54.507(g)(2). We find that the rule change is exempt from the notice and comment requirements of the Administrative Procedure Act because it concerns a non-substantive technical change to the existing rules.

### III. Procedural Matters

#### A. Paperwork Reduction Act Analysis

45. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA. Specifically, § 54.513(c) will go into effect upon announcement in the **Federal Register** of OMB approval, to the extent OMB approval is required.

#### B. Final Regulatory Flexibility Analysis

46. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Schools and Libraries NPRM*. The Commission sought written public comment on the proposals in the *Schools and Libraries NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Third Report and Order

47. In this *Third Report and Order*, we adopt rules whereby eligible entities

may receive discount rates for internal connections services, except for certain basic maintenance services, twice every five years and that prohibit a school or library from transferring equipment purchased with universal service discounts, except in limited circumstances. These rules will advance the goals of the schools and libraries program by making support for internal connections regularly available to a larger number of applicants and by reducing the likelihood of waste, fraud, and abuse.

## 2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

48. There were no comments filed specifically in response to the IRFA. Nevertheless, the agency has considered the potential impact of the rules proposed in the IRFA on small entities. Based on analysis of the relevant data, the Commission concludes the new rules limit the burdens on small entities and result in a de minimis recordkeeping requirement. The Commission also concludes that the new rules will positively impact schools and libraries, including small ones, seeking universal service support.

## 3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

49. 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 SBA. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were about 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and

townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

50. The Commission has determined that the group of small entities directly affected by the rules herein includes eligible schools and libraries and the eligible service providers offering them discounted services, including telecommunications service providers, Internet Service Providers (ISPs) and vendors of internal connections. Further descriptions of these entities are provided. In addition, the Universal Service Administrative Company is a small organization (non-profit) under the RFA, and we believe that circumstances triggering the new reporting requirement will be limited and does not constitute a significant economic impact on that entity.

### a. Schools and Libraries

51. 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." A secondary school is generally defined as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12. For-profit schools and 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. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools and libraries having \$6 million or less in annual receipts as small entities. In Funding Year 2 (July 1, 1999 to June 20, 2000) approximately 83,700 schools and 9,000 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 83,700 schools and 9,000 libraries might be affected annually by our action, under current operation of the program.

### b. Telecommunications Service Providers

52. We have included small incumbent local exchange carriers in this RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

53. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

54. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs) and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers." The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35



carriers reported that they were "Other Local Exchange Carriers." Of the 35 "Other Local Exchange Carriers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

55. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent data, 261 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

56. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of *Paging and Cellular and Other Wireless Telecommunications*. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission's most recent data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

57. *Private and Common Carrier Paging*. In the *Paging Third Report and Order*, 62 FR 16004, April 3, 1997, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small

business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to Commission data, 474 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 457 are small, under the SBA approved small business size standard.

#### c. Internet Service Providers

58. *Internet Service Providers*. The SBA has developed a small business size standard for "On-Line Information Services," North American Industry Classification System (NAICS) code 514191. This category comprises establishments "primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others." Under this small business size standard, a small business is one having annual receipts of \$18 million or less. Based on firm size data provided by the Bureau of the Census, 3,123 firms are small under SBA's \$18 million size standard for this category code. Although some of these Internet Service Providers (ISPs) might not be independently owned and operated, we are unable at this time to estimate with greater precision the number of ISPs that would qualify as small business concerns under SBA's small business size standard. Consequently, we estimate that there are 3,123 or fewer small entity ISPs that may be affected by this analysis.

#### d. Vendors of Internal Connections

59. The Commission has not developed a small business size standard specifically directed toward manufacturers of internal network connections. The closest applicable definitions of a small entity are the size standards under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment" (RTB) and "Other Communications Equipment." According to the SBA's regulations, manufacturers of RTB or other communications equipment must have 750 or fewer employees in order to qualify as a small business. The most

recent available Census Bureau data indicates that there are 1,187 establishments with fewer than 1,000 employees in the United States that manufacture radio and television broadcasting and communications equipment, and 271 companies with less than 1,000 employees that manufacture other communications equipment. Some of these manufacturers might not be independently owned and operated. Consequently, we estimate that the majority of the 1,458 internal connections manufacturers are small.

#### e. Miscellaneous Entities

60. *Wireless Communications Equipment Manufacturers*. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%, so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.

#### 4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

61. In this *Third Report and Order*, we adopt a rule that prohibits the transfer of equipment purchased with universal service discount, except in limited circumstances. Further, we provide that the excepted, limited circumstances consist of a discount recipient temporarily or permanently closing its operations where the original equipment was installed. In that instance, we require a recipient, who closes permanently or temporarily and transfers equipment to another eligible entity, to notify the Administrator of a transfer and require the transferring and receiving entities to maintain detailed records of the transfer consistent with the Commission's recordkeeping requirements for five years. We do not believe that these reporting and

recordkeeping requirements will result in a significant economic impact.

62. The rule adopted today, limiting the frequency of receiving discount rates for internal connections, does not involve additional reporting, recordkeeping, or compliance requirements for small entities. Similarly, the rule adopted in this *Third Report and Order*, creating a more formal process for annually updating the list of services eligible for support, does not involve additional reporting, recordkeeping, or compliance requirements for small entities. The rules adopted governing cost allocation between eligible and ineligible services, provision of free services, and service substitution do not impose additional reporting, recordkeeping, or compliance requirements for small entities. Finally, the rules regarding carryover of unused funds do not require additional reporting or recordkeeping for small entities participating in the schools and libraries universal support mechanism.

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

63. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) 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.”

64. Although we received no IRFA comments, we considered alternatives to the proposed recordkeeping requirements for small entities. In creating the narrow exception to the equipment transfer policy adopted in this *Third Report and Order*, we recognize the Commission’s need to protect the integrity of the schools and libraries support mechanism by curbing waste, fraud, and abuse while acknowledging circumstances that justify permitting the transfer of discounted equipment received by a program beneficiary, small or large. We recognize that we must require certain recordkeeping to verify the appropriate use of universal service funds. Consideration was afforded to having the recipient file equipment transfer records with USAC and having USAC

maintain the records. However, we conclude that requiring a filing with USAC would be more burdensome for the recipient than having the recipient collect and maintain its equipment transfer records. Complying with the processes promulgated by USAC would be more burdensome than requiring each beneficiary to retain its own files because the beneficiary would have to do more than send the documents to USAC. The beneficiary would have to comply with the procedural scheme devised by USAC for compiling, and mailing or delivering the records, and quality control measures for assuring that the records submitted were properly identified with the correct beneficiary. In the RFA, an exemption of small entities from the recordkeeping requirements is listed as a possible alternative. In this instance, exemption from the recordkeeping requirement would impede the Commission’s ability to account for funds distributed through the schools and libraries program and would undermine the Commission’s efforts to prevent waste, fraud, and abuse.

65. Report to Congress: The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

#### IV. Ordering Clauses

66. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, this Third Report and Order is adopted.

67. Part 54 of the Commission’s rules, is amended as set forth, effective March 11, 2004 except for § 54.513(c) which contains information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

68. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch**,  
Secretary.

#### Final Rules

■ 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 continues to read as follows:

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

■ 2. Amend § 54.504 by revising paragraph (b)(2)(iii) and by adding paragraphs (f) and (g) to read as follows:

#### § 54.504 Requests for services.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) The services will not be sold, resold, or transferred in consideration for money or any other thing of value, and will not be transferred, with or without consideration for money or any other thing of value, except as permitted by the Commission’s rules;

\* \* \* \* \*

(f) *Service substitution.* (1) The Administrator shall grant a request by an applicant to substitute a service or product for one identified on its FCC Form 471 where:

(i) The service or product has the same functionality;

(ii) The substitution does not violate any contract provisions or state or local procurement laws;

(iii) The substitution does not result in an increase in the percentage of ineligible services or functions; and

(iv) The applicant certifies that the requested change is within the scope of the controlling FCC Form 470, including any associated Requests for Proposal, for the original services.

(2) In the event that a service substitution results in a change in the pre-discount price for the supported service, support shall be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service.

(3) For purposes of this rule, the broad categories of eligible services (telecommunications service, Internet access, and internal connections) are not deemed to have the same functionality with one another.

(g) *Mixed eligibility services.* A request for discounts for a product or service that includes both eligible and ineligible components must allocate the cost of the contract to eligible and ineligible components.

(1) *Ineligible components.* If a product or service contains ineligible components, costs must be allocated to the extent that a clear delineation can be made between the eligible and ineligible components. The delineation must have a tangible basis, and the price for the eligible portion must be the most cost-effective means of receiving the eligible service.

(2) *Ancillary ineligible components.* If a product or service contains ineligible components that are ancillary to the eligible components, and the product or service is the most cost-effective means of receiving the eligible component functionality, without regard to the value of the ineligible component, costs need not be allocated between the eligible and ineligible components. Discounts shall be provided on the full cost of the product or service. An ineligible component is "ancillary" if a price for the ineligible component cannot be determined separately and independently from the price of the eligible components, and the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality.

(3) The Administrator shall utilize the cost allocation requirements of this subparagraph in evaluating mixed eligibility requests under § 54.504(d)(1).

■ 3. Section § 54.506 is revised to read as follows:

**§ 54.506 Internal connections.**

(a) A service is eligible for support as a component of an institution's internal connections if such service is necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch. Discounts are not available for internal connections in non-instructional buildings of a school or school district, or in administrative buildings of a library, to the extent that a library system has separate administrative buildings, unless those internal connections are essential for the effective transport of information to an instructional building of a school or to a non-administrative building of a library. Internal connections do not include connections that extend beyond a single school campus or single library branch. There is a rebuttable presumption that a connection does not

constitute an internal connection if it crosses a public right-of-way.

(b) *Basic maintenance services.* Basic maintenance services shall be eligible as an internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services. Basic maintenance services do not include services that maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information.

(c) *Frequency of discounts for internal connections services.* Each eligible school or library shall be eligible for support for internal connections services, except basic maintenance services, no more than twice every five funding years. For the purpose of determining eligibility, the five-year period begins in any funding year, starting with Funding Year 2005, in which the school or library receives discounted internal connections services other than basic maintenance services. If a school or library receives internal connections services other than basic maintenance services that are shared with other schools or libraries (for example, as part of a consortium), the shared services will be attributed the school or library in determining whether it is eligible for support.

■ 4. Amend § 54.507 by adding paragraphs (a)(1) and (a)(2) to read as follows:

**§ 54.507 Cap.**

(a) \* \* \*

(1) *Amount of unused funds.* The Administrator shall report to the Commission, on a quarterly basis, funding that is unused from prior years of the schools and libraries support mechanism.

(2) *Application of unused funds.* On an annual basis, in the second quarter of each calendar year, all funds that are collected and that are unused from prior years shall be available for use in the next full funding year of the schools and libraries mechanism in accordance with the public interest and notwithstanding the annual cap, as described in paragraph (a) of this section.

\* \* \* \* \*

■ 5. Amend § 54.509 by revising paragraph (b) to read as follows:

**§ 54.509 Adjustments to the discount matrix.**

\* \* \* \* \*

(b) Reduction in percentage discounts. At all times other than within a filing period described in § 54.507(c), if the estimates schools and libraries make of their future funding needs lead the Administrator to predict that total funding request for a funding year will exceed the available funding, the Administrator shall calculate the percentage reduction to all schools and libraries, except those in the two most disadvantaged categories, necessary to permit all requests in the next funding year to be fully funded.

\* \* \* \* \*

■ 6. In § 54.513, revise the section heading and add paragraph (c) to read as follows:

**§ 54.513 Resale and transfer of services.**

\* \* \* \* \*

(c) Eligible services and equipment components of eligible services purchased at a discount under this subpart shall not be transferred, with or without consideration of money or any other thing of value, for a period of three years after purchase, except that eligible services and equipment components of eligible services may be transferred to another eligible school or library in the event that the particular location where the service originally was received is permanently or temporarily closed. If an eligible service or equipment component of a service is transferred due to the permanent or temporary closure of a school or library, the transferor must notify the Administrator of the transfer, and both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years.

■ 7. Amend § 54.516 by adding a second sentence to paragraph (a) to read as follows:

**§ 54.516 Auditing.**

(a) \* \* \* Schools and libraries shall be required to maintain asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase.

\* \* \* \* \*

■ 8. Add § 54.522 to subpart F to read as follows:

**§ 54.522 Eligible services list.**

The Administrator shall submit by June 30 of each year a draft list of services eligible for support, based on the Commission's rules, in the following funding year. The Commission will issue a Public Notice seeking comment on the Administrator's proposed eligible

services list. At least 60 days prior to the opening of the window for the following funding year, the Commission shall release a Public Notice attaching the final eligible services list for the upcoming funding year.

■ 9. Add § 54.523 to subpart F to read as follows:

**§ 54.523 Payment for the non-discount portion of supported services.**

An eligible school, library, or consortium must pay the non-discount portion of services or products purchased with universal service discounts. An eligible school, library, or consortium may not receive rebates for services or products purchased with universal service discounts. For the purpose of this rule, the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of the non-discount portion of the supported services.

[FR Doc. 04-2732 Filed 2-9-04; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 04-29; MM Docket No. 02-14; RM-10358; RM-10764]

**Radio Broadcasting Services; Castle Dale, UT, Coalville, UT; Huntsville, UT, Jerome, ID, Ketchum, ID, Naples, UT, Parowan, UT, Payson, UT, Rupert, ID, and South Jordan, Salina, Tooele, Wellington, UT**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a counterproposal in this proceeding filed jointly by Millcreek Broadcasting, L.L.C., Community Wireless of Park City, Inc., and George S. Flinn, Jr., this document modifies the respective authorizations of Station KUUU to specify operation on Channel 223C2 at South Jordan, Utah, Station KCUA to specify operation on Channel 223C at Naples, Utah, and Station KPED to specify operation on Channel 276C at Coalville, Utah. To accommodate these modifications, this document modifies the licenses of Station KKMV, Rupert, Idaho, to specify operation on Channel 291C0 and Station KTCE, Payson, Utah, to specify operation on Channel 221A. To accommodate Channel 221A at Payson, this document substitutes Channel 237C3 at Wellington, Utah, and Channel 271C3 at Castle Dale, Utah. See

67 FR 5961, February 8, 2002. The reference coordinates for the Channel 223C2 allotment at South Jordan, Utah, are 40-39-35 and 112-12-05. The reference coordinates for the Channel 223C allotment at Naples, Utah, are 40-35-08 and 109-42-08. The reference coordinates for the Channel 276C allotment at Coalville, Utah, are 40-55-46 and 111-00-26. The reference coordinates for the Channel 291C0 allotment at Rupert, Idaho, are 42-23-40 and 113-42-05. The reference coordinates for the Channel 221A allotment at Payson, Utah, are 40-03-20 and 111-49-43. The reference coordinates for the Channel 237C3 allotment at Wellington, Utah, are 39-32-33 and 110-44-05. The reference coordinates for the Channel 271C3 allotment at Castle Dale, Utah, are 39-12-48 and 111-01-18.

**DATES:** Effective March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Robert Hayne, Media Bureau, (202) 418-2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Report and Order* in MB Docket No. 02-14 adopted January 14, 2004, and Released January 16, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualixint@aol.com](mailto:qualixint@aol.com).

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

■ Part 73 of the Code of Federal Regulations is amended as follows:

**PART 73—RADIO BROADCAST SERVICES**

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 223C and adding Channel 291C0 at Rupert.

■ 3. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 237C3 and adding Channel 271C3 at Castle Dale, by removing Channel 223C3 and by adding Channel 276C at Coalville, by removing Huntsville, Channel 276C3, by adding

Naples, Channel 223C2, by removing Channel 222A and adding Channel 221A at Payson, by adding South Jordan, Channel 223C2, by removing Tooele, Channel 221C3, by removing Channel 221C3 and adding Channel 237C3 at Wellington.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04-2841 Filed 2-9-04; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 04-30; MB Docket No. 03-164; RM-10737]

**Radio Broadcasting Services; Marmet and Montgomery, WV**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a *Notice of Proposed Rule Making*, 68 FR 43704 (July 24, 2003), this document reallots Channel 227A from Montgomery, West Virginia, to Marmet, West Virginia, and provides Marmet with its first local aural transmission service. The coordinates for Channel 227A at Marmet are 38°13'09" North Latitude and 81°25'05" West Longitude, with a site restriction of 13.4 kilometers (8.3 miles) east of Marmet, West Virginia.

**DATES:** Effective March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 03-164, adopted January 14, 2004, and released January 16, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualixint@aol.com](mailto:qualixint@aol.com).

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows: