U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

■ 6. Revise § 206.226(b) to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b) *Mitigation planning.* In order to receive assistance under this section, as of November 1, 2004 (subject to 44 CFR 201.4(a)(2)), the State must have in place a FEMA approved State Mitigation Plan in accordance with 44 CFR part 201.

* * * * *

■ 7. In § 206.432, revise paragraphs (b) introductory text and (b)(1) to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) *Amounts of assistance.* The total of Federal assistance under this subpart shall not exceed either 7½ or 20 percent of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster under 42 U.S.C. 5170b, 5172, 5173, 5174, 5177, 5178, 5183, and 5201 as follows:

(1) *Seven and one-half (7½) percent.* Effective November 1, 2004, a State with an approved Standard State Mitigation Plan, which meets the requirements outlined in 44 CFR 201.4, shall be eligible for assistance under the HMGP not to exceed 7½ percent of the total estimated Federal assistance described in this paragraph. Until that date, existing FEMA approved State Mitigation Plans will be accepted. States may request an extension to the deadline of up to six months to the Director of FEMA by providing written justification in accordance with 44 CFR 201.4(a)(2).

* * * * *

■ 8. Revise § 206.434(b)(1) to read as follows:

§ 206.434 Eligibility.

* * * * *

(b) * * *

(1) For all disasters declared on or after November 1, 2004, local and Indian tribal government applicants for project subgrants must have an approved local mitigation plan in accordance with 44 CFR 201.6 prior to receipt of HMGP subgrant funding for projects. Until November 1, 2004, local mitigation plans may be developed concurrent with the implementation of subgrants.

* * * * *

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–20609 Filed 9–10–04; 8:45 am]

BILLING CODE 9110–41–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 54

[CC Docket No. 02–6; FCC 04–190]

Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts measures to protect against waste, fraud, and abuse in the administration of the schools and libraries universal service support mechanism (also known as the E-rate program). In particular, the Commission resolves a number of issues that have arisen from audit activities conducted as part of ongoing oversight over the administration of the universal service fund, and we address programmatic concerns raised by our Office of Inspector General.

DATES: Effective October 13, 2004 except for §§ 1.8003, 54.504(b)(2), 54.504(c)(1), 54.504(f), 54.508, and 54.516 which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order, and Order in CC Docket No. 02–6 released on August 13, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this order, we adopt measures to protect against waste, fraud, and abuse in the administration of the schools and libraries universal service support mechanism (also known as the E-rate program). In particular, we resolve a number of issues that have arisen from audit activities conducted as part of ongoing oversight over the administration of the universal service fund, and we address programmatic concerns raised by our Office of Inspector General (OIG). First, we set forth a framework regarding what amounts should be recovered by the Universal Service Administrative Company (USAC or Administrator) and the Commission when funds have been disbursed in violation of specific statutory provisions and Commission rules. Second, we announce our policy regarding the timeframe in which USAC and the Commission will conduct audits or other investigations relating to use of E-rate funds. Third, we eliminate the current option to offset amounts disbursed in violation of the statute or a rule against other funding commitments. Fourth, we extend our red light rule previously adopted pursuant to the Debt Collection Improvement Act (DCIA) to bar beneficiaries or service providers from receiving additional benefits under the schools and libraries program if they have failed to satisfy any outstanding obligation to repay monies into the fund. Fifth, we adopt a strengthened document retention requirement to enhance our ability to conduct all necessary oversight and provide a stronger enforcement tool for detecting statutory and rule violations. Sixth, we modify our current requirements regarding the timing, content and approval of technology plans. Seventh, we amend our beneficiary certification requirements to enhance our oversight and enforcement activities. Eighth, we direct USAC to submit a plan for timely audit resolution, and we delegate authority to the Chief of the Wireline Competition Bureau to resolve audit findings. Finally, we direct USAC to submit on an annual basis a list of all USAC administrative procedures to the Wireline Competition Bureau (Bureau) for review and further action, if necessary, to ensure that such procedures effectively serve our objective of preventing waste, fraud and abuse.

II. Fifth Report and Order

2. Since the inception of the schools and libraries support mechanism, schools and libraries have been subject to audits to determine compliance with the program rules and requirements. Audits are a tool for the Commission and USAC, as directed by the

Commission, to ensure program integrity and to detect and deter waste, fraud, and abuse. Because audits may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules applicable during a particular funding year, audits can reveal instances in which universal service funds were improperly disbursed or used in a manner inconsistent with the statute or the Commission's rules. As explained below, we adopt measures relating to recovery of such funds and other measures to strengthen the integrity of the schools and libraries mechanism of the universal service program and enhance our ongoing oversight over this program.

3. We stress that the measures we adopt herein are not the final steps we plan to take for strengthening oversight of the universal service program and combating waste, fraud, and abuse. We remain committed to deterring inappropriate uses of universal service monies and to rapidly detecting and addressing potential misconduct (including waste, fraud, and abuse), and we recognize that achieving these goals is a continual process. We note that we previously sought comment on additional oversight mechanisms, including a requirement that beneficiaries obtain and pay for independent audits of their compliance with our rules. We are continuing to work on various proposals for improving our oversight of the universal service program, and we expect to issue an order adopting additional measures in the near future.

A. Recovery of Funds

a. What To Recover

4. It is clear that funds disbursed in violation of the statute or a rule that implements the statute or a substantive program goal must be recovered. In this order we identify rules of this type and provide advance notice to all stakeholders that violation of these rules will result in recovery. In addition, we recognize that other rules may be necessary to protect against waste, fraud and abuse, and that violation of these types of rules will warrant recovery as well, as set forth in this order.

5. On the other hand, we agree with commenters that recovery may not be appropriate for violation of all rules regardless of the reason for their codification. For example, when the administrative costs of recovering funds disbursed in violation of a rule exceed the improperly disbursed amount, it may be reasonable not to seek recovery. Likewise recovery may not be appropriate for violation of procedural rules codified to enhance operation of the e-rate program. We seek to ensure that the determination is made and communicated to applicants in advance. Consistent with this policy, as described more fully below, we intend to evaluate whether there are USAC procedures that should be codified into the Commission's rules and whether violation of each should also be a basis for recovery. Applicants will be required to comply with procedural rules in applying for support—and applications that do not comply will be rejected. If, however, the procedural violation is inadvertently overlooked during the application phase and funds are disbursed, the Commission will not require that they be recovered, except to the extent that such rules are essential to the financial integrity of the program, as designated by the agency, or that circumstances suggest the possibility of waste, fraud, or abuse, which will be evaluated on a case-by-case basis.

6. Amounts disbursed in violation of the statute or a rule that implements the statute or a substantive program goal must be recovered in full. In situations where disbursement of funds is warranted under the statute and rules, but an erroneous amount has been disbursed, the amount of funds that should be recovered is the difference between what the beneficiary is legitimately allowed under our rules and the total amount of funds disbursed to the beneficiary or service provider. We set forth below a number of examples to illustrate the applications of this principle.

7. *Competitive Bidding Requirements.* We conclude that we should recover the full amount disbursed for any funding requests in which the beneficiary failed to comply with the Commission's competitive bidding requirements as set forth in § 54.504 and § 54.511 of our rules and amplified in related Commission orders. For instance, it is appropriate to recover the full amount of funds disbursed for a funding request when the beneficiary signs a contract before the end of the 28-day posting period. Likewise, it is appropriate to recover the full amount disbursed in a situation where the beneficiary failed to consider price as the primary factor when evaluating among competing bids. This conclusion is based on our position that the competitive bidding process is a key component of the schools and libraries program, ensuring that funds support services that satisfy the precise needs of an applicant and that services are provided at the lowest possible rates.

8. *Necessary Resources Certification.* We conclude that a lack of necessary resources to use the supported services warrants full recovery of funds disbursed for all relevant funding requests. The requirements that beneficiaries have sufficient computer equipment, software, staff training, internal connections, maintenance and electrical capacity to make use of the supported services are integral to ensuring that these monies are used for their intended purposes, without waste, fraud or abuse.

9. *Service Substitution.* Parties have the opportunity to make legitimate changes to requested services when events occur that make the original funding request impractical or even impossible to fulfill. Last December, we codified rules to address requests for service or equipment changes, concluding that allowing parties to make such substitutions is consistent with our goal of affording schools and libraries maximum flexibility to choose the offering that meets their needs more effectively and efficiently. We conclude that in situations where a service substitution would meet the criteria now established in our rules, the appropriate amount to recover is the difference between what was originally approved for disbursement and what would have been approved, had the entity requested and obtained authorization for a service substitution. In situations where the service substitution would not meet the criteria established in our rules, the appropriate amount to recover is the full amount associated with the service in question.

10. *Failure To Pay Non-Discounted Share.* We conclude that all funds disbursed should be recovered for any funding requests in which the beneficiary failed to pay its non-discounted share. While our rules do not set forth a specific timeframe for determining when a beneficiary has failed to pay its non-discounted share, we conclude that a reasonable timeframe is 90 days after delivery of service. Allowing schools and libraries to delay for an extended time their payment for services would subvert the intent of our rule that the beneficiary must pay, at a minimum, ten percent of the cost of supported services. We believe, based on USAC's experience to date as Administrator, that a relatively short period ''comparable to what occurs in commercial settings—should be established in which beneficiaries are expected to pay their non-discounted share after completion of delivery of service. In other contexts, companies refer payment matters to collection agencies if a customer fails to pay after

several requests for payment. Accordingly, we clarify prospectively that a failure to pay more than 90 days after completion of service (which is roughly equivalent to three monthly billing cycles) presumptively violates our rule that the beneficiary must pay its share. For purposes of resolving any outstanding issues relating to audits conducted prior to the issuance of this clarification, we direct USAC to determine whether full payment had been made as of the time the audit report was finalized. If any amounts remained outstanding at the conclusion of the audit work, that constitutes a rule violation warranting recovery of all amounts disbursed. Information on payment of the non-discounted share shall be sought from the beneficiary.

11. *Duplicative Services.* As noted in the *Schools and Libraries Second Order,* 68 FR 36931, June 20, 2003, our rules prohibit the funding of duplicative services, defined as services that provide the same functionality to the same population in the same location during the same period of time. In such circumstances, we ordinarily will recover the amount associated with the more expensive of the duplicative services, except in situations where there are indications of fraud, where we may recover the full amount of the funding request.

12. *Failure To Complete Service Within the Funding Year.* We conclude that the failure to complete delivery of services by the relevant deadline for a particular funding year is a rule violation that warrants recovery of all funds disbursed for services installed or delivered after the close of the funding year. We note that parties are always free to seek an extension of time to install non-recurring services from USAC, consistent with the conditions set by the Commission for such an extension. Such extensions have been granted in situations where installation cannot be completed for reasons outside the control of the beneficiary. Generally, however, the Commission requires service to be completed within one Funding Year, in order to promote equity among applicants and to avoid waste.

13. *Discount Calculation Violation.* When applicants fail to calculate properly their appropriate discount rate, the amount disbursed in violation of this rule is the difference between the amount of support to which the beneficiary is legitimately allowed and the amount requested or provided. For instance, in a situation in which the beneficiary made a clerical error in calculating the level of participation in the school lunch program, or failed to use an approved methodology for calculating the level of school lunch participation, the beneficiary may legitimately receive support under a recalculated discount rate. In these circumstances, the amount to recover is the difference between the incorrectly calculated amount and the amount recalculated with the appropriate discount. We emphasize, however, that in the narrow circumstance where there is evidence that an applicant has manipulated its discount rate in a deliberate attempt to defraud the government, full recovery may be appropriate. Moreover, in situations where the applicant would not have qualified for any support for internal connections had it properly applied the discount, the recovery would be the entire amount disbursed.

14. *Service Not Provided for Full Funding Year.* Similarly, if an applicant requested and received funding for a full year, and the service provider billed for the full year, but provided services for less than the full year, we believe it would be appropriate to pro-rate support and recover the excess. Such adjustments are ordinarily made prior to disbursement when discovered by USAC through normal review processes.

15. *Recovery Only for Waste, Fraud and Abuse.* We reject the argument some commenters make that applicants should not be required to repay the fund unless waste, fraud or abuse is established. We believe that there may be instances in which rule violations undermine statutory requirements or substantive policy goals of the program, but may not rise to the level of waste, fraud or abuse. For example, a request for an ineligible service might not entail waste, fraud or abuse, but it is still a violation for which recovery is necessary. While we appreciate that it may impose some hardship to make repayment in some situations, a statutory or rule violation cannot be absolved merely because the nature of the violation does not implicate waste, fraud or abuse. Moreover, to limit recovery to situations involving waste, fraud or abuse would place us in the position of condoning violation of the program's rules Further, it would provide no incentives to applicants or service providers to take the necessary steps to familiarize themselves with our rules and put controls in place to ensure rule compliance. Nor do we believe it appropriate for a beneficiary to retain an overpayment if, for some reason, USAC has mistakenly disbursed an amount in excess of that which the entity is allowed under our rules. If there are unique reasons why a particular entity believes recovery for a rule violation is inappropriate, that party is always free to present such information in seeking review of USAC's decision to recover monies, pursuant to § 54.722. We note, however, that we are without authority to waive statutory violations.

16. While we have not, to date, enunciated a bright line standard for determining whether a particular funding request or activities related to it depart from this standard to a degree that constitutes waste, fraud or abuse, we emphasize that we, and USAC in the first instance, retain the discretion to make such determinations on a case-by-case basis in the course of examining specific factual circumstances. For example, section 254(h)(1)(B) of the Act requires that applicants make a bona fide request for services to be used for educational purposes. A funding request may not be bona fide in a situation in which a service provider has charged the beneficiary an inflated price. Thus, it would be appropriate to recover amounts disbursed in excess of what similarly situated customers are normally charged in the marketplace. Similarly, in a situation in which the beneficiary has requested a clearly excessive level of support ''which necessarily must be judged in the context of the specific circumstances of the school or library ''it would also be appropriate to recover the full amount of the funding request, because the beneficiary has not made a bona fide request based on its reasonable needs. In addition, in specific cases where there is evidence of fraudulent conduct, it would be appropriate to refer such matters to law enforcement officials.

b. When To Recover Funds

17. In this section, we establish an administrative limitations period in which the Commission or USAC will determine that a violation has occurred. We believe that announcing a general policy in this area is in the public interest because it provides applicants and service providers with some certainty of the timing by which an audit or further review of e-rate funding may occur. We also conclude that a *de minimis* exception is in the public interest and direct USAC generally not to seek recovery when the administrative cost is greater than the recovery amount. Finally, we decline to implement a rule generally requiring full recovery when a pattern of violations is discovered, recognizing the punitive nature of such a rule. Rather, we direct USAC to conduct more rigorous scrutiny of applications in subsequent funding years when systematic noncompliance of FCC rules is suspected, and we direct USAC to

refer such situations to the Bureau, as appropriate, for further consideration.

18. *Administrative Limitations Period for Audits or Other Investigations by the Commission or USAC.* We believe that some limitation on the timeframe for audits or other investigations is desirable in order to provide beneficiaries with certainty and closure in the E-rate applications and funding processes. For administrative efficiency, the time frame for such inquiry should match the record retention requirements and, similarly, should go into effect for Funding Year 2004. Accordingly, we announce our policy that we will initiate and complete any inquiries to determine whether or not statutory or rule violations exist within a five year period after final delivery of service for a specific funding year. We note that USAC and the Commission have several means of determining whether a violation has occurred, including reviewing the application, post application year auditing, invoice review and investigations. Under the policy we adopt today, USAC and the Commission shall carry out any audit or investigation that may lead to discovery of any violation of the statute or a rule within five years of the final delivery of service for a specific funding year.

19. In the E-rate context, disbursements often occur for a period up to two years beyond the funding year. Moreover, audit work typically is not performed until after the disbursement cycle has been completed. For consistency, our policy for audits and other investigations mirrors the time that beneficiaries are required to retain documents pursuant to the rule adopted in this order. We believe that conducting inquiries within five years strikes an appropriate balance between preserving the Commission's fiduciary duty to protect the fund against waste, fraud and abuse and the beneficiaries' need for certainty and closure in their E-rate application processes.

20. One commenter argues that fund recovery actions should be subject to a one year statute of limitations, comparable to the limitation for imposition of forfeitures, while others argue that a two year timeframe, beginning the date of the funding commitment decision letter, is appropriate. We emphasize that our policy regarding initiation of audits or other investigations does not affect the statutes of limitations applicable under the DCIA for collection of debts established by the Commission.

21. *Recovery for De Minimis Amounts.* We conclude that it does not serve the public interest to seek to recover funds associated with statutory or rule violations when the administrative costs of seeking recovery outweigh the dollars subject to recovery. Accordingly, we direct USAC not to seek recovery of such *de minimis* amounts. We direct USAC to provide the Wireline Competition Bureau and the Office of Managing Director sufficient information regarding the administrative costs of seeking recovery of improperly disbursed funds so that a *de minimis* amount can be determined.

22. *Recovery for Pattern of Rule Violations.* We decline at this time to adopt a rule requiring recovery of the full amount disbursed in situations in which there is a pattern of rule or statutory violations, but the specific individual violations collectively do not require recovery of all disbursed amounts. We believe it would be difficult to establish a workable bright line standard that USAC could apply in such cases, and therefore decline to adopt such a rule at this time. We direct the Wireline Competition Bureau to consider such situations on a case-by-case basis in the course of resolving audit findings. Moreover, we emphasize that USAC should subject any school or library that exhibits systematic noncompliance with governing FCC rules to more rigorous scrutiny in the subsequent funding years. We direct USAC to implement this practice and to refer such situations to the Bureau, as appropriate, for further consideration.

c. How To Recover

23. *Elimination of the Offset Options.* In the *Commitment Adjustment Implementation Order,* the Commission authorized USAC to offer service providers two offset methods for repayment of funds disbursed in violation of the statute or a rule. One offset method allowed a service provider to offset the debt by ''reductions in the amounts owed to the service provider from other existing valid commitments involving the same applicant and service provider in the same funding year.'' The other offset method permitted a service provider to offset commitments involving the same applicant and service provider in subsequent funding years.

24. Based on our experience with implementation of the *Commitment Adjustment Implementation Order,* we now conclude that it would better serve our interest in protecting universal service funds to eliminate the offset methods adopted in that order as options for recovery of funds in the schools and libraries universal service mechanism. We have observed that, when used, such offset methods can result in a lengthy process that imposes a significant administrative burden on USAC. We note that although a service provider may fully intend to repay the outstanding debt in a timely manner when choosing the offset options adopted in the *Commitment Adjustment Implementation Order,* events may occur during the current or subsequent funding year which may delay or prevent payment. For example, the offset option was made available when there were sufficient pending funding requests to pay for the outstanding debt during the subsequent funding year, but if actual disbursements requested during that funding year do not satisfy the outstanding debt, the debt may continue during later funding years, or indefinitely if there remains an unsatisfied commitment. Even within the current funding year, such an offset may prove to be an attenuated, lengthy process, given that the beneficiary may have more than a full year after the close of the funding year to complete installation of non-recurring services, and may obtain extensions beyond that in specified circumstances. The potential for carrying the outstanding debt over several funding years, or non-payment altogether, hinders the ability of USAC to fully collect funds as necessary. To avoid this, and to promote administrative efficiency, we eliminate the offset options adopted in the *Commitment Adjustment Implementation Order* from the fund recovery plan.

25. *Booking of Recovery Amounts.* The Commission is committed to meeting its obligations under federal laws by maintaining complete and accurate financial reporting. As we have noted in other orders, universal service monies are reflected on the Commission's financial statements. To ensure the Commission meets its goals with respect to accounting for universal service funds on its financial statements, the Commission previously has directed USAC as Administrator of the Universal Service Fund to prepare financial statements for the Universal Service Fund consistent with generally accepted principles for federal agencies. In accordance with the Commission's rules, recovery amounts should be recorded in the accounting records for the Universal Service Fund consistent with Federal Generally Accepted Accounting Principles (GAAP).

d. Treatment of Applicants Subject to Recovery Actions

26. Some commenters stress that an opportunity to contest recovery should be afforded to applicants and service providers, and one commenter argues that applicants and service providers

should receive a full administrative hearing before recovery of funds is sought. We decline to adopt a rule providing for an administrative hearing before the issuance of a letter demanding recovery of funds. Parties are already free today to challenge any action of USAC—including the issuance of a demand for recovery of funds—by filing a request for review with this Commission pursuant to § 54.722 of our rules. We believe that this opportunity sufficiently addresses beneficiaries' needs. We see no significant additional public benefit to justify the creation of another layer of administrative process and the associated administrative costs for all involved.

27. Earlier this year we amended our rules to implement the Debt Collection Improvement Act of 1996, which generally governs the collection of claims owed to the United States. Among other things, we adopted a rule, § 1.1910, providing that the Commission shall withhold action on any application or request for benefits made by an entity that is delinquent in its non-tax debts owed to the Commission, and shall dismiss such applications or requests if the delinquent debt is not resolved. This rule (which we refer to as the ''red light rule'') applies to any application that is subject to the FCC Registration Number requirement set forth in part 1, subpart W, of our rules. The new DCIA rules specify that the term ''Commission'' includes the Universal Service Fund.

28. In response to the *Schools and Libraries Second Further Notice,* 69 FR 6181, February 10, 2004, several commenters suggested that we should bar or limit participation in the program when entities have some particular forms of outstanding claims. At present, applicants and some service providers under the schools and libraries mechanism are not required to obtain an FCC Registration Number, and as such, are not subject to the literal terms of § 1.1910 of our rules. We believe adopting analogous requirements for the schools and libraries program would be beneficial to the administration of the program in the prevention of waste, fraud and abuse, however, as it would strengthen incentives for beneficiaries and service providers to comply with the statute and our rules. We therefore amend our rules to bring all E-rate beneficiaries and service providers within the ambit of the red light rule. Accordingly, we amend our rules at 47 CFR 1.8002 and 1.8003 to require all entities that participate in the schools and libraries universal service support mechanism to obtain an FCC Registration Number. This rule change shall go into effect pursuant to the *DCIA Order,* 69 FR 27843, May 17, 2004, and shall apply to all applications and recovery actions pending at that time. Thereafter, USAC shall dismiss any outstanding requests for funding commitments if a school or library, or service provider, as applicable, has not paid the outstanding debt, or made otherwise satisfactory arrangements, within 30 days of the date of the notice provided for in our commitment adjustment procedures. In this regard, we expressly recognize that a school or library's ability to pay outstanding debts may be dependent on action by state or local officials on budgetary requests, and the timing of such budgetary action may be considered in determining satisfactory repayment options. We direct USAC to work with the Wireline Competition Bureau and Office of Managing Director to resolve any implementation issues associated with this rule.

29. Applications will not be dismissed pursuant to our red light rule if the applicant has timely filed a challenge through administrative appeal or a contested judicial proceeding to either the existence or amount of the debt owed to the Commission. Our recent *DCIA Order* expressly notes that appeals made to USAC shall be deemed administrative appeals. Our rules thus provide the opportunity to contest any finding that monies are owed to the fund, and thereby toll the potentially harsh consequences of the red light rule. This addresses the concerns raised by some parties that deferring action on pending requests when there is an outstanding commitment adjustment action would unfairly dissuade parties from pursuing their legitimate appeal rights.

30. Moreover, even if outstanding debts to the universal service fund have been repaid, we think it appropriate to subject subsequent applications from beneficiaries that have been found to have violated the statute or rules in the past to greater review. We believe it prudent to subject any pending applications to more rigorous scrutiny if USAC has determined, based on audit work or other means, that the applicant violated the statute or a Commission rule in the past. Such action is consistent with the framework previously enunciated in our *Puerto Rico Department of Education Order* for situations in which one or more entities is under investigation, or there is other evidence of potential program violations. Such heightened scrutiny could entail, for instance, requiring additional documentary evidence to demonstrate current compliance with all applicable requirements, or submission of a corrective plan of action to address past errors. It may also include site visits or other investigatory activities. Such heightened scrutiny could continue as long as necessary. We envision, however, that in most instances, such heightened scrutiny would no longer be necessary in subsequent years, after USAC determines that a pending application is compliant with the statute and Commission requirements.

B. Document Retention Requirements

31. Most commenters addressing this issue support the adoption of a five-year record retention rule, but suggest that the Commission should provide clear guidance on what information needs to be retained for possible audits and/or reviews. We agree. Therefore, in this Order, we amend § 54.516 of our rules to require both applicants and service providers to retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular Funding Year. This rule change shall go into effect when this order becomes effective and, as such, will apply to Funding Year 2004 and thereafter. We conclude that the adoption of a five-year record retention requirement will facilitate improved information collection during the auditing process and will enhance the ability of auditors to determine whether applicants and service providers have complied with program rules. Further, we believe that specific recordkeeping requirements not only prevent waste, fraud and abuse, but also protect applicants and/or service providers in the event of vendor disputes.

32. Although we agree with commenters that an explicit list of documents that must be retained in the recordkeeping requirement would be most useful for service providers and program beneficiaries, we do not believe that an exhaustive list of such documents is possible. We base this conclusion on our knowledge that due to the diversity that exists among service providers and program beneficiaries, the descriptive titles or names of relevant documents will vary from entity to entity. To address commenters' concerns, however, we provide for illustrative purposes the following description of documents that service providers and program beneficiaries must retain pursuant to this recordkeeping requirement, as applicable:

• *Pre-bidding Process.* Beneficiaries must retain the technology plan and

technology plan approval letter. If consultants are involved, beneficiaries must retain signed copies of all written agreements with E-rate consultants.

• *Bidding Process.* All documents used during the competitive bidding process must be retained. Beneficiaries must retain documents such as: Request(s) for Proposal (RFP(s)) including evidence of the publication date; documents describing the bid evaluation criteria and weighting, as well as the bid evaluation worksheets; all written correspondence between the beneficiary and prospective bidders regarding the products and service sought; all bids submitted, winning and losing; and documents related to the selection of service provider(s). Service providers must retain any of the relevant documents described above; in particular, a copy of the winning bid submitted to the applicant and any correspondence with the applicant. Service providers participating in the bidding process that do not win the bid need not retain any documents.

• *Contracts.* Both beneficiaries and service providers must retain executed contracts, signed and dated by both parties. All amendments and addendums to the contracts must be retained, as well as other agreements relating to E-rate between the beneficiary and service provider, such as up-front payment arrangements.

• *Application Process.* The beneficiary must retain all documents relied upon to submit the Form 471, including National School Lunch Program eligibility documentation supporting the discount percentage sought; documents to support the necessary resources certification pursuant to § 54.505 of the Commission's rules, including budgets; and documents used to prepare the Item 21 description of services attachment.

• *Purchase and Delivery of Services.* Beneficiaries and service providers should retain all documents related to the purchase and delivery of E-rate eligible services and equipment. Beneficiaries must retain purchase requisitions, purchase orders, packing slips, delivery and installation records showing where equipment was delivered and installed or where services were provided. Service providers must retain all applicable documents listed above.

• *Invoicing.* Both service providers and beneficiaries must retain all invoices. Beneficiaries must retain records proving payment of the invoice, such as accounts payable records, service provider statement, beneficiary check, bank statement or ACH transaction record. Beneficiaries must also be able to show proof of service provider payment to the beneficiary of the BEAR, if applicable. Service providers must retain similar records showing invoice payment by beneficiary to the service provider, USAC payment to the service provider, payment of the BEAR to the beneficiary, through receipt or deposit records, bank statements, beneficiary check or automated clearing house (ACH) transaction record, as applicable.

• *Inventory.* Beneficiaries must retain asset and inventory records of equipment purchased and components of supported internal connections services sufficient to verify the location of such equipment. Beneficiaries must also retain detailed records documenting any transfer of equipment within three years after purchase and the reasons for such a transfer.

• *Forms and Rule Compliance.* All program forms, attachments and documents submitted to USAC must be retained. Beneficiaries and service providers must retain all official notification letters from USAC, as applicable. Beneficiaries must retain FCC Form 470 certification pages (if not certified electronically), FCC Form 471 and certification pages (if not certified electronically), FCC Form 471 Item 21 attachments, FCC Form 479, FCC Form 486, FCC Form 500, FCC Form 472. Beneficiaries must also retain any documents submitted to USAC during program integrity assurance (PIA) review, Selective Review and Invoicing Review, or for SPIN change or other requests. Service providers must retain FCC Form 473, FCC Form 474 and FCC Form 498, as well as service check documents. In addition, beneficiaries must retain documents to provide compliance with other program rules, such as records relevant to show compliance with CIPA.

33. We emphasize that the rule we adopt here requires that program participants retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt, and delivery of services receiving schools and libraries discounts. Thus, the descriptive list above is provided as a guideline but cannot be considered exhaustive. For example, service providers must provide beneficiaries' billing records, if requested, and will be held accountable for properly billing those applicants for discounted services and for complying with other rules specifically applicable to service providers. Service providers are responsible for maintaining records only with respect to the services they actually provide, not records for applicants on whose contracts they may have bid, but not won.

34. We make additional clarifications to our rules providing for audits of program beneficiaries and service providers participating in the program. In particular, we clarify that schools, libraries, and service providers remain subject to both random audits and to other audits (or investigations) to examine an entity's compliance with the statute and the Commission's rules initiated at the discretion of the Commission, USAC, or another authorized governmental oversight body. We also conclude that failing to comply with an authorized audit or other investigation conducted pursuant to § 54.516 of the Commission's rules (*e.g.*, failing to retain records or failing to make available required documentation) is a rule violation that may warrant recovery of universal service support monies that were previously disbursed for the time period for which such information is being sought.

C. Technology Plans

35. To ensure transparency and consistency in the application of our rules we now modify our requirements regarding technology plan timing and content. Our revised rules require applicants to have an approved technology plan in place before the start of services and to certify at the time that they apply for discounts that their receipt of e-rate support is contingent upon timely approval of the technology plan. Our revised rules also largely adopt the United States Department of Education guidelines for technology plan content, and, in cases where applicants do not fall under the ambit of the Department of Education technology planning requirement, we adopt requirements consistent with USAC's guidelines. Because we continue to believe that the focus of technology planning should be research and planning for technology needs, we decline at this time to adopt rules to require technology plans to include an analysis of the cost of leasing versus purchasing E-rate eligible products and services or a showing that the applicant has considered the most cost-effective way to meet its educational objectives. We see no need, at this time, to address the question of what specific qualifications technology plan approvers should have. We note that the technology plans of libraries and public schools are already reviewed by individual states, and that USAC certifies reviewers for non-public schools. As we describe below, the state is the certified technology plan approver

for libraries and public schools, and we codify this practice in this order. We modify our rules so that non-public schools and entities that cannot or do not choose to secure approval of their technology plan from their states may obtain technology plan approval from USAC-certified entities.

36. *Technology Plan Timing.* We revise § 54.504(b)(2)(vii) so that applicants with technology plans that have not yet been approved when they file FCC Form 470 must certify that they understand their technology plans must be approved prior to the commencement of service. In making this change, we recognize that the timing of technology plan approval in particular states and localities may not coincide perfectly with the application cycle of the schools and libraries support mechanism. At the same time, we emphasize that applicants still are expected to develop a technology plan prior to requesting bids on services in FCC Form 470; all that we are deferring is the timing of the approval of such plan by the state or other approved certifying body. Second, we amend our rules to require that applicants formally certify, in FCC Form 486, that the technology plans on which they based their purchases were approved before they began to receive service. This revision conforms our rules to the current instructions for filing FCC Form 470 and is consistent with the views of commenters. The revision permits applicants to meet our technology plan requirements as long as their technology plans will be approved before they begin receiving service. It also ensures that applicants formally confirm that their technology plans were approved when service begins.

37. In light of the current inconsistency between our rules and the instructions to FCC Form 470, we conclude that it is appropriate to waive the rule for the limited purpose of extinguishing liability for recovery of funds in the narrow circumstance in which a beneficiary obtained approval of its technology plan after the filing of FCC Form 470, but before service commenced. We hereby grant a waiver of § 54.504(b)(2)(vii) of our rules to all applicants that failed to have a technology plan approved at the time they filed their FCC Form 470 or that had obtained approval of a technology plan that covered only part of the funding year, but that obtained approval of a plan that covered the entire funding year before the commencement of service in the relevant funding year. We conclude that in this situation, it would not serve the public interest to enforce the terms of § 54.504(b)(2)(vii) in light of the ambiguity created by the phrasing of the certification contained in the current FCC Form 470. We emphasize, however, that this limited waiver does not extend to instances where the applicant failed to obtain an approval of a technology plan at all. Such failure to obtain any approval is inconsistent with our rules and warrants recovery of all funds disbursed under the relevant funding requests.

38. *Technology Plan Content.* We conclude that technology plans should continue to focus on ensuring that technologies are used effectively to achieve educational goals rather than assuming a greater role in monitoring the procurement process. We reiterate our conclusion that the technology plan should focus on ''research and planning for technology needs ''rather than act as preliminary RFPs. Thus, while we expect that applicants will compare purchase and leasing options and the cost-effectiveness of different technologies as part of their procurement processes, we decline, consistent with the views of most commenters, to add a requirement that these matters be addressed in technology plans.

39. We agree with the virtually unanimous view of commenters that the Commission's technology plan requirements should be harmonized with the technology planning goals and requirements of the U.S. Department of Education and the U.S. Institute for Museum and Library Services. In fact, USAC has already been treating technology plans approved under the Department of Education's Enhancing Education Through Technology (EETT) as acceptable technology plans subject to one qualification. Consistent with the Commission requirement that program applicants demonstrate that they have the necessary resources required to utilize e-rate discounts, USAC has required that the EETT technology plans be supplemented by an analysis that indicates that the applicant is aware of and will be able to secure the financial resources it will need to achieve its technology aims, including technology training, software, and other elements outside the coverage of the Commission's support program. We adopt this existing policy in recognition of the Department of Education's expertise and USAC's attention to our requirement that applicants show that they have done the necessary planning and are able to secure the required resources to effectively employ the services they desire to purchase. Accordingly, we adopt a rule that codifies this method of compliance with the technology plan requirement.

40. We also adopt a rule that applicants that do not have EETT technology plans, must demonstrate that their plans contain the following elements:

(1) Establish clear goals and a realistic strategy for using telecommunications and information technology to improve education or library services;

(2) Have a professional development strategy to ensure that the staff understands how to use these new technologies to improve education or library services;

(3) Include an assessment of the telecommunication services, hardware, software, and other services that will be needed to improve education or library services;

(4) Provide for a sufficient budget to acquire and support the non-discounted elements of the plan: the hardware, software, professional development, and other services that will be needed to implement the strategy; and

(5) Include an evaluation process that enables the school or library to monitor progress toward the specified goals and make mid-course corrections in response to new developments and opportunities as they arise.

With these elements included in technology plans, applicants will be demonstrating at an early stage of the application process that they are or are preparing to be in compliance with the Commission's rules.

41. Consistent with this rule, the ability of an entity whose technology plan complies with the criteria in the preceding paragraphs to order services is only limited by the scope of its technology plan's strategy for using telecommunications services and information technology to meet its educational goals. Commenters should not fear that strengthened technology plan requirements will lock them into specific services. In fact, applicants are free to switch from wireline to wireless technologies, from high to even higher speed transmission speeds, and to make other similar changes in the services they order as long as those services are designed to deliver the educational applications they have prepared to provide. Only if an applicant desires to order services beyond the scope of its existing technology plan does it need to prepare and seek timely approval of an appropriately revised technology plan.

42. We also decline at this time to take any of the other actions regarding technology plans suggested by commenters. We decline to adopt ALA's suggestion that we require separate filings of proposals to provide service and prices, since we find that it would

be much more costly for USAC to process such filings separately, given the redundancy. We decline to require USAC to provide examples of acceptable technology plans given that applicants can already approach their states or other entities from which they must gain certification for such examples. Although we do not require technology plans from those seeking only ''POTS'' local and long distance telecommunications services, or cellular service, we decline to eliminate the requirement for those seeking internet access, because we believe that certified plans are important to ensuring that applicants have carefully considered how to employ the service. For administrative efficiency, we also decline to require all applicants to submit their technology plans as attachments to current forms, but note that USAC may request submission of a technology plan for any applicant as part of the application review process and that such plans are subject to the document retention rules adopted in this order. As such, a violation of the technology plan rules we adopt herein will be subject to recovery on a prospective basis.

43. *Technology Plan Approval.* We also modify our rules to address non-public schools that are not eligible to secure approval of their technology plan from their states. USAC has been handling this matter by permitting such schools to obtain approval of their plans from entities that USAC has certified as qualified to provide such evaluations and approval. We now amend our rules to codify this practice.

D. Certifications

44. *Form 470.* Section 54.504 of the Commission's rules governs applicants' requests for services and provides specific requirements for completing the FCC Form 470. Pursuant to § 54.504(b)(2), there are several requirements to which applicants must certify compliance before submitting their FCC Form 470 applications. Most of these certification requirements are also listed in Block 5 of the FCC Form 470. However, as noted above, the language in the form does not mirror the precise language in the rule. In particular, § 54.504(b)(2)(v) of the Commission's rules states that applicants certify that ''all of the necessary funding in the current funding year has been budgeted and approved to pay for the ''non-discount'' portion of requested connections and services, as well as any necessary hardware or software, and to undertake the necessary staff training required to use the services effectively.'' The form states more generally, however, that applicants must certify that ''support under the support mechanism is conditional upon the school(s) and library(ies) securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.''

45. As explained above, the certification language on the FCC Form 470 is consistent with the intent of the rule and more closely resembles the real-world experience. Therefore, we revise the current language of § 54.504(b)(2)(v) to require applicants to certify that support under the support mechanism is conditional. We replace the current language of § 54.504(b)(2)(v) with the following sentence: ''Support under this support mechanism is conditional upon the school(s) and library(ies) securing access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections necessary to use the services purchased effectively. ''In addition, we re-designate the current § 54.504(b)(2)(v) as new § 54.504(b)(2)(vi). We believe these revisions will facilitate the ability of applicants to determine what certifications are necessary for proper completion of the application and will facilitate our enforcement and oversight activities.

46. Furthermore, to emphasize that applicants must make cost effective service selections consistent with the *Ysleta Order* we will require applicants to certify on the Form 470 that the services for which bids are being sought are the most cost effective means for meeting their educational needs and technology plan goals. Therefore, we modify § 54.504(b)(2) to add a new certification, § 54.504(b)(2)(vii), which states the following: ''All bids submitted will be carefully considered and the bid selected will be for the most cost-effective service or equipment offering, with price being the primary factor, and will be the most cost-effective means of meeting educational needs and technology plan goals.''

47. *Form 471.* Under § 54.504(c) of the Commission's rules, applicants are required to submit a completed FCC Form 471 after signing a contract for eligible services. Like the FCC Form 470, the FCC Form 471 lists several matters to which applicants must certify in order to have their applications considered. Currently, however, these requirements are not expressly addressed in part 54 of the Commission's rules. We therefore find it appropriate to amend § 54.504(c) of the Commission's rules by adding a new subsection (1) which will state that the FCC Form 471 shall be signed by the person authorized to order telecommunications and other supported services for the eligible school, library, or consortium and shall include that person's certification that the entity(ies) is/are eligible to receive support and has/have secured access to all of the resources necessary to make effective use of the service purchased; the entity(ies) is/are covered by technology plans that have been or will be approved by a state or other authorized body; the entity(ies) has/have complied with program rules as well as all state and local laws regarding procurement of services; the services will be used solely for educational purposes and will not be sold, resold, or transferred; the applicant understands that the discount level used for shared services is conditional; and the applicant recognizes that its application may be audited. We conclude that codifying these existing certification requirements in the Commission's rules will diminish confusion regarding the criteria to which applicants must certify when completing their FCC Forms 471 while enhancing our enforcement and oversight activities.

48. Consistent with the requirement imposed on the Form 470, we will require applicants to certify on the Form 471 that the selection of services and service providers is based on the most cost effective means of meeting educational needs and technology plan goals. Therefore, we modify § 54.504(c)(1) to add a new certification, § 54.504(c)(1)(xi), which states the following: ''All bids submitted were carefully considered and the most cost-effective bid for services or equipment was selected, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology plan goals.''

49. *Form 473.* In the *Schools and Libraries Second Further Notice,* we sought comment on whether the Commission, as a condition of support, should require each service provider to make certifications that it has not sought to subvert the effectiveness of the E-rate program's competitive bidding process. Although the Commission recognized that many of those subversive actions are already prohibited by the federal antitrust laws, if not other state or federal statutes or rules, it observed that requiring such certifications would better enable the Commission or other government agencies to enforce the Commission's rules and to seek criminal sanctions where appropriate.

50. We now adopt three certification requirements modeled after the certificate of independent price determination required under federal acquisition regulations, as referenced in the *Schools and Libraries Second Further Notice.* These certifications will serve to emphasize to potential service providers that any practices that thwart the competitive bidding process will not be tolerated, and will facilitate the ability of government agencies to prosecute any misdeeds in this area. Service providers receiving funds through the E-rate program accordingly now must make the following certifications with respect to their participation in the competitive bidding process of the E-rate program in the Service Provider Annual Certification Form, FCC Form 473:

1. I certify that the prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

2. I certify that the prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program will not be knowingly disclosed by this service provider, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

3. I certify that no attempt will be made by this service provider to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

III. Order

51. In this order, we set forth how audit findings related to the schools and libraries support mechanism shall be resolved. This discussion applies to audits conducted by USAC's own internal audit division, as well as audits conducted by independent public accounting firms under contract to USAC.

52. As modified above, USAC shall continue to recover funds whenever it discovers a statutory or rule violation, as described above. The standard for determining such a violation is the same standard that we use in our enforcement actions: specifically, whether a party has willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, based on a preponderance of the evidence. To the extent audit findings raise matters outside the scope of our orders or existing rules, we expect USAC to clearly identify such findings to the agency.

53. We conclude that a standardized, uniform process for resolving audit findings is necessary, and we direct USAC to submit, no later than 45 days from the publication in the **Federal Register**, a proposed plan for resolving audit findings. USAC's audit resolution plan should detail USAC's proposed procedures for resolving all findings arising from audits conducted by USAC's internal audit department, independent public accounting firms under contract with USAC, or government audit organizations. In addition, USAC's audit resolution plan should specify deadlines to ensure audit findings are resolved in a timely manner.

54. We have set forth in the accompanying Fifth Report and Order a general framework for what amounts should be recovered in specific situations, and we expect future audits to be resolved consistent with that framework. To the extent audits in the future raise issues not addressed herein, we provide a limited delegation to the Wireline Competition Bureau to address such matters. In particular, we direct the Chief of the Wireline Competition Bureau to address audit findings and to act on requests for waiver of rules warranting recovery of funds. We hereby amend §§ 0.91 and 0.291 to reflect such delegation of authority in this limited instance. We emphasize the limited nature of this delegation which we adopt because of the importance of providing rapid responses to audit findings and requests for waiver of rules warranting recovery of funds. We also emphasize that any party aggrieved by any action by the Bureau is, of course, free to seek review by this Commission, pursuant to § 1.115 and commit that we will address any such appeal within six months. Moreover, any action by USAC implementing direction from the Bureau is subject to full Commission review pursuant to § 54.723(b).

55. The Managing Director is the agency'' designated follow-up official. Pursuant to the Commission's Audit Follow-up Directive, that office ensures that systems for audit follow-up and resolution are documented and in place, that timely responses are made to all audit reports, and that corrective actions are taken. We clarify that the Office of Managing Director remains the agency's audit follow-up official, and that all actions taken by the Wireline Competition Bureau relating to E-rate fund audits shall be consistent with the agency's general framework for audit resolution and follow-up.

56. USAC shall maintain records of the status of all audit reports and any recommendations made therein, and make such records available to the Commission upon request. USAC also shall submit a report to the Commission on a semi-annual basis summarizing the status of all outstanding audit findings. To the extent findings cannot be resolved within six months, USAC shall describe the status of its efforts, and provide a projected timeframe for completion. We also note that USAC's determination concerning the resolution of audit findings does not limit the Enforcement Bureau's ability to take enforcement action for any statutory or rule violation pursuant to section 503 of the Act.

57. We recognize that, to date, a number of audit reports have contained findings that indicate noncompliance with USAC administrative procedures. Consistent with its obligation to administer this support mechanism without waste, fraud and abuse, we expect USAC to identify for Commission consideration on at least an annual basis all findings raising management concerns that are not addressed by the Commission's existing rules and precedent, and, as appropriate, identify any USAC administrative procedures that should be codified in our rules to facilitate program oversight.

58. Recently, issues have been raised regarding recovery of funds disbursed in instances when applicants failed to follow certain USAC administrative procedures. As discussed above, a number of these procedures, such as guidelines for the content of technology plans and specific guidance on document retention, are being incorporated into the Commission's rules, and their violation may warrant recovery of universal service monies on a prospective basis. We believe that it will be particularly useful to continue to evaluate, on an ongoing basis, whether other procedures adopted by USAC should also be incorporated into the rules and whether their violation should also warrant recovery of previously disbursed monies.

59. We believe that USAC's experience in processing tens of thousands of these applications provides it with insightful information regarding ways in which waste, fraud and abuse may occur in that process. Based on that information, we believe that USAC's development of procedures

to serve our objective to prevent waste, fraud and abuse is invaluable. We direct USAC to submit to the Commission within 45 days from publication in the **Federal Register**, and annually thereafter, a list summarizing all current USAC administrative procedures identifying, where appropriate, the specific rules or statutory requirements that such procedures further, and those procedures that serve to protect against waste, fraud and abuse. We shall review those procedures to determine whether action is needed to ensure appropriate recovery, and shall determine whether such procedures should be adopted as binding rules. Thereafter, USAC and the Commission will generally seek recovery of funds disbursed in violation of the statute or a rule that implements the statute or substantive program goal or that serves to protect against waste, fraud and abuse. USAC and the Commission will not seek recovery of funds disbursed in violation of other rules, except to the extent that such rules are important to ensuring the financial integrity of the program, as designated by the agency.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

60. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

61. In this present document, we have assessed the effects of the measures adopted to protect against waste, fraud and abuse in the administration of the schools and libraries universal service support mechanism, and find that the added certification requirements in various FCC Forms will not be unduly burdensome on small businesses.

B. Final Regulatory Flexibility Analysis

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

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

63. In this *Fifth Report and Order,* we adopt measures to protect against waste, fraud and abuse in the administration of the schools and libraries universal service support mechanism, particularly with regard to audit requirements and how to respond to audit findings. We set forth a framework for how much USAC should seek recovery when violations are found and set a five year administrative limitations period for such recovery actions as well as a corresponding five year document retention rule. We also eliminate the option of allowing parties to offset current debts to USAC against expected future payments, and we bar those with outstanding debts to the fund from receiving additional amounts. We also conform our rules concerning the content of and timing of certifications regarding technology plans to current practices. These rules will advance the goals of the schools and libraries program by deterring waste, fraud and abuse, leaving more support available applicants.

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

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

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

65. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were about 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

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

4. Schools and Libraries

67. As noted, ''small entity'' includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally ''a non-profit institutional day or residential school that provides elementary education, as determined under state law.'' A secondary school is generally defined as ''a non-profit institutional day or residential school that provides secondary education, as determined under state law,'' and not offering education beyond grade 12. For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are

libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools and libraries having $6 million or less in annual receipts as small entities. In Funding Year 2 (July 1, 1999 to June 20, 2000) approximately 83,700 schools and 9,000 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 83,700 schools and 9,000 libraries might be affected annually by our action, under current operation of the program.

5. Telecommunications Service Providers

68. 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.

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

70. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs) and ''Other Local Exchange Carriers.''* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to ''Other Local Exchange Carriers.'' The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35 carriers reported that they were ''Other Local Exchange Carriers.'' Of the 35 ''Other Local Exchange Carriers,'' an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

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

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

73. *Private and Common Carrier Paging.* In the *Paging Third Report and Order*, 62 FR 16004, April 3, 1997, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to Commission data, 474 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 457 are small, under the SBA approved small business size standard.

6. Internet Service Providers

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

7. Vendors of Internal Connections

75. The Commission has not developed a small business size standard specifically directed toward manufacturers of internal network connections. The closest applicable definitions of a small entity are the size standards under the SBA rules applicable to manufacturers of ''Radio and Television Broadcasting and Communications Equipment'' (RTB) and ''Other Communications Equipment.'' According to the SBA's regulations, manufacturers of RTB or other communications equipment must have 750 or fewer employees in order to qualify as a small business. The most recent available Census Bureau data indicates that there are 1,187 establishments with fewer than 1,000 employees in the United States that manufacture radio and television broadcasting and communications equipment, and 271 companies with less than 1,000 employees that manufacture other communications equipment. Some of these manufacturers might not be independently owned and operated. Consequently, we estimate that the majority of the 1,458 internal connections manufacturers are small.

8. Miscellaneous Entities

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

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

77. In this *Fifth Report and Order*, we eliminate the option that entities formerly had with respect to funds they had received from the program in error. Instead of requiring them to immediately repay such funds, the program rules allowed them to offset the amounts they owed against future payments that they were due. Unfortunately, as discussed above, the administrative costs of tracking such debts appears to outweigh the benefits of the option and so it has been eliminated.

78. In our continuing effort to crack down on waste, fraud, and abuse by those who owe funds to the program, we also modify our rules to bring all E-rate program beneficiaries and service providers within the ambit of the program's ''red light'' rule: denying future funding to any party with outstanding debts to the program. To achieve this, we amend §§ 1.8002 and 1.8003 of the Commission's rules to require all entities that participate in the schools and libraries universal service support program to obtain an FCC Registration Number. The agency has already certified that this process imposes only a *de minimis* burden.

79. While we adopt a 5-year document retention rule, this rule should actually reduce, not increase, the burden on small businesses. After all, § 54.516 of the Commission rules previously required relevant documents to be retained by parties indefinitely. Those parties are no longer required to do so. Meanwhile, as discussed above, these record retention rules are required to ensure that program auditors can make full audits where and when they see fit, thereby maximizing the amount of program funds available for legitimate uses. In particular such funds can help finance funding requests that are now approved but left unfunded due to a lack of funds.

80. Although the Commission has formalized its rules concerning the substance and timing of technology plans, the modified rules do not impose any additional, non-trivial burdens; they merely provide further guidance on the requirements of the current technology plan. Schools and libraries must now certify on FCC Form 486 that their technology plans had been approved before they started to receive any E-rate supported services based on them, but schools and libraries have always been required to prepare a technology plan on which to base their E-rate program product and service requests and to get that plan approved. The action of signing an additional time on a form that they already have to file to certify that they have complied with existing rules represents no more than a trivial burden.

81. The framework adopted today, setting forth what amounts should be recovered by USAC when specific statutory and Commission rule requirements are violated, does not involve additional reporting, recordkeeping, or compliance requirements for small entities. Similarly, the rule adopted in this *Fifth Report and Order*, adopting a five year administrative limitations period for initiation of fund recovery actions, does not involve additional reporting, recordkeeping, or compliance requirements for small entities. Rather, it reduces their recordkeeping requirements. The rules adopted, barring entities from receiving additional benefits under the schools and libraries program if they have failed to repay an outstanding debt to the fund, do not impose additional reporting, recordkeeping, or compliance requirements for small entities. Finally, other rules we adopt regarding the certification requirements made on FCC Forms do not require additional reporting or recordkeeping for small entities, as they merely conform our rules to current practices.

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

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

83. Although we received no IRFA comments, we considered alternatives to the proposed recordkeeping requirements for small entities. Although we eliminated the options that schools and libraries had to offset amounts they owed to the fund due to rule violations against expected future payments, we did so only after giving the options a reasonable trial. We only eliminated them after concluding that they can involve a lengthy process resulting in a significant administrative burden on USAC, as discussed in more detail above.

84. Although the Commission adopts the standards currently used by SLD,

the rules clearly enable schools and libraries to minimize any duplicative administrative actions by permitting the technology plans that schools must prepare in response to the recent ''No Child Left Behind'' initiative to serve double duty to the extent that that is appropriate. Thus, schools whose plans have already been approved through the Department of Education's EETT need only meet the single additional standard of showing that they have sufficient resources to finance their portion of the cost of the entire implementation of using telecommunications to advance educational goals. Furthermore, we formally authorize USAC to certify entities that are qualified to approve the technology plans of non-public schools, among others.

85. The new requirement that schools and libraries certify—on FCC Form 486—that their technology plans were already approved before they began receiving any E-rate supported services also relaxes the former rule that required applicants to certify that their plans had been approved before they filed their FCC Form 470.

86. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. In addition, the Commission will send a copy of this order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act pursuant to 5 U.S.C. 801(a)(1)(A).

VI. Ordering Clauses

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

88. The Commission's rules, 47 CFR parts 0, 1 and 54 are amended as set forth, effective October 13, 2004 except for §§ 1.8003, 54.504(b)(2), 54.504(c)(1), 54.504(f), 54.508, and 54.516 which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

89. The Commission will send a copy of this *Fifth Report and Order*, including the FRFA, in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements.

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Investigations, Telecommunications.

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, and 54 as follows:

PART 0—COMMISSION ORGANIZATION

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

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Amend § 0.91 by adding paragraph (n) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(n) Address audit findings relating to the schools and libraries support mechanism, subject to the overall authority of the Managing Director as the Commission's audit follow-up official.

■ 3. Amend § 0.291 by adding paragraph (i) to read as follows:

§ 0.291 Authority delegated.

* * * * *

(i) *Authority concerning schools and libraries support mechanism audits.* The Chief, Wireline Competition Bureau, shall have authority to address audit findings relating to the schools and libraries support mechanism. This authority is not subject to the limitation set forth in paragraph (a)(2) of this section.

PART 1—PRACTICE AND PROCEDURE

■ 4. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 5. Amend § 1.8002 by revising paragraph (a)(6) to read as follows:

§ 1.8002 Obtaining an FRN.

* * * * *

(a) * * *

(6) Any applicant or service provider participating in the Schools and Libraries Universal Service Support Program, part 54, subpart F, of this chapter.

* * * * *

■ 6. Revise § 1.8003 to read as follows:

§ 1.8003 Providing the FRN in Commission filings.

The FRN must be provided with any filings requiring the payment of statutory charges under subpart G of this part, anyone applying for a license (whether or not a fee is required), including someone who is exempt from paying statutory charges under subpart G of this part, anyone participating in a spectrum auction, making up-front payments or deposits in a spectrum auction, anyone making a payment on an auction loan, anyone making a contribution to the Universal Service Fund, any applicant or service provider participating in the Schools and Libraries Universal Service Support Program, and anyone paying a forfeiture or other payment. A list of applications and other instances where the FRN is required will be posted on our Internet site and linked to the CORES page.

PART 54—UNIVERSAL SERVICE

■ 7. The authority citation continues to read as follows:

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

■ 8. Amend § 54.504 by revising paragraph (b)(2), by adding paragraphs (c)(1) and (f), and by adding and reserving paragraph (c)(2), to read as follows:

§ 54.504 Request for services.

* * * * *

(b) * * *

(2) FCC Form 470 shall be signed by the person authorized to order telecommunications and other supported services for the eligible school, library, or consortium and shall include that person's certification under oath that:

(i) The schools meet the statutory definition of elementary and secondary schools found under section 254(h) of the Act, as amended in the No Child Left Behind Act of 2001, 20 U.S.C. 7801(18) and (38), do not operate as for-profit businesses, and do not have endowments exceeding $50 million;

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(iii) All of the individual schools, libraries, and library consortia receiving services are covered by:

(A) Individual technology plans for using the services requested in the application; and/or

(B) Higher-level technology plans for using the services requested in the application; or

(C) No technology plan needed because application requests basic local and/or long distance service and/or voicemail only.

(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 applicant is applying for basic local, cellular, PCS, and/or long distance telephone service and/or voicemail only.

(v) The services the applicant purchases at discounts will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

(vi) Support under this support mechanism is conditional upon the school(s) and library(ies) securing access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections necessary to use the services purchased effectively.

(vii) All bids submitted will be carefully considered and the bid selected will be for the most cost-effective service or equipment offering, with price being the primary factor, and will be the most cost-effective means of meeting educational needs and technology plan goals.

* * * * *

(c) * * *

(1) FCC Form 471 shall be signed by the person authorized to order telecommunications and other supported services for the eligible school, library, or consortium and shall include that person's certification under oath that:

(i) The schools meet the statutory definition of elementary and secondary schools found under section 254(h) of the Act, as amended in the No Child Left Behind Act of 2001, 20 U.S.C. 7801(18) and (38), do not operate as for-profit businesses, and do not have endowments exceeding $50 million.

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(iii) The entities listed on the FCC Form 471 application have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services purchased, as well as to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. The billed entity will pay the non-discount portion of the cost of the goods and services to the service provider(s).

(iv) All of the schools and libraries listed on the FCC Form 471 application are covered by:

(A) An individual technology plan for using the services requested in the application; and/or

(B) Higher-level technology plan(s) for using the services requested in the FCC Form 471 application; or

(C) No technology plan needed; applying for basic local and long distance telephone service only.

(v) Status of technology plan(s) has/have been approved; will be approved by a state or other authorized body; or no technology plan is needed because applicant is applying for basic local, cellular, PCS, and/or long distance telephone service and/or voicemail only.

(vi) The entities listed on the FCC Form 471 application have complied with all applicable state and local laws regarding procurement of services for which support is being sought.

(vii) The services the applicant purchases at discounts will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

(viii) The entities listed in the application have complied with all program rules and acknowledge that failure to do so may result in denial of discount funding and/or recovery of funding.

(ix) The applicant understands that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.

(x) The applicant recognizes that it may be audited pursuant to its application, that it will retain for five years any and all worksheets and other records relied upon to fill out its application, and that, if audited, it will make such records available to the Administrator.

(xi) All bids submitted were carefully considered and the most cost-effective bid for services or equipment was selected, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology plan goals.

* * * * *

(f) *Filing of FCC Form 473.* All service providers eligible to provide telecommunications and other supported services under this subpart shall submit annually a completed FCC Form 473 to the Administrator. FCC Form 473 shall be signed by an authorized person and shall include that person's certification under oath that:

(1) The prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to those prices, the intention to submit an offer, or the methods or factors used to calculate the prices offered;

(2) The prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program will not be knowingly disclosed by this service provider, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt will be made by this service provider to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

■ 9. Add § 54.508 to subpart E to read as follows:

§ 54.508 Technology plans.

(a) *Contents.* The technology plans referred to in this subpart must include the following five elements:

(1) A clear statement of goals and a realistic strategy for using telecommunications and information technology to improve education or library services;

(2) A professional development strategy to ensure that the staff understands how to use these new technologies to improve education or library services;

(3) An assessment of the telecommunication services, hardware, software, and other services that will be needed to improve education or library services;

(4) A budget sufficient to acquire and support the non-discounted elements of the plan: the hardware, software, professional development, and other services that will be needed to implement the strategy; and

(5) An evaluation process that enables the school or library to monitor progress toward the specified goals and make mid-course corrections in response to new developments and opportunities as they arise.

(b) *Relevance of approval under Enhancing Education through Technology.* Technology plans that meet the standards of the Department of Education's Enhancing Education Through Technology (EETT), 20 U.S.C. 6764, are sufficient for satisfying paragraphs (a)(1), (a)(2), (a)(3) and (a)(5) of this section, but applicants must supplement such plans with an analysis demonstrating that they meet the budgetary requirement described in paragraph (a)(4) of this section. Furthermore, to the extent that the Department of Education adopts future technology plan requirements that require one or more of the five elements described in paragraph (a) of this section, such plans will be acceptable for satisfying those elements of paragraph (a) of this section. Applicants with such plans will only need to supplement such plans with the analysis needed to satisfy those elements of paragraph (a) of this section not covered by the future Department of Education technology plan requirements.

(c) *Timing of certification.* As required under 54.504(b)(2)(vii) and (c)(1)(v), applicants must certify that they have prepared any required technology plans. They must also confirm, in FCC Form 486, that their plan was approved before they began receiving services pursuant to it.

(d) *Parties qualified to approve technology plans required in this subpart.* Applicants required to prepare and obtain approval of technology plans under this subpart must obtain such approval from either their state, the Administrator, or an independent entity approved by the Commission or certified by the Administrator as qualified to provide such approval. All parties who will provide such approval must apply the standards set forth in paragraphs (a) and (b) of this section.

■ 10. Revise § 54.516 to read as follows:

§ 54.516 Auditing.

(a) *Recordkeeping requirements*—(1) *Schools and libraries.* Schools and libraries shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least 5 years after the last day of service delivered in a particular Funding Year. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well. Schools and libraries shall maintain asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase.

(2) *Service providers.* Service providers shall retain documents related to the delivery of discounted telecommunications and other supported services for at least 5 years after the last day of the delivery of discounted services. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well.

(b) *Production of records.* Schools, libraries, and service providers shall produce such records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the FCC, or any local, state or federal agency with jurisdiction over the entity.

(c) *Audits.* Schools, libraries, and service providers shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements for the schools and libraries universal service support mechanism, including those requirements pertaining to what services and products are purchased, what services and products are delivered, and how services and products are being used. Schools and libraries receiving discounted services must provide consent before a service provider releases confidential information to the auditor, reviewer, or other representative.

[FR Doc. 04–20363 Filed 9–10–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 04–313, CC Docket No. 01–338; FCC 04–179]

Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Interim requirements.

SUMMARY: The Commission establishes interim requirements and details a 12-month transition plan governing competing carriers' unbundled access to incumbent local exchange carriers' (LECs') network elements. These requirements extend for an interim period the effectiveness of existing contracts between carriers to avoid disruption in the telecommunications industry while new rules are being written pursuant to a Notice of Proposed Rulemaking simultaneously issued by the Commission.

DATES: Effective September 13, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Ian Dillner, Attorney, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1191, or at *Ian.Dillner@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in WC Docket No. 04–313 and CC Docket No. 01–338, adopted July 21, 2004, and released August 20, 2004 (Order). The complete text of this Order 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. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Order

1. *Interim Requirements.* The pressing need for market certainty as the Commission works to issue final unbundling rules warrants the implementation of a plan to ensure stability in the interim. This Order