

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.610 is amended by revising the introductory text in paragraphs (a)(1) and (a)(2) and

alphabetically adding commodities to the table in paragraph (a)(1) to read as follows:

**§ 180.610 Aminopyralid; tolerances for residues.**

(a) \* \* \* (1) Tolerances are established for residues of the herbicide

aminopyralid, 4-amino-3,6-dichloro-2-pyridinecarboxylic acid, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only free and conjugated aminopyralid.

Commodity	Parts per million
Corn, field, forage .....	0.30
Corn, field, grain .....	0.20
Corn, field, stover .....	0.20
* * * * *	*

(2) Tolerances are established for residues of the herbicide aminopyralid, 4-amino-3,6-dichloro-2-pyridinecarboxylic acid, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only aminopyralid.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

[CC Docket No. 02-6; FCC 09-105]

**Schools and Libraries Universal Service Support Mechanism**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) addresses matters related to the eligibility of products and services under the schools and libraries universal service support mechanism, also known as the E-rate program. First, in the Report and Order, the Commission modifies its rules to expressly include interconnected voice over Internet protocol (VoIP) and text messaging as eligible services under the E-rate program. Second, in the process of releasing the list of services that will be eligible for discounts for E-rate funding year 2010, the Commission clarifies the E-rate program eligibility of video on-demand servers, ethernet, web hosting, wireless local area network (LAN) controllers, and virtualization software. It also finds that telephone broadcast messaging, unbundled warranties, power distribution units, softphones, interactive white boards,

and e-mail archiving are ineligible for E-rate program funding.

**DATES:** Effective May 7, 2010.

**FOR FURTHER INFORMATION CONTACT:** Cara Voth, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400 or TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order in CC Docket No. 02-6, FCC 09-105, adopted December 1, 2009, and released December 2, 2009. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

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**Synopsis of the Report and Order**

**I. Introduction**

1. In the Report and Order, we conclude that interconnected VoIP service is eligible for E-rate support and should continue to be an eligible service under the E-rate program. We also conclude that text messaging is eligible for E-rate support. In response to the 2010 ESL Public Notice, we clarify the E-rate program eligibility of video on-demand servers, ethernet, web hosting, wireless local area network (LAN)

controllers, and virtualization software. We find that telephone broadcast messaging, unbundled warranties, power distribution units, softphones, interactive white boards, and e-mail archiving are ineligible for E-rate program funding. Finally, we release the Eligible Services List (ESL) for E-rate funding year 2010.

**II. Background**

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections. Section 254 of the Communications Act of 1934, as amended (the Act), gives the Commission the authority to designate "telecommunications services" and certain additional services eligible for support under the E-rate program. The Commission may also designate services eligible for E-rate support as part of its authority to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms and libraries.

3. Since the initial implementation of the E-rate program in 1998, and consistent with the Commission's rules and requirements, USAC has developed procedures and guidelines to ensure that E-rate funding is provided only for eligible services. Initially, the Commission directed USAC, in consultation with the Commission, to determine whether particular services fell within the eligibility criteria established under the Act and the Commission's rules and policies. USAC began to update and post to its Web site on an annual basis a list of services and products eligible to receive discounts under the E-rate program, now known as the ESL. In consultation with the Wireline Competition Bureau (Bureau), USAC updated the list to reflect any

changes in rules that had occurred during the previous year and to address issues that arose in the application review process.

4. On December 23, 2003, the Commission adopted section 54.522 of its rules, formalizing the process for updating the ESL for the E-rate program. Specifically, under section 54.522 of the Commission's rules, the Commission must seek comment on USAC's proposed ESL and issue a public notice attaching the final ESL for the upcoming funding year at least 60 days prior to the opening of the application funding window for the E-rate program. In its current form, the ESL is divided into five main categories—telecommunications service, Internet access, internal connections, basic maintenance of internal connections, and miscellaneous.

5. In the 2010 ESL Public Notice, the Bureau sought comment on changes to the ESL proposed by USAC for funding year 2010. Comments on the 2010 ESL Public Notice were due on June 23, 2009, and reply comments were due on June 30, 2009. In the ESL NPRM, released in July 2008, the Commission sought comment on issues related to eligible services that had been raised by commenters but had not yet been resolved through the ESL public notice and revision process. For example, the Commission sought comment on the inclusion of interconnected VoIP service in the ESL, and whether text messaging, telephone broadcast messaging, and other individual services should be eligible for E-rate support under section 254(c)(3) of the Act. The Commission also sought comment on which rules, if any, would need to be amended to implement any changes made as a result of the ESL NPRM. Comments on the ESL NPRM were due on September 18, 2008, and reply comments were due on October 3, 2008.

### III. Discussion

#### A. Designation of Additional Supported Services

6. In this Report and Order, we modify our rules to expressly include interconnected VoIP and text messaging as eligible services under the E-rate program.

7. *Interconnected VoIP* We conclude that we should modify our rules to expressly include interconnected VoIP as a service eligible for E-rate support, and we will continue to fund interconnected VoIP service under the E-rate support mechanism. We also determine that interconnected VoIP service should be a Priority 1 service because regardless of its ultimate

regulatory classification, it is defined as "enabl[ing] real-time, two-way voice communications," 47 CFR 9.3, and thus provides basic connectivity akin to other Priority 1 services. We note, however, that not all of the components of an interconnected VoIP service are eligible for Priority 1 funding. Any components of an interconnected VoIP system that would be considered internal connections would be eligible for Priority 2 funding only, and any components of an interconnected VoIP system that are end-user equipment are ineligible for funding. We also adopt USAC's proposal that interconnected VoIP be listed in both the telecommunications and Internet access categories of the ESL, despite the fact that the Commission has not yet determined the regulatory classification of interconnected VoIP.

8. We find that, pursuant to section 254 of the Act, the Commission has the authority to include interconnected VoIP service as an additional service eligible for E-rate support. We therefore amend section 54.503 of our rules to designate interconnected VoIP as a supported special service. We note that the Commission has not yet classified interconnected VoIP service as either a telecommunications service or an information service. If interconnected VoIP service is found to be a telecommunications service, sections 254(c)(1), (c)(3), and (h)(1)(B) of the Act provide the Commission with the authority to provide E-rate support for all commercially available telecommunications services. 47 U.S.C. 254(c)(1), (c)(3). If, however, interconnected VoIP is determined to be an information service, sections 254(c)(3), (h)(1)(B), and (h)(2) of the Act, as explained in the Universal Service First Report and Order, provide the Commission with the authority to provide E-rate support for interconnected VoIP when provided by both telecommunications carriers and non-telecommunications carriers because such support will "enhance \* \* \* access to advanced telecommunications and information services" for schools and libraries. 47 U.S.C. 254(c)(3), (h)(1)(B), (h)(2)(A). No matter how interconnected VoIP is ultimately classified, we find that the Commission has statutory authority to include it as an eligible supported service. Therefore, we amend section 54.517 of our rules to permit interconnected VoIP to be provided by non-telecommunications carriers.

9. Furthermore, we agree with commenters that the permanent inclusion of interconnected VoIP service increases the options available to

schools and libraries to encourage meaningful communications among parents, teachers, and school and library administrators. Indeed, because interconnected VoIP is increasingly used to replace analog voice service, funding interconnected VoIP service is consistent with the concept of competitive neutrality, which is the principle of treating similarly situated services in the same manner for E-rate funding purposes, as mandated by the Commission. We also agree with commenters that the inclusion of interconnected VoIP service as an eligible service allows schools and libraries to benefit from the same cost efficiencies and service features that have led many consumers and businesses to choose this technology.

10. We also sought comment on whether interconnected VoIP service should remain classified in the miscellaneous service category, as it has been in previous ESLs. As proposed by USAC in its annual ESL submission, we conclude that interconnected VoIP service should be listed in both the telecommunications and Internet access categories to help minimize applicant confusion noted by commenters. We clarify that we are not, by this action, ultimately determining that interconnected VoIP is either a telecommunications service or an Internet access service. Rather, we put interconnected VoIP in both of those ESL categories because interconnected VoIP can be provided by both telecommunications service providers or non-telecommunications service providers. Because of this change, it will no longer be necessary to list interconnected VoIP in the miscellaneous category of the ESL. We believe this change will also clarify that applicants can apply for and receive E-rate funding for interconnected VoIP service provided by either a telecommunications service provider or an Internet access service provider. We encourage applicants soliciting bids for interconnected VoIP services to post for the services in both categories to expand the number of service providers that can bid on the services sought. Consistent with USAC's recommendation, we clarify that applicants are not required to prepare a technology plan if they are seeking discounts only for interconnected VoIP. Thus, we amend section 54.504(b) of our rules to make clear that no technology plan is needed if applicants are applying only for interconnected VoIP.

11. We also agree with Funds for Learning that any interconnected VoIP hardware that does not meet the test for Priority 1 services in the Tennessee

Order should be considered Priority 2 internal connections and should be ineligible for Priority 1 funding. In the Tennessee Order, the Commission stated that a service is considered a component of internal connections if it is necessary to “transport information within one or more instructional buildings of a single school campus.” The Commission also stated that it was reasonable to presume that if facilities are located on an applicant’s premises, then such facilities are necessary to transport information within one or more buildings of the school campus, and are thus a Priority 2 internal connections service and not part of an end-to-end Internet access service, i.e., a Priority 1 service. This presumption can be rebutted with evidence that the applicant does not own or have exclusive use of the facilities. Thus, leased VoIP telephone systems will need to be evaluated in accordance with the conditions in the Tennessee Order, to determine whether they should be eligible as Priority 2 internal connections only or if some portion of the system would be eligible as Priority 1. For example, only the lease of a single basic terminating component is eligible as a Priority 1 service under E-rate and this may include a VoIP gateway device located on the applicant’s premises, but hubs, routers and switches are not considered basic terminating components and would be subject to the on-premise Priority 1 equipment conditions set forth in the Tennessee Order.

12. In the ESL NPRM, we also sought comment on whether applicants requesting funding for interconnected VoIP service as an Internet access service must comply with and certify to requirements identified in the Children’s Internet Protection Act (CIPA). 47 U.S.C. 254(h)(5), (l). Enacted in 2001, CIPA imposed requirements on schools and libraries “having computers with Internet access” and prohibits schools and libraries from receiving discounted services if those requirements are not met. 47 U.S.C. 254(h)(5), (h)(6). This prohibition is not applicable to a school or library that receives discounted services “only for purposes other than the provision of Internet access, Internet service, or internal connections.” 47 U.S.C. 254(h)(5)(A)(ii), (h)(6)(A)(ii). Thus, the Commission determined that schools or libraries receiving only discounted telecommunications services were not required to comply with CIPA. Consistent with the majority of commenters’ arguments, we conclude that applicants requesting funds for

interconnected VoIP service alone are not required to comply with and certify to CIPA requirements. While interconnected VoIP service may traverse the Internet, interconnected VoIP service, by definition, is not used to provide an Internet access service, Internet service, or internal connections. 47 CFR 9.3. Therefore, we find that CIPA compliance is not required for applicants that receive funding for interconnected VoIP service. Applicants seeking support for interconnected VoIP service that also seek support for Internet access, Internet service, or internal connections would certify their CIPA compliance separately for the Internet access.

13. *Text Messaging.* We find that we should modify our rules to include text messaging, known as short message service (SMS), as a service eligible for E-rate support. We agree with commenters who noted that text messaging is similar to other E-rate-eligible services used by applicants to communicate, such as e-mail and paging services. Moreover, we believe our decision to add text messaging is analogous to our decision in the Schools and Libraries Second Report and Order to add voice mail service to the list of E-rate-eligible services. Thus, for similar reasons, we designate text messaging as a service eligible for E-rate support. We note that we include text messaging as an eligible service irrespective of whether text message is ultimately categorized as a telecommunications service or an information service. This service will be categorized in the ESL in the telecommunications service category as a component of telephone service because text messaging has generally been available in conjunction with wireless telephone service, and the charges for text messaging are typically bundled with wireless telephone service or the separate charges for the text messaging service appear on the same bill as the telephone service. We therefore amend section 54.503 of our rules to designate text messaging as a supported special service.

14. We remind applicants that text messaging is eligible for E-rate support when used for educational purposes only. The Commission had established a presumption that activities that occur in a library or classroom or on library or school property are integral, immediate, and proximate to the education of students or the provision of library services to library patrons. We caution applicants that for purposes of the E-rate program, eligible text messaging would not include applications, software or other special features that, for example, are used to

facilitate the mass distribution of text messages, or the creation or management of distribution groups for text messaging.

*B. Clarifications Regarding the Eligibility for Support of Services in the Funding Year 2010 ESL*

15. We also release the ESL for E-rate funding year 2010 and make findings about the particular changes to the ESL recommended by USAC. Specifically, we clarify the eligibility of video on-demand servers, ethernet, Web hosting, wireless LAN controllers, VoIP-related services, and virtualization software. We also find that telephone broadcast messaging, unbundled warranties, power distribution units, softphones, interactive white boards, and e-mail archiving are ineligible for E-rate program funding.

16. *Video On-Demand Servers.* Although USAC had proposed to make “video on-demand servers” ineligible in their entirety, we clarify that applicants can continue to receive E-rate discounts as internal connections for the portion of a video on-demand server that enables the transport of video to the classroom or parts of a library. The portion of a video on-demand server that enables the storage of video or other content, however, would remain ineligible. To clarify the eligibility status of a video on-demand server, we add the term “video content storage” to the list of ineligible storage components on the ESL. This should more clearly delineate the portion of a video on-demand server that is ineligible for discounts. Currently, applicants are using servers that house video for various purposes, including transporting information over a wide area network (WAN) or LAN to classrooms from a central server. We note that there may be video on-demand servers that are primarily dedicated to the storage of video and other content and the cost-allocation used by the manufacturer should accurately reflect the true use of the server. We also caution applicants that duplicative products or services are ineligible. If applicants are using other products or services to transport video or information throughout their school or library buildings, the portion of a video on-demand server that also provides this capability will be considered duplicative and ineligible.

17. *Ethernet.* We clarify that ethernet is an eligible digital transmission technology in the telecommunications funding category of the ESL. Ethernet technology provides a network that connects computers. Although traditionally associated with local area

networks, technology has evolved such that ethernet networks can span large distances and can provide connections from within an eligible school or library to other locations beyond the school or library. Therefore, we find that for purposes of the E-rate program, ethernet service is eligible in the telecommunications funding category. We agree with commenters who state that adding ethernet to the ESL “reflects the evolution of telecommunications technologies that are commercially available and is a clarification of previous eligibility.” We also note that although it was not specifically listed in the ESL for funding year 2009, ethernet is a type of digital transmission service that has been eligible for E-rate discounts when purchased as a Priority 1 telecommunications service.

18. *Web hosting.* We clarify that web pages protected by a username and password are eligible for funding as part of web hosting services. The fact that a school or library restricts access to all or part of its Web site to certain users—*e.g.*, school administrators, teachers, librarians and students—does not render the service ineligible for E-rate funds. Web hosting has been on the ESL since funding year 2004, as Internet access. We emphasize that an eligible Web hosting service is limited to hosting a school or library’s Web site—software applications, end-user file storage, and content editing features are still ineligible components of a web hosting service. Such ineligible web hosting features would include, but would not be limited to, the posting of content created by third party vendors, any type of interactive application feature that would allow for blogging, and any features involving data input or retrieval including searching of databases for grades, student attendance files, or other reports. We caution applicants that they must cost-allocate these types of ineligible features. The clarification to allow funding for web pages protected by a username and password was intended to allow school administrators, parents, students, and library employees to view web pages that, may, for various reasons, need to be restricted from viewing by the rest of the public. This clarification was not intended to allow applicants to obtain funding for additional web hosting-related applications and features beyond the service that enables a school or library to have hosted web pages, including any application software or features that may be required to maintain password protected Web pages.

19. *Wireless LAN Controllers.* We agree with USAC that wireless LAN

controllers should be specifically listed in the ESL as eligible internal connections within the data distribution category. A wireless LAN controller is a device that is a central component of a wireless network solution and that helps to manage the large-scale deployment of a wireless network. In its proposed changes to the ESL for E-rate funding year 2010, USAC proposes to include a definition of a wireless LAN controller as a component that is used in conjunction with access points to create a wireless local area network. USAC defines an “access point” as a base station in a wireless LAN and states that access points are typically stand-alone devices that may plug into an ethernet hub or server or may provide a repeater function for wireless networks. When a school or library is relying on a wireless network solution, wireless LAN controllers, in conjunction with access points, are necessary for the delivery of information all the way to the classrooms of the school or rooms of the library. Under the E-rate program, internal connections components are those that are necessary to “transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch.” Wireless LAN controllers, therefore, are eligible for support under the E-rate program as internal connections. Applicants have been receiving support for wireless LAN controllers as eligible internal connections and this change to the ESL is merely a clarification of the service’s existing funding status.

20. *Interconnected VoIP-Related Software.* We agree with USAC that we should clarify that funding for user licenses for VoIP systems are eligible server based software and can be requested in the internal connections funding category. Interconnected VoIP user licenses are necessary for the utilization of the VoIP system. They are similar to client access licenses for eligible software products, except that they are specific to VoIP systems. Client access licenses are currently eligible for E-rate funding. Commenters agree with the proposed clarification, noting that applicants have received funding for these services in prior funding years.

21. *Virtualization Software.* We agree with USAC that virtualization software is eligible for E-rate support as internal connections. As stated above, under the E-rate program, internal connections components are those that are necessary to “transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that

comprise a single library branch.” USAC’s draft ESL for funding year 2010 states that virtualization software allows for the creation of multiple virtual servers on a single server, essentially allowing the work of multiple servers to be performed on one server. We agree with Funds for Learning that virtualization software should be eligible for E-rate funding when it is used for eligible server functions. Moreover, one of the internal connections for which the E-rate program provides discounts is operating system software, which enables the basic operations of a computer system or other electronic device. We find that virtualization software is a type of operating system software. Applicants can use virtualization software to transport information within its school or library, and, in so doing, would be using a single server to perform the tasks of what would usually take multiple servers. Thus, virtualization software may be a cost-effective technology for applicants and is eligible for E-rate funding. If applicants also use virtualization software for functions that are ineligible for E-rate support, such as archiving, functions that support ineligible applications, or network management, the applicants must perform a cost allocation to remove the ineligible functions from their E-rate funding requests.

22. *Telephone Broadcast Messaging.* We agree with USAC that telephone broadcast messaging should not be added to the ESL because we find that it does not fit within any of the current categories of supported services. A broadcast messaging service is one that can call hundreds or thousands of recipients and play a pre-recorded message from school administrators about information including, but not limited to, weather delays or closings, school absences, or child safety issues. Broadcast messaging has been described by commenters as an add-on to voice mail service and an application riding on top of a service provider’s telecommunications infrastructure. Only a few categories of software are eligible for E-rate funding, however, including operating system software, e-mail software, and software for a server-based, shared voice mail system. While voice mail has been designated as an eligible service, and the E-rate program pays for the software for a server-based shared voice mail system, the record in the ESL NPRM proceeding established that telephone broadcast messaging is an “add-on to voice mail” service and not software for voice mail itself. Therefore, we find that broadcast

messaging consists of applications or features that do not fit into any of the current categories of supported services and thus, should not be added to the list of software applications that are currently eligible for support as internal connections. Moreover, we find that it would not be in the public interest to add telephone broadcast messaging to the ESL when requests for E-rate funding consistently exceed the funding cap. While we believe that many school districts find telephone broadcast messaging a useful service, we do not believe it is essential to the educational purposes of schools and libraries, and funding this service may have an adverse effect on funds available for other already eligible services.

23. *Unbundled Warranties.* We find that unbundled warranties are not services eligible for E-rate discounts as basic maintenance of internal connections. In its proposed changes to the ESL, USAC proposes to add unbundled warranty to the basic maintenance category of the ESL and defines “unbundled warranty” as a separately priced warranty allowing for broken equipment to be fixed or, in the event that the problem is beyond repair, replaced. The Commission has found that basic maintenance services are eligible for universal service support as Priority 2 internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services. We do not add unbundled warranties to the ESL at this time because we find that a warranty may be duplicative of an applicant’s maintenance agreement or contract, which is eligible for E-rate discounts. To avoid the potential waste of E-rate resources, we decline to allow applicants to receive E-rate discounts for duplicative unbundled warranties. Moreover, the current ESL states that basic maintenance is eligible for discount only if it is a component of a maintenance agreement or contract for eligible components. An unbundled warranty would not be a component of a maintenance agreement or contract for eligible components. Therefore, we find that an unbundled warranty is not eligible for E-rate funds as basic maintenance.

24. *Power Distribution Units.* We agree with USAC that the ESL should be updated to clearly state that power distribution units are not eligible for E-rate support as internal connections. USAC proposes to define a “power distribution unit” as a power strip designed for data centers or racks with

greater capacity and features than a power strip, and a “power strip” as a group of sockets that allow for multiple power cords to plug into a single device. Power strips have not previously been eligible for E-rate funding and, because a power distribution unit is merely a type of power strip with additional capacities and features, we find that it is also ineligible for E-rate program funds.

25. *Softphones.* We agree with USAC’s proposal to clarify in the ESL that softphones are software that is ineligible for E-rate funding. The Commission has approved operating system software, e-mail software, and software for a server-based, shared voice mail system as eligible software under the internal connections funding category for E-rate. USAC proposes to define a softphone as end-user application software that allows users the use of a personal computer’s microphone and speakers to make telephone calls in place of a physical end-user telephone. This type of application software is unlike the types of software the Commission has previously approved for E-rate funding and, as commenters note, softphones perform the same functions as physical desktop telephones, which are end-user equipment and are not eligible for E-rate funding.

26. *Interactive White Boards.* We agree with USAC and commenters that the ESL should clarify that interactive white boards are end-user equipment that is ineligible for E-rate funding. End-user equipment, such as desktop telephones, personal computers, fax machines, and modems, for example, is not eligible for E-rate discounts. In its draft ESL for funding year 2010, USAC defines an “interactive white board” as a device that allows end-users to display information with a vast array of interactive features. We find, therefore, that interactive white boards are end-user equipment that is not eligible for E-rate funding.

27. *E-mail Archiving.* We agree with USAC’s proposal to clarify in the ESL that e-mail archiving is an ineligible component of an e-mail service. In addition, we agree with USAC’s clarification to the draft ESL for funding year 2010 that, for purposes of E-rate support, storage products may be used for eligible e-mail files but not for e-mail archiving. USAC’s draft ESL for funding year 2010 defines e-mail archiving as a form of electronic recordkeeping, often compressing e-mail files to make available greater in-box space. For example, when e-mail is archived to reduce in-box size, reduce hard drive space, and retain records for future

retrieval, it constitutes the storage of end-user files and is ineligible for E-rate discounts. Although E-rate eligible e-mail services can include a short-term storage component that enables the user to view current e-mails, any long-term storage service is ineligible for E-rate discounts and we agree with USAC that this distinction should be made clear to applicants in the 2010 ESL.

#### Procedural Matters

##### *Final Regulatory Flexibility Act Certification*

28. The Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” *See* 5 U.S.C. 605(b). The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3). A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

29. In the report and order, we modify our rules to expressly include interconnected voice over Internet protocol (VoIP) and text messaging as eligible services in our rules governing the E-rate program. We also release the list of services that will be eligible for discounts for E-rate funding year 2010. This Eligible Services List (ESL) is released on an annual basis to enable school and library applicants and other affected entities to determine the services and products that are eligible for E-rate discounts. In the report and order we add services to the ESL but do not remove any services from the list. Thus, the only changes made in our report and order result in the ability of schools and libraries to seek E-rate discounts for more services than were available to them in the prior funding year. This means that the rule revisions will result in a positive net impact on small entities. Therefore, we certify that the requirements of the report and order will have no significant economic impact.

30. The Commission will send a copy of the report and order, including a copy

of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). In addition, the report and order (or summary thereof) and this final certification will be published in the **Federal Register**, and will be sent to the Chief Counsel for Advocacy of the U.S. Small Business Administration. See 5 U.S.C. 605(b).

#### *Paperwork Reduction*

31. This report and order does not contain proposed information collection(s) 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).

#### *Congressional Review Act*

32. The Commission will send a copy of this Report and Order [CC Docket No. 02–6; FCC 09–105] in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A).

#### *Ex Parte Presentations*

33. These matters shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. 47 CFR 1.1200 through 1.1216. 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 is generally required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules. 47 CFR 1.1206(b).

#### **Ordering Clauses**

34. *It is ordered*, that pursuant to the authority contained in sections 1 through 4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201 through 205, 254, 303(r), and 403, this report and order *is adopted*.

35. *It is further ordered*, that pursuant to the authority contained in sections 1 through 4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201 through 205, 254, 303(r), and 403,

sections 54.503, 54.507, and 54.517 of the Commission’s rules, 47 CFR 54.503, 54.507 and 54.517, *is amended*, effective May 7, 2010.

36. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this report and order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

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

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

Federal Communications Commission.

**Marlene H. Dortch**,  
*Secretary*.

#### **Final Rules**

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

#### **PART 54—UNIVERSAL SERVICE**

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

**Authority:** 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Section 54.503 is revised to read as follows:

#### **§ 54.503 Other supported special services.**

For the purposes of this subpart, other supported special services provided by telecommunications carriers include voice mail, interconnected voice over Internet protocol (VoIP), text messaging, Internet access, and installation and maintenance of internal connections in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such services shall not be covered by the universal service support mechanisms.

■ 3. Section 54.504 is amended by revising paragraph (b)(2)(iv) to read as follows:

#### **§ 54.504 Requests for services.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) The technology plan(s) has/have been approved by a state or other authorized body; the technology plan(s) will be approved by a state or other authorized body; or no technology plan

needed because the applicant is applying for voice mail, interconnected voice over Internet protocol (VoIP), or basic local, cellular, PCS, or long distance telephone service only.

\* \* \* \* \*

■ 4. Section 54.507 is amended by revising paragraphs (g) introductory text, (g)(1)introductory text, (g)(1)(i) through (iii) (the note remains unchanged) to read as follows:

#### **§ 54.507 Cap.**

\* \* \* \* \*

(g) *Rules of priority.* The Administrator shall act in accordance with paragraph (g)(1) of this section with respect to applicants that file an FCC Form 471, as described in § 54.504(c) of this part, when a filing period described in paragraph (c) of this section is in effect. The Administrator shall act in accordance with paragraph (g)(2) of this section with respect to applicants that file an FCC Form 471, as described in § 54.504(c) of this part, at all times other than within a filing period described in paragraph (c) of this section.

(1) When the filing period described in paragraph (c) of this section closes, the Administrator shall calculate the total demand for support submitted by applicants during the filing period. If total demand exceeds the total support available for that funding year, the Administrator shall take the following steps:

(i) The Administrator shall first calculate the demand for services listed under the telecommunications and Internet access categories on the eligible services list for all discount levels, as determined by the schools and libraries discount matrix in § 54.505(c). These services shall receive first priority for the available funding.

(ii) The Administrator shall then calculate the amount of available funding remaining after providing support for the telecommunications and Internet access categories for all discount levels. The Administrator shall allocate the remaining funds to the requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix in § 54.505(c) of this part. Schools and libraries eligible for a 90 percent discount shall receive first priority for the remaining funds, and those funds will be applied to their requests for internal connections.

(iii) To the extent that funds remain after the allocation described in §§ 54.507(g)(1)(i) and (ii), the

Administrator shall next allocate funds toward the requests for internal connections submitted by schools and libraries eligible for an 80 percent discount, then for a 70 percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining.

\* \* \* \* \*

■ 5. Section 54.517 is amended by revising paragraph (b) to read as follows:

**§ 54.517 Services provided by non-telecommunications carriers.**

\* \* \* \* \*

(b) *Supported services.* Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing interconnected voice over Internet protocol (VoIP), voice mail, Internet access, and installation and maintenance of internal connections.

\* \* \* \* \*

[FR Doc. 2010-7757 Filed 4-6-10; 8:45 am]

BILLING CODE 6712-01-P

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Docket No. NHTSA-2009-0093]

RIN 2127-AG51

**Federal Motor Vehicle Safety Standards; Roof Crush Resistance**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule; further response to comments.

**SUMMARY:** In May 2009, NHTSA published a final rule that upgraded the agency's safety standard on roof crush resistance. This document provides a further response to comments submitted by the National Truck Equipment Association (NTEA) during that rulemaking.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Christopher J. Wiacek, NHTSA Office of Crashworthiness Standards, telephone 202-366-4801. For legal issues, you may call J. Edward Glancy, NHTSA Office of Chief Counsel, telephone 202-366-2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

*A. Final Rule Upgrading FMVSS No. 216*

On May 12, 2009, as part of a comprehensive plan for reducing the serious risk of rollover crashes and the risk of death and serious injury in those crashes, NHTSA published in the **Federal Register** (74 FR 22348) a final rule substantially upgrading Federal Motor Vehicle Safety Standard (FMVSS) No. 216, *Roof Crush Resistance*. The upgraded standard is designated FMVSS No. 216a.

First, for the vehicles previously subject to the standard, i.e., passenger cars and multipurpose passenger vehicles, trucks and buses with a Gross Vehicle Weight Rating (GVWR) of 2,722 kilograms (6,000 pounds) or less, the rule doubled the amount of force the vehicle's roof structure must withstand in the specified test, from 1.5 times the vehicle's unloaded weight to 3.0 times the vehicle's unloaded weight. We note that this value is sometimes referred to as the strength-to-weight ratio (SWR), e.g., a SWR of 1.5, 2.0, 2.5, and so forth.

Second, the rule extended the applicability of the standard so that it will also apply to vehicles with a GVWR

greater than 2,722 kilograms (6,000 pounds), but not greater than 4,536 kilograms (10,000 pounds). The rule established a force requirement of 1.5 times the vehicle's unloaded weight for these newly included vehicles.

Third, the rule required all of the above vehicles to meet the specified force requirements in a two-sided test, instead of a single-sided test. For the two-sided test, the same vehicle must meet the force requirements when tested first on one side and then on the other side of the vehicle.

Fourth, the rule established a new requirement for maintenance of headroom, i.e., survival space, during testing in addition to the existing limit on the amount of roof crush. The rule also included a number of special provisions, including ones related to leadtime, to address the needs of multi-stage manufacturers, alterers, and small volume manufacturers.

*B. Challenge by NTEA*

NTEA filed a petition for review of the May 2009 final rule in the United States Court of Appeals for the Sixth Circuit. That organization had submitted comments during the rulemaking opposing the agency's proposed revisions with respect to multi-stage vehicles.

*C. Consent Motion To Stay Briefing Schedule*

NHTSA filed with the Court a motion for a stay of the briefing schedule. The agency stated that it believed the Court's consideration of the challenge by NTEA would be facilitated by a fuller response to the comments that organization had submitted during the rulemaking, which would permit both NTEA and the Court to more fully address the agency's rationale. NHTSA also noted that petitions for reconsideration of the rule were pending before the agency. NTEA consented to the motion and the Court granted a six-month stay of the briefing schedule on October 2, 2009.

**II. Today's Document and Related Actions**

In this document, we provide a fuller response to comments submitted by NTEA on our proposal to upgrade FMVSS No. 216.

We are also publishing two separate documents related to the May 2009 final rule. One is a response to petitions for reconsideration of that rule. The other is a correcting rule. The correcting rule incorporates a provision that was discussed in the preamble but inadvertently omitted from the regulatory text. As explained in the preamble, the agency decided to