

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) | | Communities affected |
|--------------------|----------------------------------|---|----------|----------------------|
| | | Effective | Modified | |

Maps are available for inspection at 215 South Mill Street, Louisville, OH 44641.

City of Massillon

Maps are available for inspection at 151 Lincolnway East, Massillon, OH 44646.

City of North Canton

Maps are available for inspection at 220 West Maple Street, North Canton, OH 44720.

Unincorporated Areas of Stark County

Maps are available for inspection at 110 Central Plaza South, Canton, OH 44702.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: May 14, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

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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: Proposed 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. Specifically, in this Further Notice of Proposed Rulemaking (FNPRM), we propose that the following services should not be eligible for funding under the E-rate program—separately priced firewall services, anti-virus/anti-spam software, scheduling services, wireless Internet access applications, and web hosting. We propose to revise the Commission's rules to establish that the Commission should not be required to list individual products and services (e.g., voice mail) in the rules, but that such products and services will be listed in the Eligible Services List (ESL). We propose to require the Universal Service Administrative Company (USAC) to submit any proposed changes to the ESL to the Commission no later than March 30th of each year. Finally,

we propose to eliminate the requirement that the ESL be released by public notice.

DATES: Comments on the proposed rules are due on or before July 9, 2010 and reply comments are due on or before July 26, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements should be submitted on or before August 9, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by CC Docket No. 02-6, 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://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- *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.

- In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to PRA@fcc.gov and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to Nicholas_A.Fraser@omb.eop.gov or via fax at 202-395-5167.

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

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 Notice of Proposed Rulemaking 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>.

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. In this FNPRM, we seek comment on whether particular services should be designated as eligible for E-rate support. Specifically, we tentatively conclude that the Eligible Services List (ESL) should not include separately priced firewall services, anti-virus/anti-spam software, scheduling services, wireless Internet access applications, and web hosting should not be eligible for funding under the E-rate program. Alternatively, we propose that web hosting should be eligible for E-rate program funds as a Priority 2 service. We also propose to change our rules to establish that the Commission no longer needs to list individual products and services in the rules, but that such products and services will be listed in the ESL. We propose to change our rules to require the Universal Service Administrative Company (USAC) to submit any proposed changes to the ESL

to the Commission no later than March 30th of each year. Finally, we tentatively conclude to revise our rules to eliminate the requirement that the ESL be released by public notice.

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 *ESL NPRM* (73 FR 48352, August 19, 2008), 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. 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. Services

6. In this FNPRM, we seek comment on the tentative conclusions we make regarding services discussed in the *ESL NPRM* that have not been addressed already. We tentatively conclude that separately priced firewall services, anti-virus and anti-spam software, teleconferencing scheduling services, and wireless Internet access applications, should not be added to the ESL. Additionally, we tentatively conclude that web hosting should not be eligible for funding under the E-rate program, or, alternatively, should only be eligible for E-rate program funds as a Priority 2 service.

7. *Firewall*. We tentatively conclude that we should decline to add separately priced firewall services to the ESL. In the 2007 ESL, the Commission clarified that only basic firewall services that are provided as a standard component of a vendor's Internet access service are eligible for E-rate program discounts. The E-rate program already funds basic firewall services, giving applicants a basic level of protection. We tentatively conclude that the inclusion of separately priced firewall services is not essential and may have an adverse effect on funds available for other already eligible services. We seek comment on this tentative conclusion and also ask that commenters provide examples of how separately priced firewalls are used by schools and libraries so that we can determine whether we should reexamine our tentative conclusion. We also seek comment on a suggested updated definition of basic firewall services and whether that would provide better guidance to applicants on what types of basic firewall services are eligible for E-rate funding.

8. *Anti-Virus/Anti-Spam Software*. We tentatively conclude that we should not add anti-virus and anti-spam software to the ESL and seek comment on this tentative conclusion. Anti-virus

and anti-spam software is not an Internet access service itself but is a separate software application designed to enhance the operation of Internet access service. 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. We tentatively conclude that anti-virus and anti-spam software should not be added to the list of eligible software under internal connections because this software does not fit into the categories of software that are currently on the ESL. Even if anti-virus and anti-spam software are generally considered necessary for the operation of e-mail, we believe that such products should not be funded because their addition to the ESL may have an adverse affect on the funds available for other services. We seek comment on these tentative conclusions.

9. *Scheduling Services*. We tentatively conclude that we should not adopt scheduling services as eligible for E-rate funding. As explained above, only operating system software, e-mail software, and software for a server-based, shared voice mail system have been approved for E-rate funding. Scheduling software allows schools and libraries to use video teleconferencing for distance learning by coordinating between locations. We believe that scheduling services, while potentially useful for schools and libraries, does not fit into the categories of software that are currently on the ESL. We also find that schools and libraries are able to use video teleconferencing for distance learning without scheduling services and therefore such services are not essential. The E-rate program is operated with a finite amount of funding and we tentatively conclude that funds should not be shifted from necessary components to add scheduling services to the program. We seek comment on this tentative conclusion.

10. *Web Hosting*. Web hosting, as an unbundled Internet access service, was added to the ESL in October 2003, for funding year 2004. In funding year 2004, Web hosting was described as an Internet service provided by an Internet service provider that will host a school or library's Web site (<http://www.schoolname.org>) as part of a bundled service offering, or as an optional service. Because Web hosting is listed in the ESL as Internet access, it is funded under the E-rate program as a Priority 1 service. Although Web hosting has been included as part of Internet access, we now seek comment on whether Web hosting should

continue to be eligible for funding under the category of Priority 1 Internet access. We tentatively conclude that Web hosting should not be eligible for funding under the E-rate program, or, alternatively, should only be eligible for E-rate program funds as a Priority 2 service. We tentatively conclude that we should remove Web hosting from the ESL because, while many school districts find Web hosting to be a useful way to post information for parents and the community, we do not believe it is essential to the educational purposes of schools and libraries. We seek comment on this tentative conclusion.

11. If we decide to retain Web hosting on the ESL, we tentatively conclude that Web hosting is not Internet access or an information service and it should move to Priority 2. In funding year 2004, there was a presumption in the ESL description of Web hosting that Web hosting was to be provided by an Internet service provider. In today's marketplace, Web hosting vendors are not necessarily Internet service providers, and although a basic Web hosting service is comprised of the physical rental of space on a vendor's server for the hosting of an applicant's Web site, Web hosting service has greatly evolved with a variety of optional features. To the extent the Commission adopts the tentative conclusion that Web hosting service is eligible as a Priority 2 service, what aspects of this service should be eligible and how should an eligible Priority 2 Web hosting service be described in the ESL? Also, should contracts between Web hosting vendors and applicants be itemized to show the pricing of E-rate eligible features and elements of Web hosting?

12. *Wireless Internet Access Applications.* We tentatively conclude that certain wireless Internet access applications including, but not limited to, services that could be used on school buses to transmit emergency information, track students, and locate buses with GPS technology, are ineligible for E-rate support. We seek comment on this tentative conclusion. To the extent commenters support E-rate funding on these services we seek comment on how or why these applications would serve an educational purpose. Like scheduling software, we find that wireless Internet access applications are non-essential services and we tentatively conclude that we should not add them to the ESL at this time. We seek comment on this tentative conclusion.

B. Administrative Matters Related to the ESL

13. *Commission's Rules Regarding Eligible Services.* Currently, sections 54.502 and 54.503 of the Commission's rules state that telecommunications carriers may provide telecommunications, Internet access, and internal connections; section 54.506 defines internal connections; section 54.517 provides that non-telecommunications carriers may provide voice mail, Internet access, and internal connections; and section 54.518 describes the wide area network services that will be supported. We tentatively conclude that the rules should be restructured so that all of the provisions relating to eligible services be located in the same place and seek comment on this tentative conclusion. We seek comment on the proposed restructure of these rules.

14. The Commission rules that address the services that are eligible for E-rate support generally provide that telecommunications, Internet access, internal connections, and basic maintenance are eligible for E-rate support. They also, however, refer to specific services such as voice mail or wide area network. The ESL also lists specific services that are eligible for E-rate support, e.g., Centrex is listed as a supported service under the telecommunications services category. Applicants may be confused by the differences between the Commission's rules and the ESL. Thus, we propose that the rules regarding eligible services should make clear that the specific services eligible for support under the general categories of telecommunications, Internet access, and internal connections will be listed in the ESL and not specifically named in the Commission's rules. We tentatively conclude that any reference to specific services or products in the rules should be removed and instead the rules should state that all products and services eligible for E-rate support will be listed in the ESL. We seek comment on this tentative conclusion.

15. Section 54.522 of the Commission's rules provides a process by which the ESL can be changed from funding year to funding year. The process requires USAC to submit any proposed changes to the ESL for the following funding year by June 30th of each year to the Commission so that the Commission can release such proposals by public notice for comment. Any final changes to the ESL for the following funding year are voted on and released after this comment period. We find that this process provides the public with

ample notice of any potential changes to the eligibility status of certain products and services. Requiring the Commission to change its rules with the addition of each new service or change to the ESL does not enable USAC and Commission to keep up with the rapidly changing needs of schools and libraries to access telecommunications and advanced services. We find that our tentative conclusion to remove from our rules all references to specific services eligible for support will provide the Commission with the flexibility to make E-rate discounts available on new and improved products and services in a fluid yet predictable environment. We seek comment on the reasons we have provided for our tentative conclusion. We also seek comment on any alternative proposals or ideas that would better inform the public of the services that are eligible for E-rate support.

16. Because we tentatively conclude that reference to specific services should not be made in the rules, we propose to remove section 54.518 from our rules. Section 54.518 states that applicants cannot receive E-rate support to build or purchase a WAN. Instead, the program's requirements pertaining to WANs will be included in the ESL. We emphasize that this proposal will not change the current eligibility of WANs. We seek comment on our tentative conclusion to delete this rule.

17. In addition, we tentatively conclude that we should change the name of the category of supported services currently called "Internet access" to "Internet access and information services" in the ESL. We have defined Internet access as "basic conduit access to the Internet." The current ESL, however, also includes e-mail under the category of "Internet access." While e-mail uses the Internet, it is not, itself, Internet access. As such, we believe including "information services" in the descriptive title of the category would more accurately reflect the type of services eligible. We seek comment on this proposed change.

18. *Commission's Rules Regarding the ESL Process.* We tentatively conclude that we should change the process by which the Commission adopts changes to the ESL. First, we tentatively conclude that USAC should file its proposed ESL with the Commission no later than March 30th each year. Section 54.522 of the Commission's rules requires USAC to submit a draft ESL with any proposed changes to the Commission by June 30th of each year. The Commission then releases a public notice seeking comment on USAC's proposed ESL. Section 54.522 of the

Commission's rules requires the Commission to release the final ESL at least 60 days prior to the opening of the application filing window for the next E-rate funding year. For the last two years, USAC has opened the application filing window in early November for funding year 2008 and early December for funding year 2009. The current rule, therefore, allows approximately three months for the Commission to release the proposed draft of the ESL, for the public to review and comment on the draft, and for the Commission to release the final ESL. We have found that we have not had enough time to complete all of the steps required by the rule and release the final ESL 60 days prior to the opening of the application filing window. Indeed, on at least three prior occasions, as we have done this year, we have waived section 54.522 to allow USAC to open the application filing window without having to wait 60 days from the release of the final ESL. We find that requiring USAC to submit the proposed ESL earlier will allow additional time for the Commission to review the proposal and to review and analyze public comment on the proposed ESL. In the alternative, we seek comment from the public on any other methods by which we can streamline this process and keep it one that allows for ample public notice and opportunities for public participation.

19. We also tentatively conclude that we should change the provision in section 54.522 of the Commission's rules that requires the Commission to issue a public notice seeking comment on USAC's proposed annual changes to the ESL and another public notice announcing the release of the final ESL for the upcoming funding year. Specifically, we believe the rules should be changed to remove the requirement that the ESL be released as a public notice by the Commission. This will provide the Commission with flexibility to provide, for example, more detailed explanations regarding changes to the ESL in an order when it deems necessary. We seek comment on this tentative conclusion.

Procedural Matters

Initial Regulatory Flexibility Act Analysis

20. 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.

21. 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 FNPRM. 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 FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM (or summary thereof) will be published in the **Federal Register**.

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

22. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as 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. Since the initial implementation of the E-rate program, USAC has developed various procedures and guidelines, consistent with the Commission's rules and requirements, to ensure that funding is provided only for eligible services.

23. Pursuant to the Commission's rules, the Commission released the Public Notice seeking comment on USAC's proposed ESL for Funding Year 2010. The ESL indicates whether specific products or services are eligible for discounts under the E-rate program. In *2009 ESL Public Notice*, we noted

that this proceeding is limited to determining what services are eligible under the Commission's current rules and is generally not intended to be a vehicle for changing any eligibility rules. We also noted, however, that the Commission sought comment on various issues including the eligibility of specific services in the *ESL NPRM* released last year and invited parties that wanted their *ESL NPRM* comments considered in response to the public notice to refile those comments.

24. In the FNPRM, we seek comment on the Commission's tentative conclusion that the ESL should not add separately-priced firewall services, anti-virus/anti-spam software, scheduling services, and wireless Internet access applications. The Commission agrees with commenters that these services are either not eligible under the Act or are not essential to furthering the goals and purposes of the E-rate program. Further, we agree with commenters that paying for the discount on these services would have an adverse effect on services that are already being funded. We also seek comment on the Commission's tentative conclusion that Web hosting should not be eligible for funding under the E-rate program, or, alternatively, should only be eligible for E-rate program funds as a Priority 2 service. The Commission does not believe that Web hosting is essential to the educational purposes of schools and libraries. We also seek comment on changes to our rules to establish that specific eligible products and services should be listed in the ESL as opposed to being listed individually in the rules. We seek comment on our tentative conclusions on the process for developing the ESL, including requiring the Universal Service Administrative Company (USAC) to submit any proposed changes to the ESL to the Commission no later than March 30th of each year. Finally, we seek comment on the Commission's tentative conclusion to revise our rules to eliminate the requirement that the ESL be released by public notice, which would provide the Commission the flexibility to release the ESL by order. All of these administrative changes would bring clarity and transparency to the ESL process and would benefit all participants in the program.

2. Legal Basis

25. The legal basis for the FNPRM is contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403,

and section 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

26. 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 that: (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. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

27. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services, including telecommunications service providers, Internet Service Providers (ISPs), and vendors of the services and equipment used for internal connections.

28. *Schools.* As noted, "small entity" includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools, 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 schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools having \$7 million or less in annual receipts as small entities. In funding year 2007 approximately 105,500 schools 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 105,500 schools might be affected annually by our action, under current operation of the program.

29. *Libraries.* As noted, "small entity" includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for libraries, the definition of library includes public libraries, public elementary school or secondary school libraries, academic libraries, certain research libraries and private libraries where the state has determined that the library should be considered a library for purposes of this definition. For-profit libraries 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 libraries having \$7 million or less in annual receipts as small entities. In funding year 2007 approximately 10,950 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 10,950 libraries might be affected annually by our action, under current operation of the program.

30. *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, 1,311 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 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.

31. 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.

32. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the Commission's 2008 *Trends Report*, 300 companies reported that they were engaged in the provision of interexchange services. Of these 300 IXCs, an estimated 268 have 1,500 or few employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that most providers of interexchange services are small businesses that may be affected by the rules and policies adopted herein.

33. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the 2008 *Trends Report*, 1,005 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,005 CAPs and competitive LECs, an estimated 918 have 1,500 or few employees and 87 have more than 1,500 employees. Consequently, the

Commission estimates that most providers of competitive exchange services are small businesses that may be affected by the rules and policies adopted herein.

34. *Wireless Telecommunications.* Neither the Commission nor the SBA has developed a definition of small entities specifically for wireless telephony. The closest definition is the SBA definition for wireless telecommunications (except satellite). Under this definition, a cellular licensee is a small entity if it employs no more than 1,500 employees. According to the *2008 Trends Report*, 434 providers classified themselves as providers of wireless telephony, including cellular telecommunications, Personal Communications Service, and Specialized Mobile Radio (SMR) Telephony Carriers. Of these 437 wireless telephony providers, an estimated 222 have 1,500 or few employees and 212 have more than 1,500 employees. Consequently, the Commission estimates that more than half of the providers of wireless telephony services are small businesses that may be affected by the rules and policies adopted herein.

35. *Other Wireless Services.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to wireless services other than wireless telephony. The closest applicable definition under the SBA rules is again that of wireless telecommunications (except satellite), under which a service provider is a small entity if it employs no more than 1,500 employees. According to the *2008 Trends Report*, 69 providers classified themselves as wireless data carriers or other mobile service providers. Of these 69 providers, an estimated 65 have 1,500 or few employees and 4 have more than 1,500 employees. Consequently, the Commission estimates that most providers of wireless services other than wireless telephony are small businesses that may be affected by the rules and policies adopted herein.

36. *Paging and Messaging Service Providers.* In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates

and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to Commission data, 281 carriers reported that they were engaged in the provision of paging services, messaging services, or other mobile services. Of those, the Commission estimates that 279 are small, under the SBA approved small business size standard.

37. *Internet Service Providers.* Under the category of Internet service provider, a small business is one having annual receipts of \$23 million or less. According to SBA data, there are a total of 2,829 firms with annual receipts of less than \$10 million, and an additional 111 firms with annual receipts of \$10 million or more. Thus, the number of On-line Information Services firms that are small under the SBA’s \$18 million size standard is between 2,829 and 2,940. Further, some of these Internet Service Providers (ISPs) might not be independently owned and operated. Consequently, we estimate that there are fewer than 2,940 small entity ISPs that may be affected by the decisions and rules of the present action.

38. *Vendors of Internal Connections—Communications Equipment Manufacturers.* The Commission has not developed a definition of small entities applicable to the manufacturers of internal network connections. The most applicable definitions of a small entity are the definitions under the SBA rules applicable to manufacturers of “Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing” and “Other Communications Equipment Manufacturing.” According to the SBA’s regulations, manufacturers of these types of 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 companies 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 there are fewer than 1,458 small entity internal connections manufacturers that may be affected by the decisions and rules of the present action.

39. *Vendors of Internal Connections—Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61 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

40. The FNPRM does not result in additional recordkeeping requirements for small businesses. To the extent that new items are added to the ESL, schools, libraries and service providers will merely have additional choices of services eligible for discount when they voluntarily participate in the E-rate program. Likewise, removing or not adding a service to the ESL would have no additional impact on recordkeeping requirements.

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

41. 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.

42. In the FNPRM, we seek comment on a number of issues related to services eligible for E-rate discounts, including issues raised by the commenters that may not have been addressed as part of prior ESL proceedings. Specifically, we determine that anti-virus and anti-spam software and other services should not be added to the ESL. We believe that keeping these services off the ESL will not have an adverse impact on small entities since the services were never funded in the first place. Applicants and service providers have never had an expectation that E-rate discounts would apply to these services and will therefore not be harmed by a decision to maintain the status quo. We seek comment on this tentative conclusion.

43. We also make the tentative conclusion that web hosting be removed from the ESL. We propose, however, that this change should be implemented in the funding year following the rule change. This will give applicants affected by the removal of web hosting time to find alternative funds for the service, if necessary. Delaying the removal of web hosting will also mitigate any economic impact on those small entities providing the service. In addition, we propose additional outreach from USAC to inform and educate applicants and service providers on the change. We seek comment on these proposals to mitigate the impact of removing web hosting and seek comment generally on the economic impact of this tentative decision.

44. We also make tentative conclusions regarding administrative matters such as restructuring the eligible services rules, requiring USAC to submit a proposed draft ESL to the Commission on March 30th of each year, and revising our rules to state that all products and services eligible for E-rate support will be named in the ESL. We believe these changes will have no economic impact on entities participating in the E-rate program and, indeed, will benefit participants by making the rules and application process easier to understand and administer. We welcome, however, comments from parties that have opinions different from those reached in this analysis.

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

45. None.

Paperwork Reduction

46. This FNPRM 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).

Ex Parte Presentations

47. 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).

C. Comment Filing Procedures

48. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *Paper Filers:* 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, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the

Secretary, Federal Communications Commission.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- 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, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

- In addition, one copy of each comment or reply comment must be sent to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554; e-mail: Charles.Tyler@fcc.gov.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Ordering Clauses

49. Accordingly, *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 through 154, 201 through 205, 254, 303(r), and 403, this further notice of proposed rulemaking *is adopted*.

50. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this 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, Infants and children, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 to read as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation continues to read as follows:

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

Subpart F—Universal Service Support for Schools and Libraries

2. Section 54.502 is revised to read as follows:

§ 54.502 Supported services.

(a) *Telecommunications services.* For purposes of this subpart, supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services 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 service shall not be covered by the universal service support mechanisms. All supported telecommunications services are defined and listed in the Eligible Services List as updated annually in accordance with § 54.503 of the Commission's rules.

(b) *Internet access and information services.* For purposes of this subpart, supported Internet access and information services include basic conduit access to the Internet and all the services defined in § 54.5 of the Commission's rules as Internet access. All supported Internet access and information services are defined and listed in the Eligible Services List as updated annually in accordance with § 54.503 of the Commission's rules.

(c) *Internal connections.*

(1) For purposes of this subpart, a service is eligible for support as a component of an institution's internal connections if such service is necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch. Discounts are not available for internal connections in non-instructional buildings of a school or school district, or in administrative buildings of a library, to the extent that a library

system has separate administrative buildings, unless those internal connections are essential for the effective transport of information to an instructional building of a school or to a non-administrative building of a library. Internal connections do not include connections that extend beyond a single school campus or single library branch. There is a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way. All supported internal connections are defined and listed in the Eligible Services List as updated annually in accordance with § 54.503 of the Commission's rules.

(2) *Basic maintenance services.* For purposes of this subpart, basic maintenance services shall be eligible as an internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services. Basic maintenance services do not include services that maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information. All supported basic maintenance is defined and listed in the Eligible Services List as updated annually in accordance with § 54.503 of the Commission's rules.

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

(d) Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing the supported services described in paragraph (b) and (c) of this section for eligible schools, libraries, and consortia including those entities. Such services provided by non-telecommunications carriers shall be subject to all the

provisions of this subpart, except §§ 54.501(a), 54.502(a), and 54.515.

3. Section 54.503 is revised to read as follows:

§ 54.503 Eligible services list.

(a) The Administrator shall submit by March 30 of each year a draft list of services eligible for support, based on the Commission's rules, in the following funding year. The Wireline Competition Bureau will issue a Public Notice seeking comment on the Administrator's proposed eligible services list. At least 60 days prior to the opening of the window for the following funding year, the final list of services eligible for support will be released.

(b) All supported services are defined and listed in the Eligible Services List as updated annually in accordance with paragraph (a) of this section.

§ 54.506 [Removed and Reserved]

4. Remove and reserve § 54.506.

§§ 54.517 and 54.518 [Removed and Reserved]

5. Remove and reserve §§ 54.517 and 54.518.

§ 54.522 [Removed and Reserved]

6. Remove and reserve § 54.522.

[FR Doc. 2010-12931 Filed 6-8-10; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 02-6; GN Docket No. 09-51; FCC 10-83]

Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on several potential reforms that would cut red tape by eliminating rules that have not effectively served their intended purpose, while continuing to protect against waste, fraud, and abuse. In addition, the Commission seeks comment on how to provide stability and certainty for the funding of internal connections that are necessary to deliver higher bandwidth services to the classroom and how to expand access to funding for internal connections for schools and libraries serving impoverished populations. Finally, the