''Other Local Service Providers'' are small entities.

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

9. Requiring porting beyond wireline rate center boundaries could impose compliance burdens on small entities. First, by making porting more widely available, the requirement may increase the amount of telephone numbers that small carriers may be required to port. To handle this increased porting volume, small carriers may need to add personnel, update porting procedures, or upgrade software. In addition to the compliance burdens associated with increased porting volume, porting beyond wireline rate center boundaries may cause small or rural carriers to incur transport costs associated with delivering calls to ported numbers served by distant switches. We seek comment on the costs associated with these potential compliance burdens.

10. In addition to the impacts associated with transporting calls to ported numbers, by making it easier for more consumers to port, the requirements may cause small or rural carriers to lose customers. Small carriers have expressed concern that permitting porting beyond wireline rate center boundaries would give large wireless carriers an unfair competitive advantage over smaller LECs by making it easier for more consumers to port numbers to larger nationwide carriers.

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

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for 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 small entities.

12. The Federal Communications Commission has previously addressed concerns raised by small and rural carriers when considering intermodal portability issues. Specifically, the *Intermodal Order* considered limiting the scope of intermodal porting based on the small carrier concern that requiring porting to a wireless carrier that does not have a physical point of interconnection or numbering resources in the rate center associated with the ported number would give wireless carriers an unfair competitive advantage. The order found however, that these considerations did not justify denying wireline consumers the benefit of being able to port their numbers to wireless carriers. In addition, the order noted that each type of service offers its own advantages and disadvantage and that consumers would consider these attributes in determining whether or not to port their numbers. The *Intermodal Order* also considered the concern expressed by small carriers that requiring porting beyond wireline rate center boundaries would lead to increased transport costs. The order concluded that such concerns were outside the scope of the number portability proceeding and noted that the rating and routing issues raised by the rural wireline carriers were also implicated in the context of non-ported numbers and were before the Federal Communications Commission in other proceedings.

13. The order also, for wireline carriers operating in areas outside of the 100 largest MSAs, waived, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. The order noted that the transition period would help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems. The order also noted that carriers could file petitions for waiver of their obligation to port numbers to wireless carriers, if they could provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules.

14. In addition to the steps taken by the Federal Communications Commission, pursuant to section 251(f)(2) of the Communications Act of 1934, as amended, carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide may petition state commissions to suspend or modify the LNP requirements. Under the terms of section 251(f)(2), the state commission shall grant such petition to the extent that, and for such duration as, the state commission determines that such suspension or modification: (A) Is necessary to avoid a significant adverse economic impact on end users, to avoid imposing an unduly economically burdensome requirement, or to avoid imposing a technically infeasible requirement; and (B) is consistent with the public interest, convenience, and necessity. Numerous petitions have been filed with state commissions since the *Intermodal Order's* release and in many of these cases, states have granted temporary or permanent relief from LNP requirements to small carriers. We seek comment on the effectiveness of this mechanism for addressing any potential burdens on small carriers.

F. Overlapping, Duplicating, or Conflicting Federal Rules

14. None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14179 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 05–195, CC Docket No. 96–45, CC Docket No. 02–6, WC Docket No. 02–60, WC Docket No. 03–109, CC Docket No. 97–21; FCC 05–124]

Comprehensive Review of Universal Service Fund Management, Administration, and Oversight

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission initiates a broad inquiry into the management and administration of the Universal Service Fund (USF), as well as the Commission's oversight of the USF and the USF Administrator. We seek comment on ways to improve the management, administration, and oversight of the USF, including simplifying the process for applying for USF support, speeding the disbursement process, simplifying the billing and collection process, addressing issues relating to the Universal Service Administrative Company (USAC or the Administrator), and exploring performance measures suitable for assessing and managing the USF programs. We also seek comment on ways to further deter waste, fraud, and abuse through audits of USF beneficiaries or other measures, and on various methods for recovering improperly disbursed funds.

DATES: Comments are due on or before October 18, 2005. Reply comments are due on or before December 19, 2005.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–195, CC Docket No. 96–45, CC Docket No. 02–6, WC Docket No. 02–60, WC Docket No. 03–109, CC Docket No. 97–21 and/or FCC 05–124, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- Mail: Filings should be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on this rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Warren Firschein, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking* in WC Docket No. 05–195, CC Docket No. 96–45, CC Docket No. 02–6, WC Docket No. 02–60, WC Docket No. 03–109 and CC Docket No. 97–21 released on June 14, 2005. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking* (NPRM) we initiate a broad inquiry into the management and administration of the Universal Service Fund (USF), as well as the Commission's oversight of the USF and the USF Administrator. In particular, we seek comment on ways to improve the management, administration, and oversight of the USF, including simplifying the process for applying for USF support, speeding the disbursement process, simplifying the billing and collection process, addressing issues relating to the Universal Service Administrative Company (USAC or the Administrator), and exploring performance measures suitable for assessing and managing the USF programs. In addition, we seek comment on ways to further deter waste, fraud, and abuse through audits of USF beneficiaries or other measures, and on various methods for recovering improperly disbursed funds.

2. Our goal is to find ways to improve the program, both from the perspective of USF beneficiaries and from the perspective of safeguarding the fund itself. We recognize that some parties have raised concerns ranging from mismanagement to intentionally defrauding the program, and we take these concerns seriously. In this proceeding, we intend to address these concerns by finding constructive ways to continue meeting the needs of those who depend on the USF, while at the same time ensuring that the public is confident that the funds are used for their intended purpose. To accomplish this, we are seeking input from all interested parties, including experienced participants in the USF programs, on improving the management, administration, and oversight of the four universal service programs. We intend to determine whether any rule changes are necessary in order to manage and administer the USF programs more efficiently and effectively, while deterring waste, fraud, and abuse. We are interested in rule changes that can be applied, to the greatest extent possible, consistently across all programs. Furthermore, to the extent commenters' suggestions can be accomplished without rule changes, we may do so after evaluating the record in this docket.

II. Discussion

A. Management and Administration of the USF

3. In this section, we broadly seek comment on measures the Commission can take to improve management and administration of the program. The effectiveness and efficiency of our management and administration of the USF is influenced by the organizational structure used to carry out the missions of the USF, the methods used to measure and evaluate program performance, and the program operations, including the application process, the contributions process, and the disbursement process. We encourage parties to comment on the Commission's past practices and submit proposals for improving the management and administration of the program. We also invite comments and suggestions on any aspect of this NPRM from USAC, including its views on its performance as Administrator.

1. Universal Service Fund Administrator

a. Background

4. The Commission's rules provide for the appointment of a permanent Administrator of the USF. In 1998, the Commission appointed USAC the permanent Administrator of the federal universal service support mechanisms. Under the Commission's rules, the Administrator is responsible for administering each of the USF mechanisms. As part of its duties and subject to Commission rules and oversight, the Administrator bills contributors to the USF, collects USF contributions, disburses universal service support funds, recovers improperly disbursed USF moneys, submits periodic reports to the Commission (including quarterly reports on the disbursement of universal service support funds), maintains accounting records, conducts audits of contributors and beneficiaries, creates and maintains an Internet site, collects information, and provides access to information it collects to the Commission. Aggrieved parties may file appeals of actions taken by the Administrator. Under the Commission's rules, USAC is required to maintain its books of account in accordance with generally accepted accounting principles (GAAP) and to account for the financial transactions of the USF in accordance with government generally accepted accounting principles (GovGAAP). The Administrator must also maintain the accounts of the USF in accordance with the U.S. Government Standard General Ledger (USGSGL). Pursuant to Commission rules, the Administrator is prohibited from making policy, interpreting unclear provisions of the statute or the Commission's rules, or interpreting the intent of Congress, and may only advocate positions before the Commission and its staff on administrative matters.

B. USF Administrative Structure

5. We seek comment on whether modifications to our rules are needed to ensure efficient, effective, and competitively neutral administration of the USF. The Commission appointed USAC the permanent Administrator ''subject to a review after one year by [the Commission] to determine that the Administrator is administrating the universal service support mechanisms

in an efficient, effective, and competitively neutral manner.'' The Commission intended to review USAC's performance after one year; however, the one-year review did not take place. We therefore seek comment on USAC's performance since the inception of the USF program, as well as the Commission's management and oversight of USAC. We seek comment on whether USAC has administered the USF in an efficient, effective, and competitively neutral manner. In addition, we seek comment on whether additional rules or amendment of existing rules are needed to provide clarity to the scope and content of the Administrator's functions. Commenters should address USAC's successes as well as any weaknesses in USAC's performance or areas that need improvement.

6. *Administrative Structure.* We take this opportunity to evaluate the current administrative structure to determine whether any changes are needed in order to enhance management of the USF. Commenters should discuss whether their experience in other government programs suggests a more effective mechanism for administering a subsidy program the size of the USF. We seek comment on whether we should replace the permanent, designated Administrator with another type of administrative structure or entity. For example, we could retain USAC as Administrator pursuant to a contract or subject to a Memorandum of Understanding. We could seek competitive bids for another entity to administer the USF, subject to replacement after a period of time. Alternatively, we could appoint a different entity or organization to permanently administer the USF instead of USAC, or we could retain the current structure for USF administration so that USAC would continue to administer the USF. If we retain the current structure for USF administration, how can we improve the Commission's oversight of the USF and management of the program? Commenters should address the pros and cons of a permanent administrative entity as well as the pros and cons of alternative administrative structures and arrangements. Commenters should discuss the advantages and disadvantages of competitive procurement and of having the same entity administer the USF programs over a lengthy period of time. We seek comment on whether USAC should apply, to the extent practicable, the policies and procedures embodied in the Federal Acquisition Regulation (FAR). Commenters should also discuss how Commission oversight would be implemented if alternative arrangements were adopted.

7. In addition, we seek comment on whether using a not-for-profit corporation as the permanent Administrator of the USF has worked successfully. Commenters should address the pros and cons of using a not-for-profit entity as the USF Administrator. We note that the Commission has experience using contracts to administer certain programs. For example, section 251(e) of the Act directs the Commission to ''create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.'' The Commission concluded that it was free to select the National Pooling Administrator on a competitive basis, as it did in choosing the North American Numbering Plan administrator in 1997. The entities that administer telecommunications numbering and thousands block number pooling for the Commission do so pursuant to a contract and we believe that such contracts have provided certain cost benefits, such as the lower costs that can be achieved through the competitive bidding process.

8. Part 54 of the Commission's rules are designed to promote universal service in a competitively neutral manner. The Commission's rules apply a number of requirements to the USF Administrator to ensure effective, efficient, competitively neutral administration. This ensures that support is made available on a technologically neutral basis to eligible service providers. The Commission concluded, when appointing USAC permanent administrator, that ''subject to the modifications set forth in this Order, USAC fairly represents all interested parties, including a broad range of industry, consumer, and beneficiary groups.'' We seek comment on how any proposals to change the current administrative structure would affect the independence and neutrality of the USF program administration. The Commission's rules provide for an experienced Board of Directors representing a balance of different interests. The Commission's rules describe the functions of USAC, which are limited to ''administering the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism, the low income support mechanism, the interstate access universal service support mechanism * * * and the interstate common line support mechanism.'' In addition, USAC is responsible for ''billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.'' The rules also prohibit USAC from making policy or interpreting the intent of Congress, and bar USAC from lobbying on anything other than administrative issues. We seek comment on whether we should modify our rules to more clearly delineate USAC's administrative functions.

9. We seek comment on whether we should modify our rules addressing meetings of the Administrator's Board of Directors. We seek comment on whether the current board composition results in effective, efficient, and competitively neutral management of the USF. Commenters should provide specific recommendations for modifying the composition of the Administrator's Board of Directors and describe the benefits of implementing such proposals. Section 54.705 of the Commission's rules requires USAC to have three committees: A Schools and Libraries Committee, a Rural Health Care Committee, and a High Cost and Low Income Committee. We seek comment on whether additional committees or fewer committees would be administratively efficient and useful. USAC also has an audit committee, an investment committee, and an executive committee, which are not required by our rules. We seek comment on whether we should revise the rules to clarify or specify the organizational structure of the Administrator's committees.

10. We also seek comment on whether we should adopt rules to require the Administrator to implement ethics standards and procedures for addressing conflicts of interest, or if we should adopt specific rules governing the ethics standards and conflicts of interest for officers and/or employees of the Administrator. We seek comment on whether to adopt rules addressing the Administrator's procedure for handling confidential information, including confidential information related to the federal government. Finally, we seek comment on whether the Administrator's Board of Directors should be permitted to enter into closed sessions in which the Commission and members of the public are excluded. Although the Commission's rules state that all meetings of the Administrator's Board of Directors are to be public, there may be instances where a private meeting is warranted. Should we adopt procedures and rules to identify appropriate instances of when the Administrator's Board of Directors may

hold a closed sessions? If so, what should those instances be?

11. *Filing and Reporting Requirements.* Under our rules, the Administrator must submit periodic reports to the Commission. Section 54.702(g) of the Commission's rules requires USAC to submit an annual audit report. Section 54.709(a) of the Commission's rules requires USAC to submit, 60 days prior to the start of the quarter, financial and accounting data, including projected administrative expenses and projected program demand (*i.e.,* amount of moneys USAC expects to disburse in the upcoming quarter for each USF mechanism). Section 54.709(a) of the Commission's rules also requires USAC to submit, 30 days prior to the start of each quarter, its estimate of contributor base. USAC prepares and submits additional reports, both to the Commission staff on an ad hoc basis and to its Board of Directors on a quarterly basis. We seek comment on whether we should revise the content or frequency of the Administrator's reports. For example, we could require these reports be filed on a monthly, quarterly, or annual basis. We seek suggestions from USF stakeholders about the appropriate types of publicly available information that we should require from USAC. For example, should we require publicly available, periodic performance measurement and financial reports?

12. The Bureau calculates the proposed quarterly contribution factor, based on USAC's submissions, and announces it in a Public Notice fourteen days before the beginning of each quarter. This proposed contribution factor is deemed approved when the fourteen-day period ends, if the Commission takes no action to change the contribution factor. USAC uses the contribution factor to bill carriers on the sixteenth of each month during the quarter. USAC requires carriers to pay their invoices by the fifteenth of the following month. We seek comment on whether we should revise our rules to change any of these time periods or to modify the content of USAC's filings.

13. *Contributor Delinquency.* We also seek comment on whether we should revise our rules to address the issue of a carrier's delinquent contributions. Should we adopt a rule on how a carrier's payments are assigned to current and delinquent amounts due the Administrator? The Administrator's practice is to apply partial payments to the oldest debt first, instead of the current billed amount. Should we direct USAC to modify this practice? We also seek comment on whether we should adopt rules to allow USAC to charge interest and assess penalties for a carrier's failure to file the FCC Form 499–A, Telecommunications Reporting Worksheet (Form 499–A).

14. *Borrowing Funds.* Our rules currently provide that USAC ''shall request borrowing authority from the Commission to borrow funds commercially'' if contributions received in a given quarter are inadequate to meet the amount of universal service program payments and administrative costs for that quarter. We note that USAC has never requested such authority nor has the Commission authorized such borrowing. Is § 54.709(c) of the Commission's rules, to the extent it authorizes borrowing of funds to pay for the USF, inconsistent with federal financial accounting rules that apply to the USF? We seek comment on whether we should eliminate this rule. We think it is unlikely that the Commission would be unable to meet program payment requirements and administrative costs in any quarter because we evaluate the program demand (including administrative expenses) before we establish the contribution factor and we can control to a large extent the amount of USF disbursements in a given quarter. Nevertheless, we believe that we should consider and account for that contingency.

15. Moreover, we note that to the extent we modify our rules to permit other entities to administer the USF, there may be a need to permit borrowing under certain circumstances, *e.g.*, for administrative expenses or other non-program reasons and without jeopardizing program funds. We therefore seek comment on what process to establish, in lieu of the existing borrowing authority in § 54.709(c) of the Commission's rules, to address situations in which the amount of available USF is insufficient to accommodate program demand and administrative expenses. For example, we could maintain a cash reserve that would be used only in that event. At the same time, given the relatively low risk of the occurrence, we question whether it would be prudent to tie up funds for that purpose. We seek comment on what an appropriate reserve level would be. We have no rules regarding interfund borrowing. Should we adopt a rule prohibiting or allowing interfund borrowing? We seek comment on whether to establish limitations or constraints on the Administrator's ability to borrow funds in permissible circumstances and in a manner consistent with federal law. We seek comment on other ways to ensure that universal service funds are sufficient to cover costs and administrative expenses. For example, in the event that funds are insufficient to cover costs and administrative expenses, should we seek to collect additional funds and postpone payments until sufficient funds have been received? We also seek comment on the potential impact that any such proposal could have on fund beneficiaries. Finally, we seek comment on whether the Commission should adopt rules or requirements governing the investment practices and policies of the Administrator. For example, should we adopt requirements restricting USAC investments to non-interest bearing accounts or Treasury bills?

16. *Administrative Procedures.* We seek comment on whether we should codify certain USAC administrative procedures in the Commission's rules. In the *Schools and Libraries Fifth Report and Order,* 69 FR 55097, September 13, 2004, we directed USAC to identify all Schools and Libraries program procedures and we are currently evaluating USAC's list. As we discussed in the *Schools and Libraries Fifth Report and Order,* we are concerned about recovery of funds disbursed after applicants failed to follow USAC administrative procedures. Certain USAC procedures have since been incorporated into the Commission's rules. This issue has not yet been raised in the context of administrative procedures related to contributions or in the context of the High Cost, Low Income, and Rural Health Care programs. Under the Commission's rules, the Administrator may not ''make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.'' To assist our analysis, we will require USAC to file a list of its administrative procedures for the contributions process and the High Cost, Low Income, and Rural Health Care programs as an ex parte filing in this proceeding, by September 19, 2005. USAC's administrative procedures may involve collection or disbursement policies and practices that affect beneficiaries and service providers. We believe that there is a fundamental difference between ministerial errors and intentional fraud, and that greater clarity in USAC's rules and procedures will help reduce ministerial errors. We seek comment on how a beneficiary's compliance or lack of compliance with USAC non-codified administrative procedures should be treated in the auditing context. We are seeking proposals from commenters as to whether any of USAC's procedures or policies should be codified. We anticipate that it will be useful to

continue to evaluate whether other USAC administrative procedures should be codified into our rules. We ask that commenters consider whether any proposal for the Commission to codify USAC administrative procedures, or other proposals in this NPRM, would facilitate or restrict the ability of the administrator to perform its duties in a flexible and responsive way.

17. *Continuity of Operations.* Federal agencies are required to develop continuity of operations (COOP) plans to ensure that essential services will be available in emergency situations. Disruptions from a variety of sources, including severe weather conditions, can result in interruptions in services. We seek comment on whether we should adopt a rule to require USAC to develop and maintain a COOP plan for dealing with emergency situations. We also seek comment on whether any modifications to our rules are needed to ensure that the Administrator can continue to perform its mission-critical functions in the event of an incident or emergency situation. Commenters should describe the pros and cons of any proposals.

2. Performance Measures

18. We recognize that effective program management requires the implementation of meaningful performance measures. Clearly articulated goals and reliable performance data allow the Commission and other stakeholders to assess the effectiveness of the USF programs and to determine whether changes are needed. The Commission is in the process of compiling USF performance measures, particularly for the Schools and Libraries program and the High Cost program, in order to comply with the Office of Management and Budget (OMB) Program Assessment Rating Tool (PART) requirements. We seek comment on additional performance measures and goals that we can use to track progress and efficiency for all the universal service programs. Proposed performance measures should be highly relevant in measuring program value, accomplishments, and results. We also seek comment on whether we should establish specific performance goals or targets for the Administrator or for participants in the USF programs. We must be careful to measure only the goals of the program and not stray beyond our jurisdiction. Under the Act, universal service is defined as an ''evolving level of telecommunications services'' that includes advanced services. For the various USF programs, we should focus on measuring access to an evolving level of telecommunications services in the performance measure context.

19. The OMB's PART guidance sets forth three types of performance measures: (1) outcome measures, (2) output measures, and (3) efficiency measures. Outcome measures ''describe the intended result from carrying out a program or activity.'' Output measures describe the level of activity, such as applications processed, number of housing units repaired, or number of stakeholders served by a program. Efficiency measures capture a program's ability to perform its function and achieve its intended results relative to the resources expended. These performance measurements should be intrinsically linked to the purpose of the program and the strategic goal to which it contributes. The GAO has also published a number of reports addressing the use of performance measures in the management of government programs. We seek comment on establishing the most useful and valid outcome, output, and efficiency measures for the USF and each of its mechanisms, as well as the administration of the program. Commenters should address the objectives of any recommended performance measurements and goals. Commenters should also discuss whether we should revise our information collection process, including any of the forms applicable to the USF mechanisms, in order to collect sufficient information to measure the performance of the programs and identify potential areas for program improvement.

20. *E-Rate.* We seek comment on suitable outcome, output, and efficiency measures for the E-rate program. In the past, the Commission used the percentage of public schools connected to the Internet as a measure of the impact of the E-rate program and its success, and we seek comment on continuing to use connectivity as a measurement. As prescribed in section 254(h) of the Communications Act, the statutory goal of the E-rate program is to provide discounts to eligible schools and libraries for educational purposes. The Commission used this goal in developing and submitting its prior PART analysis to the OMB. We seek comment on the value of continuing to use this goal for the purposes of measuring the impact of the E-rate program. We seek comment on whether we should also measure the connectivity of libraries or private schools. We seek comment on whether alternative or supplemental goals may be more appropriate than connectivity. Universal service is an ''evolving level of telecommunications services'' that includes advanced services. We seek comment on how we can take the evolving level of services into account in adopting performance measures. We also seek comment on ways to measure the extent to which broadband services have been deployed to classrooms, through the E-rate program. One possibility for measuring the impact of E-rate moneys on schools and libraries would be to collect data on the use of E-rate supported services. For example, we could measure the number or percentage of students that access the Internet or the number or percentage of teachers using supported services in their classrooms. Likewise, we could measure the number or percentage of library patrons who use supported services during a library visit. We seek comment on relevant performance measures for the E-rate program. We note that the Department of Education already collects information on the use of the Internet in classrooms, but does not collect information on broadband. We do not want to expend resources for a repetitious inquiry. We therefore seek comment on how we should design performance measurements to measure broadband connectivity. Commenters should also propose definitions of ''broadband'' for our performance measurements. We also seek comment on how we can be sure to measure only schools and libraries that get support from the program, rather than measuring all schools and libraries. Furthermore, we seek comment on how the Commission can determine which schools currently have no connectivity at all so that we can improve the program by reaching these unconnected schools.

21. We note that the U.S. Department of Education uses performance measures to evaluate the implementation of the Enhancing Education Through Technology (EETT) program. The EETT program funds initiatives that are designed to integrate technology into classrooms in ways to improve the academic achievement of students. These performance measures allow the Department of Education to respond to Government Performance and Results Act (GPRA) reporting requirements. We seek comment on whether these measures are instructive for E-rate purposes.

22. We also seek comment on meaningful ways to distinguish the impact of E-rate funds from other governmental and non-governmental programs that support services or facilities similar to the E-rate program. Is there an effective way to isolate and

measure the impact of the E-rate program on schools and libraries?

23. We also seek comment on ways to measure the efficiency and effectiveness of the E-rate program. For example, we could implement a measurement to capture the cost in E-rate funds disbursed per student or library patron. We note that the timing of the Commission's and USAC's processes may be critical to schools and libraries. Lengthy intervals for processing or reviewing applications could have a disruptive effect on the budget or procurement schedule for schools or libraries. Delay can complicate the USAC application process for schools and libraries, leading to ministerial errors on subsequent applications, complicating auditing, and undermining our ability to combat waste, fraud, and abuse. We seek comment on timing issues that need improvement. Commenters should discuss particular deadlines that should be modified. Should we create new deadlines for Commission or USAC action in various phases of the E-rate process? Should we set deadlines for progressing from the completion of an application to the funding commitment decision letter (FCDL), or for completion of appeals? In submitting their responses and proposals, commenters should focus on the need, if any, to modify our information collection processes, and the burden any such modification would place on stakeholders in the program, particularly small entities.

24. *High Cost, Rural Health Care, and Low Income.* We also seek comment on adopting meaningful outcome, output, and efficiency measures for the High Cost, Rural Health Care, and Low Income programs. Because these mechanisms have different goals and purposes than the E-rate program, we expect to adopt different performance measures and goals for each program. We note that participants in each USF mechanism may receive support from other sources (*e.g.*, loans from the Department of Agriculture's Rural Utility Service or the Department of Education) or may seek USF support for only a portion of their telecommunications needs. We seek comment on whether and how we should account for these factors in crafting performance measurements for each of the mechanisms so we can evaluate the impact of each USF dollar disbursed. Commenters should suggest measures for each of the statutory goals listed in section 254(b)(3) of the Communications Act: ''Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.'' We also seek comment on ways to measure the efficiency of each support mechanism. How do we best determine whether the programs are accomplishing the statutory goals in a cost-effective manner? Relevant performance measures for the Low Income program may include the percentage of eligible households that receive low income support and telephone subscribership rates for low income consumers. We seek comment on these suggestions and we request commenters to submit alternative proposals for performance measures. Suitable performance measures for the High Cost program may include telephone subscribership in rural areas (and comparing such rates to telephone subscribership in urban areas) or the comparability of rural and urban rates. We seek comment on these possibilities and request parties to submit alternative proposals for performance measures. Relevant performance measures for the Rural Health Care program may determine the comparability of rural and urban rates, the number or percentage of eligible rural health care providers receiving USF support, and the number of patients served by rural health care providers participating in the program. We seek comment on these possibilities and request parties to submit alternative proposals for performance measures.

25. *USF Administration.* Finally, we seek comment on establishing suitable performance measurements for evaluating the administration of the USF program. Under the Commission's rules, the Administrator is responsible for performing certain functions under the Commission's oversight. In particular, the Administrator bills contributors, collects USF contributions, disburses USF moneys, and administers the USF's accounts and transactions. When the Commission appointed the permanent Administrator, we noted our expectation that the Administrator would perform its duties in an efficient, effective, competitively neutral manner. Although the Commission adopted various reporting requirements applicable to the Administrator, it did not adopt metrics to measure the Administrator's performance of its duties. Relevant performance measures may include the number of applications for USF support processed within a particular period of time, the percentage of applications rejected by the Administrator for errors or other reasons, the average number of days required to process an application, the accuracy of bills issued to contributors, or the number of errors made in disbursing funds to USF beneficiaries. We seek comment on these possibilities and request that commenters submit alternative proposals. We also seek comment on ways of measuring how cost-effectively the Administrator operates.

3. Program Management

26. We seek comment from all interested parties on ways we can improve the management, administration, and oversight of the USF programs, including the billing and collection process and the process of disbursing funds. We welcome input from service providers, beneficiaries, and others who have had experience with the USF programs. We also seek comment from other agencies and governmental entities about their experiences with program administration and management that may offer guidance in the context of the USF programs. We seek comment on the accessibility of our applications and disbursement processes for persons with disabilities. We recognize that our efforts to improve USF management may entail an administrative burden on USF program participants, and we invite comment on ways to achieve more efficient administration and management, while continuing our efforts in deterring waste, fraud, and abuse.

27. We seek comment on whether the E-rate and Rural Health Care distribution processes should more closely track those of the High Cost and Low Income programs. For example, we could change our rules to use a formula to distribute funds directly to schools and libraries according to their size and allow funds to be used in a more flexible way, *e.g.*, for communications-related services and equipment, or training on how best to use such service and equipment, rather than requiring applications that identify needed services and equipment and their cost. Would such a formulaic approach further the goals of the program? Would it create substantial additional challenges? We believe that any changes should not disadvantage stakeholders, including private, parochial, rural, and economically-challenged schools or libraries. We seek comment on whether a formulaic approach would

disadvantage stakeholders of these programs. We also seek comment on whether a formulaic approach would make detecting waste, fraud, and abuse more difficult.

a. Application Process

(i) E-Rate

28. Under the Schools and Libraries program, eligible schools, libraries, and consortia that include eligible schools and libraries, may receive discounts for telecommunications services, Internet access, and internal connections. The schools and libraries support mechanism is capped at $2.25 billion annually; however, annual requests for funds frequently exceed the annual cap. Applicants may receive discounts ranging from 20 to 90 percent of the price of eligible services, based on indicators of need, *i.e.*, percentages of students eligible for free or reduced price lunch through the National School Lunch Program, or a federally approved alternative mechanism. In addition, rural applicants receive enhanced discounts, ranging from 25 to 90 percent of the pre-discount price for the eligible services.

29. The application process generally begins with a technology assessment and a technology plan. After developing the technology plan, the applicant must file the FCC Form 470 (Form 470) to request discounted services such as tariffed telecommunications services, month-to-month Internet access, cellular services, or paging services, and any services for which the applicant is seeking a new contract. The Form 470 must be posted on USAC's schools and libraries division Web site for at least 28 days. The applicant must then comply with the Commission's competitive bidding requirements set forth in §§ 54.504 and 54.511(a) of the Commission's rules. The applicant then files the FCC Form 471 (Form 471), after entering into agreements for eligible services.

30. After receiving the Form 471, USAC assigns a ''funding request number'' to each request for discounted services. USAC reviews the Form 471 and then, if the request is approved, issues funding commitment decision letters advising the applicants of the discounts that the applicants will receive under the rules. The FCC Form 486, Receipt of Service Confirmation Form (Form 486), is filed after the school or library begins to receive the service from the vendor. The FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form may be filed if the school or library needs reimbursement of discounts due on approved services for which it has paid full price. Alternatively, the applicant can pay only the non-discounted portion of the bill and the vendor can seek reimbursement from USAC by filing the FCC Form 474, Service Provider Invoice Form (Form 474).

31. *Application Process.* We seek comment on the application process for obtaining support from the schools and libraries mechanism. In particular, we seek proposals on ways to improve the administration of the application process while maintaining an effective review system to ensure that USF moneys are disbursed properly. We invite suggestions for streamlining the application process, such as shortening, combining, or eliminating forms. Commenters should discuss, for example, whether we should streamline applications for priority 1 services, establish a different application cycle for applicants with repeat requests, or limit the current application form to applicants seeking priority 2 services and develop a simpler application process for priority 1 services. We seek comment on whether the burden on applicants would be reduced by creating a streamlined form for certain circumstances and only requiring full applications when changing technology plan criteria or ordering new services. It appears, based on the information we have at this time that relatively few instances of waste, fraud, and abuse occur in requests for priority 1 services. We tentatively conclude that we should adopt a streamlined multi-year application for priority one services. Commenters should address whether such a streamlined process may create the potential for waste, fraud, and abuse, and if so, how we can mitigate such risk. We seek comment on whether the complexity of the application process leads some small schools and libraries to choose not to participate in the E-rate program. In addition, we seek comment on whether the Administrator should provide applicants and service providers more, or less, information regarding the status of applications and if we should establish deadlines or target dates for processing applications. We note that there may be practical limitations to establishing firm deadlines for processing applications, which are typically submitted in batches. We ask commenters to consider these concerns in their comments. We also seek comment on suggestions for using technology to improve the application process, such as receiving electronic-only notifications and status reports. Commenters should discuss the costs and benefits of alternative proposals or modifications to the current system.

32. The timing of various parts of the USAC and Commission processes is critical to schools and libraries, many of which operate according to strict State or municipal budget and procurement schedules. When USAC or the Commission cause delay, schools and libraries can be thrown off their mandated budget or procurement schedules. This can have a significant negative impact on schools' and libraries' ability to achieve connectivity goals. Sometimes delay can complicate the USAC application process for schools and libraries, leading to ministerial errors on subsequent applications, complicating auditing, and undermining our ability to combat waste, fraud, and abuse. What are the timing and delay issues that the Commission should address in this proceeding? How can we improve timing problems and delays? While the dedicated staffs of USAC and the Commission work hard, do USAC and the Commission have adequate staff resources to combat delay? Should we create new deadlines for Commission or USAC action in various phases of the E-rate process? Current deadlines for resolution of appeals are rarely met. How can we improve? Should we set deadlines for particular phases of the USAC and Commission process, such as deadlines for progressing from the completion of an application to FCDL, or for completion of appeals at the Commission?

33. We seek comment on what guidance, if any, we should provide to define a completed application for E-rate money. We note that, since the inception of the program, parties have experienced problems with meeting the requirement to submit a complete application during the filing window. The Administrator has rejected applications that were not complete, including applications that were not signed. We seek comments on what rules, if any, we should adopt to provide clarity to program applicants. In addition, we seek comment on whether to establish minimum processing standards with which the Administrator must comply (*e.g.*, requiring the Administrator to verify that the applicant's technology plan was signed by an authorized entity). We note that failure to sign an application may implicate law enforcement activity, as well as the enforcement of the Commission's governing rules.

34. *Competitive Bidding.* We seek comment on modifying our current rules requiring competitive bidding. In particular, we request commenters to

submit alternative proposals or suggestions for improving our competitive bidding rules to ensure that program participants obtain the best value for USF support provided. We seek comment on whether to limit the obligation to issue a competitive bid should apply only to applications above a particular dollar value threshold. Would this be an appropriate way to balance administrative burdens on applicants with the need for competitive bids? We seek comment on the process for establishing and administering the eligible services list. We seek comment on the pilot on-line eligible products list that USAC established pursuant to a Commission order, and whether this project has materially streamlined or simplified the application process. Commenters should discuss ways to handle the list of eligible services in a more administratively efficient way, while at the same time ensuring that USF moneys are provided only for eligible services. Commenters should also discuss whether we should publish service life, or depreciation, guidelines for equipment. In addition, we seek comment on how the E-rate technology planning process can be reviewed in accordance with other federal technology planning requirements. We also seek comment on whether the Good Samaritan E-rate program policy is an efficient method of disbursing funds.

35. *Forms.* Commenters should discuss the Forms 470, 471, 472, 473, 474, 486, and 498 and address whether more or less information should be required on these forms, if any of these forms could be consolidated or eliminated, and if any other forms would be helpful. We seek comment on whether the Form 470 facilitates the competitive bidding process, and whether our rules should continue to require this form and its public disclosure. We seek comment on whether forms can be combined in an effort to improve the process, *e.g.,* combining the Form 472 and Form 474. We note that the Bureau is proposing revisions to the Forms 472, 473, and 474 in order to combat waste, fraud, and abuse. We seek comment on the certification requirements in the E-rate forms. Specifically, commenters should discuss whether we should revise the Form 473, so that the applicant paying on an installment plan would be required to certify that, as of the time of the final invoice payment, all of the services covered by the invoice or invoices had been provided. In addition, commenters should discuss how we can ensure that the certifications by the applicant and the service provider in the Form 472 are executed independently. Commenters should also discuss whether we should add a signature requirement to the Form 474. We also seek comment on whether any of these forms should be optional.

36. *Timing of Application Cycle.* Commenters should address whether we should better synchronize the application and disbursement process with the planning and budget cycles of the schools and libraries benefiting from this program. For example, the instructions to the Form 471 state: ''Provide the number of students eligible for the National School Lunch Program (NSLP) as of the October 1st prior to the filing of this form, or use the most current figure available.'' Commenters should discuss whether this date for data, October 1st or the most current, is reasonable, or if a different date should be used. We seek comment on whether there are inconsistencies between Commission rules (or USAC procedures) and state or municipal rules, including state or municipal procurement rules. Commenters should discuss ways to reconcile any such inconsistencies. We seek comment on whether an annual application cycle is necessary or whether it would be more efficient to permit multi-year application cycles. Commenters should address the costs and benefits of an annual cycle or multi-year cycle.

37. *Service Providers and Consultants.* We seek comment on the process as it pertains to service providers and consultants. We specifically seek comment on whether we should establish certain criteria, such as quality standards or standards of conduct, for participating service providers and consultants. Adopting quality standards or standards of conduct for service providers and consultants could help deter waste, fraud, and abuse by, for example, ensuring program participants maintain effective procedures for complying with our rules. In addition, we seek comment on whether we should impose specific standards or a certification process for consultants for E-rate and consultants used by other USF beneficiaries. Commenters should also discuss any other measures we should adopt to deter fraudulent actions by service providers or consultants. Commenters should discuss the costs and benefits for any proposal submitted.

(ii) High Cost

38. The High Cost support mechanism provided approximately $3.4 billion in support in fiscal year 2004. Under the statute and the Commission's rules, only Eligible Telecommunications Carriers (ETCs) may receive High Cost support. Under section 214(e) of the Act, a state commission can designate a common carrier as an ETC for a service area designated by the state commission. An ETC is eligible for universal service support and must offer the services supported by universal service support mechanisms using its own facilities or a combination of its own facilities and resale of another carrier's services. In addition, the ETC must advertise the availability of such services.

39. The High Cost support mechanism is made up of five components: high cost loop support, local switching support, interstate access support, forward-looking, or model, support for non-rural carriers, and interstate common line support (ICLS) for rate-of-return carriers. A telecommunications carrier seeking High Cost support for the first time must do the following: (1) obtain a service provider identification number (SPIN) by using Form 498, (2) obtain ETC status and submit a copy of the ETC designation order to USAC, (3) submit line count information, (4) have a valid certification on file, and (5) submit the Forms 499–A and 499–Q, in which the carrier reports interstate and international end user telecommunications revenue.

40. We seek proposals from stakeholders on ways to improve the High Cost program application process and participation by reducing or eliminating the administrative burden on carriers. Commenters also should discuss whether we should permit High Cost carriers to file annual, biannual, or triennial applications for support to provide for a more efficient administration of the High Cost program while minimizing the burden on carriers. Because support levels may change from year to year, a multi-year process, with annual true-ups and filing revisions, could cause administrative burdens on the Administrator and the carriers. If we adopt a multi-year application process, should we make it mandatory? If not, should we require carriers that opt for a multi-year process to retain the same level of support over the multi-year term, without an opportunity for true-up?

41. We seek comment on whether any rule changes are needed to permit the High Cost support mechanism to operate in a more efficient and effective manner while ensuring that USF moneys are used for their intended purpose. Should we adopt forms in lieu of the ''Line Count Sample Letters'' available on USAC's Web site? Is there additional information we should collect from carriers to prevent waste, fraud, and abuse? We also seek

comment on whether the Commission should adopt additional standards or deadlines (applicable either to carriers or the Administrator) to ensure more efficient management of this program. Commenters should discuss the costs and benefits of alternative proposals or suggestions. We note that our rules pertaining to the High Cost support mechanism are contained in both part 36 and part 54 of the Commission's rules. We seek comment on whether we should modify our rules to consolidate all High Cost program rules in a single section.

42. *High Cost Loop Support.* We seek comment on whether we should modify the administrative process for participating in the High Cost Loop support mechanism. Specifically, we seek comment on whether we should modify the timing and the content of the reporting requirements imposed on High Cost companies for the purpose of administering the High Cost loop support mechanism. Local exchange carriers (LECs) receiving this support are required to submit certain investment and expense data, including line count information, to NECA on July 31 of each year for participation in the High Cost loop support mechanism. Non-rural High Cost carriers must submit updated data quarterly. Rural High Cost carriers may voluntarily submit updated data. Currently, NECA processes the information and performs the necessary calculations, but does not provide the supporting documentation to USAC. Does this lack of supporting information impede auditing efforts? We seek comment on whether investment and expense information should be submitted to USAC in addition to or instead of NECA. We also seek comment on whether we should revise or clarify the calculation of line count information; for example, should we use an average annual line count instead of an end-of-year line count? In addition, we seek comment on whether we should make the voluntary update filings requirement mandatory, or eliminate this requirement altogether. We also seek comment on whether we should harmonize the filing dates and requirements so that rural and non-rural companies are subject to the same deadlines and billing requirements.

43. High Cost loop support and local switching support are based on an incumbent LEC's costs at the study area level. Rural carriers submit line count information at the study area level. We also seek comment on whether we should revise § 36.611 of our rules, which describes the data collection requirements applicable to High Cost carriers. Commenters should discuss whether revisions to NECA's data collection form are needed in order to accomplish the goals of the program. Finally, we seek comment on whether we should modify the quarterly reporting requirement for rural High Cost LECs in whose service area a competitive ETC has initiated service and reported line count data. These LECs must update their line count data quarterly (but not the investment and expense data). We invite comments and proposals on what measures we can implement to balance the filing burden on High Cost companies with our need for information to run the program.

44. *Local Switching Support.* We seek comment on the administrative process pertaining to the Local Switching Support mechanism, including the timing of and scope of the information submitted by program beneficiaries to administer this program. A cost company serving fewer than 50,000 lines must submit the Form LSSc, an average schedule company serving fewer than 50,000 lines must submit the Form LSSa. We seek comment on these forms. We seek comment on whether we should shorten, combine, revise, or eliminate these forms. Commenters should discuss whether we should revise § 54.301 of the Commission's rules to limit projected growth in accounts based on actual past performance. In addition, commenters should discuss any other revisions to the LSS data collection form and whether the quantity and timing of information requested is appropriate. The Commission's rules require incumbent LECs receiving Local Switching Support to provide data to the Administrator by October 1st of each year. We seek comment on this process and specifically on the deadlines for submitting Local Switching Support data. We seek comment on whether carriers should receive a pro-rated portion of LSS, if the LSS information is filed late. We also seek comment on whether we should adopt rules to ensure the accuracy and reliability of these data. We seek suggestions for improving the process while at the same time promoting measures to ensure that Local Switching Support is used for appropriate purposes.

45. *Interstate Access Support.* Only price cap carriers or competitive LECs serving in the area of a price cap carrier are eligible for Interstate Access Support. Price cap carriers must submit information on line counts, revenue information, UNE zone rates and UNE zone maps, and carrier certification. Line counts are the number of lines served within each price cap LEC study area in which it serves. We seek comment on the application process, the timing and scope of the information carriers must file, and whether we should impose greater or lesser reporting requirements on participants. We seek comment on whether we can administer Interstate Access Support with less information than we currently collect and still ensure that funds are used appropriately.

46. *Forms.* Applicants for funds from each of the universal service support mechanisms must comply with various certification requirements. Generally, these consist of statements certifying that information provided on the forms themselves are accurate and complete, and that funds received will be used for their intended purpose. We invite comment on whether the certification language in existing forms that must be submitted by applicants are sufficient to ensure that funds are used in their intended manner, in the absence of waste, fraud, and abuse. Would additional forms or modified language in existing forms further protect the high-cost universal service support mechanisms against waste, fraud, and abuse? We request that commenters propose specific additional certification language they believe would further these goals, along with an explanation why the current certification language is insufficient. We also seek comment on the administrative burden (particularly on rural and small entities) of any proposed new forms and certifications.

(iii) Low Income

47. The Low Income program provided approximately $800 million to carriers in fiscal year 2004 in order to promote subscribership among people of limited means. Only ETCs are eligible to receive Low Income support. In our *Lifeline/Link-Up Report and Order,* 69 FR 34590, June 22, 2004, we observed that only one-third of the households currently eligible for Lifeline/Link-Up assistance actually subscribe to this program. In that proceeding, we expanded the eligibility criteria and adopted federal certification and verification procedures to minimize potential abuse of these programs. We also adopted outreach guidelines to target low income consumers more effectively.

48. The Lifeline program reimburses carriers for discounting low income consumers' monthly telephone bills. This program allows low income consumers to save up to $10.00 per month on their telephone bills. Low income consumers living on tribal lands may qualify for additional monthly discounts ranging from $30.25 to $35.00. The Link-Up program

reimburses carriers for providing discounted connection charges to eligible low income consumers. Qualifying consumers are eligible to save up to 50 percent on installation fees (not to exceed $30). Low income consumers living on tribal lands may qualify for a discount of up to an additional $70.

49. We seek comment on the process for participating in the Low Income support mechanism. In particular, we seek comment on whether we should revise the information requested and the frequency of carrier submissions. Carriers must submit the FCC Form 497, Lifeline and Link-Up Worksheet (Form 497), for reimbursement. In the Form 497, carriers report the number of Lifeline and Link-Up customers served, for each tier of support. This form must be submitted quarterly, by April 15th, July 15th, October 15th, and January 15th of each year. Commenters should discuss whether we should simplify the application process to require annual or semi-annual reporting instead of quarterly reporting. Low income rules appear in both part 54 and part 36 of our rules. We also seek comment on whether we should consolidate the Low Income rules. In addition, we invite comments and proposals on what measures we can implement to balance the filing and advertising burdens on companies with low income end users with our need for information to run the program effectively.

50. *Forms.* Applicants for funds from each of the universal service support mechanisms must comply with various certification requirements. Generally, these consist of statements certifying that information provided on the forms themselves are accurate and complete, and that funds received will be used for their intended purpose. We invite comment on whether the certification language in existing forms that must be submitted by applicants for funds from the low income support mechanism are sufficient to ensure that funds are used in their intended manner, in the absence of waste, fraud, and abuse. Would additional forms or modified language in existing forms further protect the low income universal service support mechanisms against waste, fraud, and abuse? We request that commenters propose specific additional certification language they believe would further these goals, along with an explanation why the current certification language is insufficient. We also seek comment on the administrative burden (particularly on rural and small entities) of new forms and certifications.

(iv) Rural Health Care

51. In the Rural Health Care program, eligible health care providers apply for discounts on telecommunications services, in a procedure similar to that for the schools and libraries. The Rural Health Care support mechanism provided approximately $18 million thus far to carriers in fiscal year 2003. The program reimburses carriers that ''provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that services persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State.'' This design ensures that health care providers in rural areas obtain the benefits of the Internet and telecommunications through universal service support. Rural health care providers often use rural health care support to implement telemedicine programs, *i.e.*, medical treatment supported by advanced telecommunications services and information services. Telemedicine programs allow rural health care providers to consult with specialists in an effective manner. Carriers are not required to be ETCs to participate in this program; all Internet service providers and common carriers may participate, including interexchange carriers. This program is capped at $400 million per year.

52. We seek comment on ways to improve and streamline the application process. Currently, health care providers must file the FCC Form 465, Description of Services Requested and Certification Form and the FCC Form 466, Funding Request and Certificate Form. We seek comment generally on these forms. Commenters should address whether more or less information should be required on these forms and whether any of the forms could be consolidated or eliminated, and whether any other forms would be helpful. We tentatively conclude that we should adopt a streamlined multi-year application for rural health care providers. Our experience suggests that few problems of waste, fraud, and abuse exist in the Rural Health Care program. Commenters should discuss whether adopting multi-year applications would raise significant waste, fraud, and abuse concerns in this program. We seek comment on whether the current application process deters participation, particularly by small health care providers. In addition, commenters should discuss the feasibility of using additional automation in the administrative process; for example, requiring the Administrator to e-mail commitment letters instead of using traditional methods such as the U.S. Postal Service to notify applicants of funding decisions.

53. *Forms.* Applicants for funds from each of the universal service support mechanisms must comply with various certification requirements. Generally, these consist of statements certifying that information provided on the forms themselves is accurate and complete, and that funds received will be used for their intended purpose. We invite comment on whether the certification language in existing forms that must be submitted by applicants for funds from the rural health care support mechanism are sufficient to ensure that funds are used in their intended manner, in the absence of waste, fraud, and abuse. Would additional forms or modified language in existing forms further protect the rural health care universal service support mechanisms against waste, fraud, and abuse? We request that commenters propose specific additional certification language they believe would further these goals, along with an explanation why the current certification language is insufficient. We also seek comment on the administrative burden (particularly on rural and small entities) of new forms and certifications.

b. USF Disbursements

54. We seek comment on whether we should adopt rules to better ensure that the disbursement process is administered in an efficient, effective, and competitively neutral manner. Commenters should discuss whether experience has shown that the Administrator disburses the correct amount of funds in a timely manner. We seek any suggestions for improving the disbursement process. Specifically, we seek comment on whether we should establish deadlines or performance targets to ensure that beneficiaries get the support for which they qualify in a timely manner. USAC's disbursement process varies slightly depending on the mechanism: for High Cost and Low Income, USAC disburses one amount to each carrier participating in the program each month; for the Schools and Libraries and Rural Health Care programs, USAC disburses amounts based on invoices received from the program participants. We seek comment on whether we should establish a single uniform system for disbursing USF, and whether such a single disbursement method is feasible, given the many differences among the USF programs.

We seek comment on whether we need to modify our rules to address program-specific disbursement issues, such as strengthened procedures to help effectuate the E-rate carry-over rule. For example, are there rules we should adopt to ensure full use of the $2.25 billion annual cap for the E-rate program? Commenters should discuss whether the current system results in efficient, effective, competitively neutral administration of the programs. We seek comment on whether experience shows that the amounts disbursed are accurate, and if not, suggestions for ways to improve such accuracy. We seek comment on whether we should adopt criteria or provide guidance for the Administrator's review of invoices for the E-rate and Rural Health Care programs. We understand that some beneficiaries have asserted that the Administrator sometimes denies payment on submitted invoices even though the original application had been approved. Would specific criteria or guidance help the invoice review process?

55. We seek comment on whether the existing disbursement process for the High Cost program should be revised. The High Cost support mechanism provided approximately $3.4 billion in support in fiscal year 2004. As currently structured, the High Cost program disburses approximately $300 to $325 million per month. USAC issues one payment, generally by electronic transfer, for each carrier for all universal service payments for which it is eligible. The disbursement amount is posted on USAC's website approximately five days before disbursement, which is the carrier's notification of the disbursement amount. USAC sends a remittance statement to the carriers on the last day of each month. Commenters should discuss whether the Administrator should provide additional notification to the carriers. We seek comment on whether we should adopt rules to provide for true-ups of amounts disbursed. Amounts paid to carriers under Local Switching Support and Interstate Common Line Support components of High Cost are based on forecasts and are subject to true-up. USAC compares the actual costs, submitted by carriers twelve months after the end of the year, to the projected costs. Currently, we have no rules limiting the level of a carrier's projections and carriers can overestimate or underestimate their accounts. We seek comment on whether we should require that data be submitted earlier in order to facilitate the true-ups. Commenters should also address whether, as part of the true-up process, carriers should pay interest on the difference between projected and actual amounts if the projected amounts exceed actual amounts.

56. USAC issues one monthly payment, generally by electronic transfer, for all Low Income universal service discounts provided two months earlier. The disbursement amount is posted on USAC's website approximately five days before disbursement, which is the carrier's notification of the disbursement amount. USAC bills companies that receive Low Income support (Lifeline, Link-Up, and Toll Limitation Service) and have a negative disbursement amount for any given month. So-called ''negative disbursement'' amounts can occur when USAC conducts a true-up between a company's projected support amount and the actual support claimed, or when a company revises its previous support claims, resulting in adjustments to a carrier's support payments. We seek comment on whether our Form 497 should be revised in order to reduce the likelihood of negative disbursement amounts, which are, in effect, an interest free loan to the carrier. We seek comment on whether carriers should be charged interest on the negative disbursement amount. USAC estimates Low Income payments on a quarterly basis, based on the percentage growth in total support claimed by all carriers over the previous quarters, and applies this factor to the amount of support the carrier received in the most recent quarter. The disbursements are based on a rolling average of the payments made to that carrier over the previous twelve months. The carrier data submission, filed fifteen days after the end of a quarter, is used to true-up payments. We seek comment on whether we should revise this disbursement procedure and if so, how.

57. We seek comment on whether we should simplify or streamline the four-level discount process for Lifeline and Link-Up, or if additional levels would be appropriate. Tier 1 is equal to the incumbent ETC's federal tariffed SLC. Tier 2 is an additional $1.75. Tier 3 is equal to one-half the amount of state-mandated Lifeline support or one-half of any Lifeline support provided by the carrier, up to $1.75 per month. Tier 4 is additional federal Lifeline support of up to $25 per month for eligible residents of tribal lands. There are additional discounts for low income residents on tribal lands; Enhanced Lifeline, Link-Up, and other universal service-related programs that are targeted specifically toward tribal lands.

58. We also seek comment on whether we should revise the current Rural Health Care disbursement process. The disbursement process for the Rural Health Care program is similar to the process for the E-rate program. We seek comment on whether we should adopt rules to better ensure that the disbursement process is administered in an efficient manner.

c. Contributions Process

59. We seek comment on whether to adopt any rules clarifying or improving the contributions process to ensure the Administrator collects sufficient funds. The Form 499–A sets forth the information that carriers must submit so that the Administrators of the USF and other funds can calculate and assess contributions. Beginning March 14, 2001, the Commission modified its reporting requirements to require carriers to file not only the annual Form 499–A, but also a quarterly worksheet, FCC Form 499–Q, with the interstate and international revenues from the previous period. Currently, USAC bases a carrier's universal service obligation on the carrier's projected collected revenue rather than its historical gross-billed revenue. USAC uses the revenue information provided on the Quarterly Worksheets to determine each carrier's universal service contribution on a quarterly basis, with a yearly true-up using the Annual Worksheet. USAC then bills carriers each month, based on their quarterly contribution amount. Carriers must pay their contribution by the date shown on the invoices. A carrier's failure to file the worksheets or submission of inaccurate or untruthful information ''may subject the contributor to the enforcement provisions of the Act and any other applicable law.'' We seek comment on whether we should modify or streamline the current contribution process. We seek comment on whether to adopt criteria for the Administrator to follow for making projections or forecasts, and if so, what criteria would be appropriate. Commenters should address the pros and cons of any proposals.

d. Periodic Review of Program Management

60. We seek comment on whether we should adopt rules requiring periodic review of the administration and management of the USF. Commenters should discuss whether a triennial review, such as we have for the Local Competition rules, would be useful or whether such reviews should occur at different time intervals.

B. Oversight of the USF

61. In this proceeding, we are not trying to find problems after they occur (and thus, seek to recover improperly disbursed funds in some cases years after disbursement), but we are trying to prevent problems from occurring in the first place. We recognize, however, that strong oversight procedures are needed because the application review process can never be perfect. In moving forward to strengthen audits and oversight over the program, we are informed by the lessons of prior review efforts and investigations. We are particularly focused on preventing a recurrence of past problems.

62. In paragraphs 69 to 99 of the NPRM, we consider whether to strengthen our oversight of the high cost, low income, schools and libraries, and rural health care universal service support mechanisms. In particular, we seek comment on adopting a targeted audit requirement to ensure program integrity and to detect and deter waste, fraud, and abuse. We generally seek comment on ways in which our oversight goals may be achieved through specific changes to various stages of the application and funding process. We invite parties to address whether and how our specific goals can be met by the changes discussed and to suggest other ways to further these goals. We note that many of these issues were addressed in the context of the schools and libraries universal service support mechanism. As a result, we specifically invite parties to comment on the ways our goals and methods for protecting the high cost, low income, and rural health care fund mechanisms from waste, fraud, and abuse should replicate or differ from those previously adopted with regard to the schools and libraries universal service support mechanism.

1. Independent Audits

63. Since the inception of the E-rate program, schools and libraries have been subject to audits to determine compliance with the program rules and requirements. The Commission's rules authorize the Administrator to conduct audits of all beneficiaries, as well as contributors to the USF. Audits are a tool for the Commission and USAC, as directed by the Commission, to ensure program integrity and to detect and deter waste, fraud, and abuse. Because audits may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules applicable during a particular funding year, audits can reveal instances in which universal service funds were improperly disbursed or used in a manner inconsistent with the statute or the Commission's rules.

64. Audits and investigations have uncovered issues ranging from poor program design (*e.g.*, problems with technology plans and problems with program rules) to improper use of funds, including intentional efforts to defraud the program by some unscrupulous actors. In each case in which fraud has occurred, the Commission has debarred or proposed debarment based on Department of Justice convictions. In these cases, the parties pled guilty or were convicted of a variety of offenses, such as imposing the entire cost of the goods and services on USAC, submitting materially false and fraudulent invoices to USAC, and trying to persuade school officials not to reveal evidence to Commission auditors. The Commission's OIG has identified instances of rule violations and has recommended recovery of universal service moneys. Likewise, USAC has, at our direction, maintained an audit program that has involved more than 201 audits of participants in the E-rate program and USAC audits of more than 100 participants in the other USF support mechanisms. In some cases, beneficiaries have self-identified compliance problems and proactively disclosed these to USAC or the Commission. For the E-rate program, approximately $1.14 billion in funds provided to beneficiaries have been subjected to an audit. To date, USAC has recovered a total of approximately $7.6 million for all violations of Commission rules. Recovery of $4.5 million is subject to pending appeals and recovery of $19.5 million is still under review. We have not yet determined whether program rules were or were not violated and whether recovery is warranted for these funds. These efforts have also led to recommended recovery of $6,243,223 for the High Cost support mechanism, $392,536 for the Low Income support mechanism, and $49,348 for the Rural Health Care support mechanism. The recommended recovery amounts are small in comparison to the more than $31 billion in funds disbursed since 1997, demonstrating that the great majority of E-rate, High Cost, Low Income, and Rural Health Care program recipients follow our rules and have not engaged in fraud. Nonetheless, even a situation that results in 0.67 percent of our funds being recovered as improperly disbursed represents a weakness in the operation of the programs, which needs to be corrected. We will be aggressive in correcting this problem. Conversely, we believe that USAC, OIG, and independent auditing processes may waste government money if they are unnecessarily repetitious, or inefficiently designed or executed.

65. *E-Rate Beneficiary Audits.* With this in mind, we seek comment on whether the Commission should institute a targeted independent audit requirement to further safeguard the E-rate program against potential misconduct, including waste, fraud, and abuse. Specifically, we seek comment on whether the Commission should require some recipients of E-rate funding to obtain an annual independent audit evaluating compliance with the statute and the Commission's rules. Many schools and libraries already obtain annual independent audits to comply with the Single Audit Act. Commenters should address whether, or under what conditions, the anticipated costs associated with targeted audits of program beneficiaries would outweigh the benefits of enhanced oversight of the universal service fund. For example, are post-disbursement audits even appropriate where the cost of the audit would approach or exceed the amount of universal service support disbursement?

66. We specifically seek comment on the costs and burdens that an independent audit requirement would have on smaller beneficiaries. For example, would an independent audit requirement deter the smaller schools and libraries from applying for discounts from the fund? Moreover, because the cost of such an audit could exceed the total discounts received by some applicants, any benefit of the E-rate program may be erased quickly by a burdensome audit requirement. We seek comment on whether the audit requirement should apply only to recipients that receive a relatively large amount of support or benefits from the program. What should the threshold be? For example, we could impose a requirement that any school or library that receives $3 million or more in discounts in any funding year, or a total of $3 million or more over a consecutive three-year period, must undergo an annual audit. We note that, based on data from Funding Year 2002, an annual $3 million threshold would ensure independent audit coverage of at least 25 percent of E-rate funds disbursed; combining an annual $3 million threshold with a $3 million triennial threshold would ensure independent audit coverage of more than 50 percent of E-rate funds disbursed. Should the same threshold apply to both schools and libraries, and service providers?

67. In addition, we seek comment how such audits should be funded. Should schools, libraries, and service providers that are subject to an annual independent audit pay the costs for an auditor to evaluate their compliance with Commission rules and the Act? Alternatively, we could require USAC to procure the services of an independent auditor to perform the audits in accordance with generally accepted government auditing standards (GAGAS). In such a scenario, the costs of the independent audits would be borne by the USF itself, and therefore recovered through the collections process. We note that many participants in the USF may have internal auditors on staff who could perform these audits. The Commission's rules require audits of USF beneficiaries to comply with GAGAS. These standards allow for entities to hire independent auditors to perform audit work, but they also allow (with certain safeguards) employees of the entity to perform independent audits. We seek comment on whether allowing internal auditors and other staff to perform reviews or audits would satisfy the need for strong oversight.

68. We seek comment on the scope and methodology of an annual independent audit. We note that our efforts to combat waste, fraud, and abuse must distinguish between intentional fraud and ministerial error. Our audits, penalties, and application process must recognize the fundamental difference between intentional fraud and ministerial error. While minimizing ministerial error is important, such errors are far different from fraud. In fact, the complicated nature of our applications and the presence of USAC rules that are not published contribute to ministerial errors. Should the auditor evaluate compliance with Commission rules in order to determine potential noncompliance? Should USAC and the Commission recover improperly disbursed funds? Should our audits try to distinguish between intentional fraud, negligence, and unintentional ministerial errors? Parties recommending such an approach should offer a definition of ''ministerial error'' and provide examples. Commenters recommending this approach should also discuss whether compliance with certain administrative procedures, such as filing or application deadlines and requirements, provide a degree of certainty to all parties, including the fund Administrator. We seek comment on whether our audits should be limited to compliance with Commission rules or whether and under what circumstances the audits should include compliance with USAC administrative policies and practices. Commenters should discuss whether compliance with unpublished USAC administrative policies and practices should be included in the audit. In addition, we seek comment on whether government auditing standards, which require, *inter alia*, that independent auditors obtain a sufficient understanding of internal controls that the entity uses to ensure compliance with Commission rules that are material to the subject matter to plan the engagement, should be applied during the audit. Are auditors properly trained or have beneficiaries experienced auditors who do not properly understand the program rules? Have auditors wasted time or resources because the audit is improperly designed, improperly accomplished, or because auditors do not adequately understand the program rules? How much does it cost a school or library in terms of money and staff hours to comply with various types of audits? We seek comment on whether we should limit auditing so that one entity is not audited more than once for a given program year, so that one entity is not audited by USAC, and independent auditor, and/or the OIG for the same application. Should the auditor evaluate the sufficiency of the audited entity's internal controls that the entity uses to ensure compliance with Commission rules as part of its examination into the audited entity's compliance? We generally seek comment on other standards that should be imposed for carrying out such audits. For example, because the primary purpose of the audit is to evaluate compliance with the statute and program rules, should auditors be required to perform a ''compliance attestation'' in accordance with government auditing standards? Why or why not? We invite proposals on the mechanics of administering an independent audit program. Commenters should discuss ways to avoid repetitious or inefficient audits. In addition, we seek comment on whether USAC should provide audit reports to audited entities, and, if so, whether USAC should be required to provide the audit report within a particular period of time, after the audit is concluded.

69. We seek comment on whether the current structure of E-rate audits is appropriate to the program. Some schools indicate that E-rate audits are more intense and require them to expend more resources than do audits for the federal Title I educational program, which is a substantially larger program involving far more government money. How can we improve the process?

70. *Rural Health Care, Low Income, and High Cost Beneficiary Audits.* We seek comment on whether the current audit structure for the Rural Health Care, Low Income, and High Cost programs is appropriate to the programs. How can we improve the auditing process for these programs? As we note above in the E-rate context, our efforts to combat waste, fraud, and abuse must distinguish between intentional fraud and ministerial error. Our audits, penalties, and application process must recognize the fundamental difference between intentional fraud and ministerial error. Should the auditor evaluate compliance with Commission rules in order to determine potential noncompliance? Should USAC and the Commission recover improperly disbursed funds? Should our audits try to distinguish between intentional fraud, negligence, and unintentional ministerial errors? Parties recommending such an approach should offer a definition of ''ministerial error'' and provide examples. Commenters recommending this approach should also discuss whether compliance with certain administrative procedures, such as filing or application deadlines and requirements, provide a degree of certainty to all parties, including the fund Administrator. We seek comment on whether our audits should be limited to compliance with Commission rules or whether and under what circumstances the audits should include compliance with USAC administrative policies and practices. Commenters should discuss whether compliance with unpublished USAC administrative policies and practices should be included in the audit. We seek comment on whether we should limit auditing so that one entity is not audited more than once for a given program year, so that one entity is not audited by USAC, an independent auditor, and/or the OIG for the same application. Should the auditor evaluate the sufficiency of the audited entity's internal controls that the entity uses to ensure compliance with Commission rules as part of its examination into the audited entity's compliance? We generally seek comment on other standards that should be imposed for carrying out such audits. For example, because the primary purpose of the audit is to evaluate compliance with the statute and program rules, should auditors be required to perform a ''compliance attestation'' in accordance with government auditing standards? Why or why not? We invite proposals

on the mechanics of administering an independent audit program. Commenters should discuss ways to avoid repetitious or inefficient audits. In addition, we seek comment on whether USAC should provide audit reports to audited entities, and, if so, whether USAC should be required to provide the audit report within a particular period of time, after the audit is concluded.

71. We seek comment on whether, in order to improve our oversight capacity to guard against waste, fraud, and abuse, and ensure funds are used for appropriate purposes, our rules should require independent audits of recipients of funds (*i.e.*, service providers) from the High Cost, Low Income, and Rural Health Care programs. We specifically seek comment on whether recipients of funds from any or all of these support mechanisms should be required to undergo an independent audit requirement, and, if so, whether only recipients above a particular threshold should be subject to this requirement. For example, we could require independent audits for any entity obtaining more than $3 million in USF support in a particular fiscal year. We note that for the High Cost program, approximately 15 percent of the study areas, *i.e.*, 292 study areas, received $3 million or more in High Cost support for fiscal year 2004. Establishing an audit requirement at this threshold would ensure coverage for about 69 percent of the High Cost fund for 2004. With respect to Rural Health Care, only two service providers have received $3 million or more in a given year since the inception of the program. We recognize that the cost of independent audits could outweigh the benefits in cases where USF recipients only receive a small amount of support. We seek comment on the costs and benefits of any independent audit program, particularly the potential paperwork and other costs imposed on rural carriers and small entities. We seek comment on the scope and methodology of these audits. Similar to the E-rate context, we seek comment on whether the auditor should evaluate compliance with Commission rules in order to determine potential noncompliance (and whether USAC and the Commission should recover improperly disbursed funds). Do the costs of an audit outweigh the benefits of enhanced oversight of the universal service fund? Should such audits be performed at the recipients' expense? If not, we seek comment on whether recipients should be required to reimburse USAC or the Commission for the cost of the audit, or to pay other penalties, in the event that waste, fraud, and abuse are discovered.

72. We seek comment on the estimated costs of audits of these other mechanisms. Should we impose identical audit requirements for each USF program? If not, what audit requirements, if any, should we impose on each program? For example, the Rural Health Care program has historically disbursed a fraction of the amount of the Schools and Libraries and High Cost mechanisms. Should we require rural health care providers to get audits only if the total disbursements to a particular provider reach a certain level? What should the audit threshold be for beneficiaries of each fund mechanism? Should there be different independent audit requirements or thresholds for fund recipients (*e.g.*, rural health care participants) and participating service providers? We seek comment on the impact of any rule on small entities. We also seek comment on alternatives that might provide assurances of program integrity consistent with the goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

73. We seek comment on whether we should automatically sunset any independent audit requirement we may ultimately adopt. For example, we could sunset any measures automatically after a three-year period or we could review any independent audit requirement after a specific period of time.

74. *Contributor Audits.* In addition to considering whether we should require audits of USF program beneficiaries, we seek comment on whether our rules should require independent audits of contributors to the universal service fund. Pursuant to § 54.707 of the Commission's rules, USAC has the authority to audit contributors and carriers reporting data. In addition to such audits, our Enforcement Bureau regularly investigates contributor filings to ensure compliance with our rules. In addition to these existing procedures, we seek comment on whether we should establish an independent audit program for contributors modeled on the Single Audit Act or some other independent audit program (*e.g.*, independent audits used for the securities industry). Would the benefits of ensuring that contributors pay their full amount of USF support justify the costs of such a program? Should we establish a threshold for triggering a contributor audit (*e.g.*, require independent audits only for carriers contributing $100 million or more in a particular fiscal year)? A $100 million threshold for auditing contributors would ensure audit coverage for about 60 percent of the total contributions to the fund. If the Commission were to adopt an independent audit requirement for contributors to the Universal Service Fund, what additional rules or requirements (if any) should be adopted to ensure rigorous but fair audits? Finally, should we require contributors to pay for the audits on their own, or would using USF moneys be more appropriate?

75. We seek comment as to whether we should model any independent audit requirement we apply to participants in the USF on the requirements contained in the Single Audit Act and the OMB's implementing guidance. We seek comment on whether we should prohibit parties who fail to comply with any independent audit requirement from receiving any USF moneys until such audit is satisfactorily completed. We seek comment on whether we should adopt rules requiring audited entities to prepare and submit a plan for corrective action addressing all audit findings.

76. We seek comment on whether any independent audit requirement we adopt for beneficiaries or contributors should include an audit opinion concerning the sufficiency of an audited entity's internal controls over compliance and other areas of concern to us in our policy making role. We seek comment on whether we should adopt additional criteria beyond those established in government auditing standards for selecting an auditor, *e.g.*, competitive bids.

2. Document Retention Requirements for Recipients of Funds From the High Cost, Low Income, and Rural Health Care Mechanisms

77. In the *Schools and Libraries Fifth Report and Order*, we concluded that specific recordkeeping requirements not only prevent waste, fraud and abuse, but also protect applicants and service providers in the event of vendor disputes. In that order, we adopted a requirement that applicants and service providers retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular funding year. We found that a five-year record retention requirement would facilitate improved information collection during the auditing process and will enhance the ability of auditors to determine whether applicants and service providers have complied with program rules.

78. We seek comment on whether we should adopt document retention rules

for all of the USF mechanisms that are consistent with the amended schools and libraries rule adopted in the *Schools and Libraries Fifth Report and Order*. We recognize that, because the high cost and low income programs do not precisely mirror the application and competitive bidding process in the schools and libraries program, different document retention requirements might be needed for each support mechanism. For the high cost and low income support mechanisms, we invite comment on the length of time that records relating to the receipt or delivery of services should be maintained by the beneficiary and/or service provider. We are not proposing document retention requirements for individual participants in the Low Income program. We solicit comment on the types of documents that would be sufficient to demonstrate compliance with the rules pertaining to the high cost and low income programs. For example, we seek comment on the types of records (such as billing and engineering) used to develop year end counts of total working loops and total working USF loops, as required for High Cost Loop support. We seek comment on a reasonable record retention period for such documents. We also seek comment on whether we should revise the document retention rules for the rural health care mechanism. Should we specify minimum document retention requirements?

79. In the *Schools and Libraries Fifth Report and Order*, we clarified that schools, libraries, and service providers remain subject to both random audits and to other audits and or investigations to examine an entity's compliance with the statute and the Commission's rules. These audits and investigations may be initiated at the discretion of the Commission, the Commission's OIG, USAC, or another authorized governmental oversight body. Similarly, § 54.619(c) of the Commission's rules subjects health care providers to random compliance audits. The *Schools and Libraries Fifth Report and Order* also concluded that failing to comply with an authorized audit or other investigation, such as failing to retain records or failing to make available required documentation, would constitute a rule violation that may warrant recovery of universal service moneys that were previously disbursed for the time period for which such information is being sought. We invite comment on whether recipients of funds from the High Cost, Low Income, and Rural Health Care universal service support mechanisms (*i.e.*, service providers and carriers) should be subject to comparable requirements.

3. Administrative Limitations Period for Audits or Other Investigations by the Commission or USAC of Recipients of Funds From the High Cost, Low Income, and Rural Health Care Support Mechanism

80. In this section, we seek comment on the establishment of an administrative limitations period in which the Commission or USAC will determine that a violation has occurred among recipients of funds from the high cost, low income, and rural health care universal service support mechanisms. We believe that establishing a general policy in this area is in the public interest because it would provide these USF support mechanism participants with some certainty of the time within which an audit or further review of funding may occur.

81. In the *Schools and Libraries Fifth Report and Order*, we indicated our preference for a limitation on the timeframe for audits or other investigations ''in order to provide beneficiaries with certainty and closure in the E-rate applications and funding processes.'' We established a policy that, for administrative efficiency, the time frame for such inquiry should match the record retention requirements, and accordingly, we announced that any inquiries to determine whether or not statutory or rule violations exist with be initiated and completed within a five-year period after final delivery of service for a specific funding year. We stated that conducting inquiries within five years struck an ''appropriate balance between preserving the Commission's fiduciary duty to protect the fund against waste, fraud and abuse and the beneficiaries' need for certainty and closure in their E-rate application processes.''

82. We seek comment on whether a similar five-year standard for initiating and concluding audits and investigations is appropriate for recipients of funds from the high cost, low income, and rural health care universal service support mechanisms. Similarly, we seek comment on whether a five-year period is appropriate for seeking adjustment of a contribution obligation to make the correct contribution amount to the USF. Many E-rate beneficiaries are public institutions. In these cases, the money needed to comply with audits and to maintain services when funds are unexpectedly delayed or denied comes from taxpayers and is part of a lengthy and complex budgeting process. If schools and libraries must account for the fact that an unintentional clerical error many years in the past may require them to disgorge E-rate funds, the system will work very inefficiently. For this reason, we believe that we must balance our duty to investigate fraud with E-rate beneficiaries' legitimate need for finality, which they have with other government programs. In the *Schools and Libraries Fifth Report and Order*, we found that the public interest ordinarily is not served by seeking to recover funds associated with statutory or rule violations when the administrative costs of seeking recovery outweigh the dollars subject to recovery. We seek comment on this conclusion, and whether and in what circumstances pursuit of recovery of funds might be in the public interest even where the potential recovery amounts are small in relation to the audit or investigation costs. We also seek comment on whether to adopt a rule for the high cost, low income, and rural health care support mechanisms that requires recovery of the full amount disbursed in situations in which there is a pattern of rule or statutory violations, but the specific individual violations collectively do not require recovery of all disbursed amounts.

3. Recovery of Funds

83. We seek comment on whether to establish specific rules or criteria to address instances in which a USF beneficiary may not have used moneys in accordance with program rules. We seek comment on whether, consistent with the conclusions in the *Schools and Libraries Fifth Report and Order*, amounts disbursed from the High Cost, Low Income, and Rural Health Care support mechanisms in violation of the statute or Commission rule must be recovered in full. In addition, we seek comment on whether additional rules or criteria are necessary to ensure a fair, transparent fund recovery process for all USF mechanisms. Are there instances in which violations of Commission rules undermine statutory requirements or substantive policy goals of the USF programs, but may not rise to the level of waste, fraud, or abuse? Should funds be recovered for ministerial or clerical errors? In addition, we seek comment on whether and under what circumstances a beneficiary may retain an overpayment if, for some reason, USAC has either mistakenly disbursed an amount in excess of that which the entity is allowed under our rules, or has disbursed an erroneous amount as a result of violations of administrative procedures. Where disbursement of funds is warranted under the statute and rules, but an erroneous amount has been

disbursed, should the amount of funds that may be recovered be limited to the difference between what the beneficiary is legitimately allowed under the statute and our rules and the total amount of funds disbursed to the beneficiary or service provider? Finally, we seek comment on whether we should adopt a rule providing for an administrative hearing before the issuance of a letter seeking recovery of funds from the High Cost, Low Income and Rural Health Care support mechanisms.

4. Measures To Deter Waste, Fraud, and Abuse

84. The Schools and Libraries program is capped at $2.25 billion; however, requests for funds have historically far exceeded the annual cap. Thus, waste, fraud, or abuse of this program harms those schools and libraries who cannot receive their discount requests due to insufficient resources. In 2003, the Task Force on the Prevention of Waste, Fraud, and Abuse suggested a ceiling on the total amount of funding that an applicant can request. We seek comment on whether such a cap would be an effective measure of deterring waste, fraud, and abuse. If so, parties should explain how and describe the costs and benefits of any such approach. We seek comment on whether the concern raised by the USAC Task Force could be addressed through some measure other than an additional cap. We also seek comment on whether USAC should publicize ''best practices'' for E-rate program applicants. In addition, we seek comment on whether modifying the competitive bidding rules (*e.g.*, by requiring a minimum of three bids) would be an effective measure for deterring waste, fraud, and abuse. For example, where an applicant received only one bid, would additional review be warranted to ensure that the bid is not inflated, and if so, what level of review would be appropriate? We are concerned that obtaining three or more bids may be particularly difficult in rural areas. We are also concerned that obtaining three bids for small projects or for Priority One telecommunications services may be impractical in many cases, even for urban and suburban schools and libraries. If we require a minimum of three bids we may therefore exclude many rural schools and libraries, and many small projects and telecommunications services from the program. In order to avoid such an outcome, we ask commenters to address how a multiple bid requirement would be an effective deterrent against waste, fraud, and abuse and whether the costs of imposing additional rules in this regard would outweigh the benefits. We also seek comment on what rules should be adopted, if any, to ensure that USF moneys are used efficiently and are not wanted by, for example, applicants seeking to ''gold plate'' their supported services or seeking services or equipment beyond what they reasonably need or can use. Should we establish more detailed guidance about what is or is not supported under the E-rate program? Should we establish maximum prices for particular services or equipment?

85. Recently, the Commission adopted measures to protect against waste, fraud, and abuse in the administration of the E-rate program. In the *Schools and Libraries Fifth Report and Order*, the Commission stated that subsequent applications from beneficiaries that have violated the statute or rules in the past will be subject to greater review, such as enhanced obligations to provide additional documentary evidence demonstrating current compliance with all applicable requirements. We seek comment on whether we should adopt specific rules governing higher scrutiny for previous rule violators; for example, should we require specific reports or set performance goals for these beneficiaries? We seek comment on requirements, if any, that we should apply to the Administrator's conduct of heightened review of E-rate program participants. Commenters should discuss whether we should adopt criteria for service providers or require additional information from applicants. Commenters should discuss whether we should adopt rules or guidelines for when USAC should stop payments or processing applications as a result of suspected program violations. What threshold would be appropriate to trigger such an action? What would be the appropriate point for USAC to resume payments or processing applications?

86. *Measures to Prevent Waste, Fraud, and Abuse in the High Cost, Low Income, and Rural Health Care Programs.* We seek comment on whether we should adopt specific rules governing higher scrutiny for previous rule violators in these three programs. Should we require specific reports or set performance goals for these beneficiaries? We also seek comment on whether USAC should publicize ''best practices'' for these program participants. We specifically seek comment on ways to improve our oversight of the High Cost program. Commenters should discuss ways we can improve carriers' incentives for efficiency. Commenters should also address the state certification process and our oversight of costs not directly related to providing telecommunications services. Commenters should discuss whether we should require additional information from High Cost program participants in order to prevent waste, fraud, and abuse.

87. Additionally, we seek comment on ways we can deter waste, fraud, and abuse in the Low Income program. Commenters should discuss whether we should revise our rules to require carriers to provide additional documentation, showing the number of Lifeline subscribers for which they claim reimbursement. We also seek comment on whether we should revise our rules to require carriers seeking Low Income or High Cost support for serving tribal members residing on a reservation to provide additional information to demonstrate that each customer is a tribal member and resides on tribal lands.

88. Finally, we seek comment on ways to deter waste, fraud, and abuse in the Rural Health Care program. We also seek to ensure USF moneys are used efficiently and not in a wasteful manner in the Rural Health Care program by, for example, requesting goods or services that are not reasonably needed. Commenters should discuss whether we should establish a cap on Rural Health Care support. Commenters should address how we can verify whether the program beneficiary is providing rural health care that is eligible for reimbursement under program rules. Commenters are encouraged to propose specific language or rules (including possible enforcement mechanisms) that would further our goal of ensuring that funds received from the high cost, low income, schools and libraries, and rural health care programs are used in an appropriate manner.

5. Other Actions To Reduce Waste, Fraud, and Abuse

89. We seek comment on whether we should further protect the schools and libraries, high cost, low income, and rural health care universal service support mechanisms by adopting a rule specifically prohibiting recipients from using funds in a wasteful, fraudulent, or abusive manner. It is important that these proposed rules have sufficient specificity for beneficiaries and contributors to understand their obligations. If we adopt a general rule, applicants may not have adequate notice of what behavior is prohibited by our rules. Would such a rule enhance the effectiveness of any future enforcement efforts relating to the discovery of waste, fraud, and abuse?

Commenters should discuss the necessity and appropriate scope of such of rule. Should it apply only to intentional acts of fraud, waste, and abuse, or should it incorporate instances when applicants or recipients recklessly or negligently use funds in an inappropriate manner? In addition, we seek comment on whether we should define waste, fraud, and abuse in our rules.

90. USAC has implemented controls for the Schools and Libraries support mechanism to ensure application validity and prevent inaccurate data entry. USAC also has data validation procedures for the High Cost, Low Income, and Rural Health Care programs. We seek comment on whether we should adopt specific rules to require USAC to implement application validity controls for all USF programs. Under our rules, USAC has the authority to conduct compliance audits of beneficiaries of the schools and libraries fund. USAC conducts audits of schools and libraries with its own staff and also retains independent auditors to conduct these audits. Under USAC's procedures, if the audit indicates a rule violation, USAC attempts to recover the funds from E-rate beneficiaries or service providers, as required in the *Schools and Libraries Fifth Report and Order*. We seek comment on ways that USAC can better facilitate this process and transfer the matter to the Commission for enforcement action in a timely manner. USAC also conducts audits of High Cost, Low Income, and Rural Health Care beneficiaries and contributors.

91. We seek comment on whether we should revise the debarment rule to make it more effective against individuals and other entities, such as corporations. The current debarment rules apply only to the E-rate program. The Commission's rules provide for automatic suspension and initiation of debarment proceedings against persons convicted of, or held civilly liable for, the commission or attempted commission of fraud and other similar offenses ''arising out of activities associated with or related to the schools and libraries support mechanism.'' To date, the Commission has debarred four parties for defrauding the schools and libraries program. We seek comment on ways to inform schools and libraries of the list of debarred parties. Commenters should discuss ways schools and libraries can reduce their vulnerability to predatory contractors. We also believe that the Commission should establish a more aggressive way to inform schools and libraries when contractors are debarred. Many schools and libraries find it very difficult to find the debarment list today. How should we improve the situation? Should we also inform schools and libraries when a contractor is under investigation? How do we allow schools and libraries to take steps to reduce their vulnerability to predatory contractors without violating the rights or prejudging parties under investigation? We seek comment on whether as part of our registration process we should require contractors to waive any right to confidentiality they may have during an investigation. Should the Commission or USAC draft a list of best and worst practices to assist beneficiaries in reducing fraud? We seek comment on whether we should adopt debarment rules applicable to the High Cost, Low Income, and Rural Health Care mechanisms. If so, should the debarment rules be modeled on the debarment rule applicable to the E-rate program, should we adopt mechanism-specific debarment rules, or should we model our debarment rules for any or all of the programs, including the E-rate program, on the government-wide non-procurement debarment regulations? We note that we have initiated a proceeding to consider, among other things, changes to our E-rate program debarment rules. We incorporate that record into this proceeding and ask parties to refresh the record to account for their experience since that time. In the *Second Report and Order*, 68 FR 36931, June 20, 2003, we asked whether we should adopt the proposed government-wide debarment rules then pending. Final government-wide rules were subsequently adopted in 2003. Commenters discussing the government-wide debarment rules should ensure their comments address these final rules. We also seek comment on whether we should broaden the scope of our debarment rules to encompass entities that have been found guilty of civil and criminal violations beyond those associated with our universal service programs or entities that have shown to have engaged in a clear pattern of abuse of our rules. We also seek comment on whether we should adopt sanctions other than debarment for violations in all USF programs. Commenters should discuss what type of sanctions would be appropriate, and identify any appropriate distinctions among the universal service programs. For example, should we reduce an E-rate beneficiary's discount level for a limited number of years for repeated violations?

92. We tentatively conclude that we should establish more aggressive sanctions and debarment procedures and disclosures in all USAC programs. There should be a range of sanctions available to us for violations in all USAC programs. What types of sanctions should we employ? We also believe that sanctions should be appropriate to the violation. Sanctions should reflect the fundamental difference between isolated incidents of unintentional ministerial error and committing criminal fraud. What sanctions should we apply to clerical mistakes versus intentional fraud? One specific idea we seek comment on is whether we should be able to reduce an E-rate beneficiary's discount level for a limited number of years as a sanction for repeated violations rather than imposing a fine, especially for public institutions. We seek comment on whether the Commission or USAC should create a list of best and worst practices to assist beneficiaries to reduce fraud. This list would give examples to schools and libraries that would help them identify a good contractor and a good application, and to avoid predatory contractors and risky application practices.

93. We continue to remain committed to rapidly detecting and addressing potential misconduct, and ensuring that universal service funds are used in the absence of waste, fraud, and abuse. We seek comment generally on other measures that would further these goals by deterring the inappropriate use of funds received from the various universal service support mechanisms. We invite commenters to propose mechanism-specific measures as well as measures that would apply to applicants or recipients of any of the various support mechanisms. Commenters should specify the manner in which their proposals would further protect the universal service support mechanisms from waste, fraud, and abuse.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

94. As required by the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 604, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this NPRM, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The IRFA is in Appendix A. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA,

to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

95. This Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking does not contain information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

C. Ex Parte Presentations

96. These matters shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented in generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

D. Comment Filing Procedures

97. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 18, 2005, and reply comments on or before December 19, 2005. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. One (1) courtesy copy must be delivered to Warren Firschein at Federal Communications Commission, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–B442, Washington, DC 20554; e-mail: *warren.firschein@fcc.gov*; one (1) courtesy copy must be delivered to Mika Savir at Federal Communications Commission, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–B448, Washington, DC 20554; e-mail: *mika.savir@fcc.gov*; and one (1) copy to Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *http://www.bcpiweb.com*, by e-mail at *fcc@bcpiweb.com*, by telephone at (202) 488–5300 or (800) 378–3160, or by facsimile at (202) 488–5563.

98. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. If multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

99. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must contain the docket or rulemaking number that appears in the caption of this proceeding.

100. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

101. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

102. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *www.bcpiweb.com*, by e-mail at *fcc@bcpiweb.com*, by telephone at (202) 488–5300 or (800) 378–3160, or by facsimile at (202) 488–5563.

103. For further information regarding this proceeding, contact Warren Firschein, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418–0844, or *warren.firschein@fcc.gov* or Mika Savir, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–0384, e-mail: *mika.savir@fcc.gov*.

104. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to *Kristy_L._LaLonde@omb.eop.gov* or by fax to (202) 395–5167.

Initial Regulatory Flexibility Analysis (Notice of Proposed Rulemaking)

105. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking* (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and *IRFA* (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

106. In the *NPRM*, we seek comment on ways to further protect the high cost,

low income, schools and libraries, and rural health care universal service support mechanisms from waste, fraud, and abuse. Specifically, we seek comment on whether, so as to improve our oversight capacity to guard against waste, fraud, and abuse, our rules should require audits of recipients of funds from the high cost, low income, schools and libraries, and rural health care programs, and audits of contributors to the universal service fund. We also seek comment on whether to adopt document retention rules for all of the universal service fund mechanisms that are consistent with the rules pertaining to participants in the schools and libraries support mechanism. In addition, the *NPRM* seeks comment on whether to establish an administrative limitations period in which the Commission or USAC will determine that a violation has occurred among recipients of funds from the high cost, low income, and rural health care universal service support mechanisms that is consistent with the rules pertaining to participants in the schools and libraries support mechanism.

107. Additionally, we seek comment on ways to improve the management, administration, and oversight of the universal service fund, including the process for applying of universal service support, the disbursement process, the billing and collection process, issues relating to the Universal Service Administrative Company (USAC), and performance measures and goals for assessing and managing the universal service programs.

2. Legal Basis

108. The legal basis for the *NPRM* is contained in sections 1, 4, 201 through 205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 214, 254, 303(r), and 403, and § 1.411 of the Commission's rules, 47 CFR 1.411.

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

109. 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, there are approximately 1.6 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 percent) 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.

110. The Commission has determined that the group of small entities possibly directly affected by the proposed rules herein, if adopted, 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 below. In addition, the Universal Service Administrative Company is a small organization (non-profit) under the RFA. It does not constitute a substantial number of such entities, and we believe that circumstances triggering the new reporting requirement will be limited and that the requirement does not constitute a significant economic impact on that entity.

a. Schools and Libraries

111. As noted, ''small entity'' includes non-profit and small governmental 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

112. 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.

113. *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, 1,310 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 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.

114. *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, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees. In addition, 35 carriers reported that they were ''Other Local Exchange Carriers.'' Of the 37 ''Other Local Exchange Carriers,'' an estimated 36 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.

115. *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 data, 281 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 281 companies, an estimated 254 have 1,500 or fewer employees and 27 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by the rules and policies adopted herein.

116. *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 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.

117. *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. Also, according to Commission data, 379 carriers reported that they were engaged in the provision of either paging or messaging services or other mobile services. Of those, the Commission estimates that 373 are small, under the SBA-approved small business size standard.

c. Internet Service Providers

118. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of internet service providers increased approximately five percent from 1997 to 2002.

d. Vendors of Internal Connections

119. 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

120. *Wireless Communications Equipment Manufacturers.* The equipment manufacturers described in this section are merely indirectly affected by our current action, and therefore are not formally a part of this RFA analysis. We have included them, however, to broaden the record in this proceeding and to alert them to our decisions. 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 percent, 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. Given the above, the Commission estimates that the majority of wireless

communications equipment manufacturers are small businesses.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

121. The *NPRM* seeks comment on whether, so as to improve our oversight capacity to guard against waste, fraud, and abuse, our rules should require audits of recipients of funds from the high cost, low income, schools and libraries, and rural health care programs, and audits of contributors to the universal service fund. We have no audit cost estimate at this time. In addition, the *NPRM* seeks comment on whether to adopt document retention rules for all of the universal service fund mechanisms that are consistent with the rules pertaining to participants in the schools and libraries support mechanism.

122. The *NPRM* also seeks comment on ways to improve the management, oversight, and administration of the universal service fund and the universal service mechanisms. The *NPRM* also seeks comment on improvements to the application and disbursement process, which may include changes in the universal service forms, adoption of a multi-year application, or changes in other reporting requirements.

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

123. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

124. In the *NPRM*, we seek comments asking for identification of any recordkeeping measures that would improve the Commission's ability to enforce its rules governing waste, fraud, and abuse in the high cost, low income, schools and libraries, and rural health care programs. Decreasing the likelihood of waste, fraud, and abuse preserves program funding for all eligible entities. The *NPRM* seeks comment on whether the audit requirement should apply only to recipients that receive a relatively large amount of support or benefit from the program. Similarly, with regard to potential audits of contributors to the fund, the *NPRM* seeks comment on whether we should establish a threshold for triggering an audit (*e.g.*, require independent audits only for carriers contributing $100 million or more in a particular fiscal year). In addition, the *NPRM* seeks comment on adopting a multi-year application form for Universal Service Fund beneficiaries, which could, if adopted, reduce the filing burden on small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

125. None.

IV. Ordering Clauses

126. Pursuant to the authority contained in sections 1, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 214, 254, and 403, this *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking* is adopted.

127. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14053 Filed 7–19–05; 8:45 am]

BILLING CODE 6712–01–P