reviewed. The Department believes that the proposed waiver includes adequate assurances that OHRP will conduct periodic reviews to determine the adequacy of the waiver in meeting its intended need or if adjustments to the waiver are necessary and appropriate. The Department notes that OHRP will receive and review all certifications of research covered by the proposed waiver.

Other

One commenter suggested that the DHHS regulations should permit prisoners to complete a study in which they were enrolled before being incarcerated. The Department finds that this comment is not relevant to the proposed waiver. The Department may consider this issue at a future time.

One commenter recommended that DHHS adopt a new rule or standard for informed consent when a prisoner is participating as a research subject and the consent occurred in the prison milieu. The Department finds that this comment is not directly relevant to the proposed waiver. The Department notes that because prisoner-subjects are afforded all of the protections of the informed consent requirements listed in § 46.116 of 45 CFR part 46, subpart A, the current standards for obtaining informed consent from prisoner-subjects are adequate.

One commenter found the example given of when the proposed waiver could be used to be incongruent with the requirement that the waiver only may apply to minimal risk research. The commenter asserted that a study of HIV is not minimal risk regarding a loss of confidentiality. The Department believes that the example given could entail no more than minimal risk for research involving prisoners as defined under 45 CFR 46.303(d): the probability and magnitude of physical or psychological harm that is normally encountered in the daily lives, or in the routine medical, dental, or psychological examination of healthy persons.

One commenter stated that a prisoner should not be required to be a ''guinea pig'' and that a prisoner should be enrolled in research only if the prisoner agrees to participate in writing. The Department notes that the commenter's objections are not specific to the proposed waiver. The Department further notes that under §§ 46.116 and 46.117 of subpart A of the DHHS regulations for the protection of human subjects, no investigator may involve a human being as a subject in research covered by the regulations unless the investigator has obtained and documented the informed consent of the subject in accordance with, and to the extent required by, the DHHS regulations.

One commenter states that the proposed waiver should not be approved because it represents a retreat from one of the most important values underlying Subpart C: the fair distribution of the burdens and benefits of research. The Department believes that the waiver as proposed supports the fair distribution of burdens and benefits of research permitting subjects, including some who are prisoners, to participate in certain DHHS-supported or conducted research in which the purposes are (1) to describe the prevalence or incidence of disease by identifying all cases; and (2) to study potential risk factors associations for a disease. Such studies would not be permitted without the waiver.

Summary

After considering the comments, DHHS is adopting the waiver as proposed. The waiver is effective June 20, 2003. All initial and ongoing projects reviewed by IRBs under DHHS-approved assurances after the effective date may be reviewed in accordance with this waiver.

Dated: April 28, 2003.

Richard H. Carmona,

Surgeon General and Acting Assistant Secretary for Health.

Approved: June 13, 2003.

Tommy Thompson,

Secretary, Department of Health and Human Services

[FR Doc. 03–15580 Filed 6–19–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 54

[CC Docket No. 02–6; FCC 03–101]

Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission takes major steps to simplify and streamline the operation of our universal service mechanism for schools and libraries, while improving our oversight over the support mechanism. The Commission adopts a number of rules to streamline program operation, and promote the Commission's goal of reducing the likelihood of fraud, waste, and abuse.

DATES: Effective July 21, 2003, except for §§ 54.500(k), 54.503, 54.507(g)(1)(i) and (g)(1)(ii), 54.514(a), and 54.517(b) which will become effective July 1, 2004. In addition, § 54.515(b) contains information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

FOR FURTHER INFORMATION CONTACT: Jonathan Secrest and Katherine Tofigh, Attorneys, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order in CC Docket No. 02–6, FCC 03–101 released on April 30, 2003. This Second Report and Order was also released with a companion Further Notice of Proposed Rulemaking FNPRM. 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 take major steps to simplify and streamline the operation of our universal service mechanism for schools and libraries, while improving our oversight over the support mechanism. In section 254 of the 1996 Act, Congress directed the Commission to establish explicit universal service support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including low-income consumers, rural health care providers, and eligible schools and libraries. Pursuant to section 254, eligible schools, libraries, and consortia that include eligible schools and libraries, may receive discounts for eligible telecommunications services, Internet access, and internal connections. The Commission has issued several orders interpreting rules governing the operation of the schools and libraries universal service support mechanism.

2. Since the inception of the schools and libraries support mechanism in 1997, schools and libraries have received over $9.6 billion in funding commitments. This funding has provided millions of school children and library patrons access to modern telecommunications and information services. The Commission previously sought comment in a Notice of Proposed Rulemaking (*Schools and Libraries*

NPRM), 67 FR 7327, February 19, 2002, on ways to streamline the operation of the schools and libraries support mechanism, in order to ensure that the benefits of this universal service support mechanism for schools and libraries are distributed in a manner that is fair and equitable and improve our oversight over this program to ensure that the goals of section 254 are met without waste, fraud, and abuse.

3. In response to the *Schools and Libraries NPRM,* the Commission received a tremendous outpouring of ideas and suggestions relating to the operation of the schools and libraries mechanism. In this Second Report and Order (Order), we adopt a number of rules to streamline program operation and promote the Commission's goal of reducing the likelihood of fraud, waste, and abuse. First, we modify certain rules regarding eligible services. In particular, we clarify the statutory term ''educational purposes.'' We clarify that our rules prohibit the funding of discounts for duplicative services. We also clarify our rules to ensure that wireless services are eligible to the same extent wireline services are eligible. We modify our rules to make voice mail eligible for discounts. Second, we direct the Universal Service Administrative Company (USAC or Administrator) to develop a pilot program testing an online list of internal connections equipment that is automatically eligible for discounts, provided the uses are eligible and all other funding requirements are satisfied. Third, we codify the ''30 percent'' policy, which is a processing benchmark currently used by the Administrator when reviewing requests that include both ineligible and eligible services.

4. With regard to post commitment program administration, we adopt a rule requiring service providers to give applicants the choice each funding year whether to pay the discounted price or pay the full price and then receive reimbursement through the Billed Entity Applicant Reimbursement (BEAR) process, and adopt a rule expressly requiring service providers to remit BEAR payments to the applicant within 20 days after receipt of such payments from the Administrator.

5. With regard to appeals, we permanently extend the time limit for filing an initial appeal with the Schools and Libraries Division (SLD) and the Commission from 30 to 60 days and conclude that all appeals should be treated as filed on the date that they are postmarked. We also conclude that all successful appeals should be funded to the extent that they would have been funded had the discounts been awarded through the normal funding process. We also make a minor procedural change to our rules relating to filing appeals in this docket.

6. As part of our ongoing efforts to limit waste, fraud, and abuse, we adopt rules to prevent bad actors from receiving benefits associated with the schools and libraries mechanism. In particular, we conclude that anyone convicted of a criminal violation or found civilly liable for actions relating to this program shall be debarred from participation for three years, absent extraordinary circumstances. Also, we decline at this time to adopt further measures to reduce unused funds, in light of our prior actions to streamline the program and increase the efficiency of fund use. We make conforming rule changes in accord with the No Child Left Behind Act of 2002, and we remove certain obsolete sections of our rules.

II. Second Report and Order

A. Eligible Services

7. *Educational Purpose.* We find it appropriate to clarify the scope of the requirement that services be used for an educational purpose. Accordingly, we amend § 54.500 of our rules to clarify the meaning of educational purposes. Pursuant to this requirement, the Administrator has denied requests for services to be used by support staff not involved in instructional activities. We reiterate our recognition that the technology needs of participants in the schools and libraries program are complex and unique to each participant. We find that, in the case of schools, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as educational purposes under this program. To guide applicants in preparing their applications and to streamline the Administrator's review of applications, we further establish a presumption that activities that occur in a library or classroom or on library or school property are integral, immediate, and proximate to the education of students or the provision of library services to library patrons.

8. This clarification, however, is not intended to allow the general public to use services and facilities obtained through this support mechanism for non-educational purposes. In the *Alaska Order,* the Commission granted the State of Alaska a limited waiver of § 54.504(b)(2)(ii) of the Commission's rules, allowing members of rural remote communities in Alaska that lack local or toll-free dial-up access to the Internet to use excess service obtained through the support mechanism, when the services are not in use by the schools and libraries. The clarification we adopt today does not affect the terms of Alaska's waiver or allow schools or libraries outside the scope of that waiver to provide services to the general public in that manner.

9. Under this standard, reasonable requests for any supported service—over any technology platform—to be used by any school or library staff while in a library, classroom, or on school or library property, shall be eligible for discounts. Moreover, we conclude that in certain limited instances, the use of telecommunications services offsite would also be integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, would be considered to be an educational purpose. By adopting this standard, we provide to schools and libraries and the state and local authorities that govern them a more definitive interpretation of educational purposes, in order to assist them in pursuing their programmatic objectives.

10. We find that our clarification is consistent with statutory mandates that the purpose for which support is provided be for educational purposes in a place of instruction. Moreover, this clarification benefits applicants because it simplifies the application process by making the approval of discounted services more predictable, without sacrificing flexibility, thus furthering our streamlining goals. Because of the difficulties inherent in implementing changes in eligibility in the middle of a funding cycle, services will be available under this clarification beginning with the start of the next funding year (Funding Year 2004), on July 1, 2004.

11. We believe that this interpretation of educational purpose should not result in an increase in waste, fraud, or abuse. First, as the presumption set forth demonstrates, discounts will only be awarded to support activities that have a defined nexus to education, or, in the case of libraries, to the delivery of library services to library patrons. Thus, for instance, using a school's or a library's discounted telecommunications services to support a private enterprise or a political campaign will continue to be a violation of the Act and our rules. In addition, because our rules require schools and libraries to pay a percentage of the cost of services, schools and libraries are unlikely to request services that are not economical. This is particularly true in an environment where many

institutions face shrinking budgets. We therefore conclude this clarification of educational purpose should increase program efficiency without leading to waste, fraud, or abuse.

12. *Funding of Duplicative Services.* In the *Universal Service Order,* 62 FR 32862, June 17, 1997, the Commission indicated that an applicant's request for discounts should be based on the reasonable needs and resources of the applicant, and bids for services should be evaluated based on cost-effectiveness. Pursuant to this requirement, the Administrator has denied discounts for duplicative services. Duplicative services are services that deliver the same functionality to the same population in the same location during the same period of time. We emphasize that requests for discounts for duplicative services will be rejected on the basis that such applications cannot demonstrate, as required by our rules, that that they are reasonable or cost effective.

13. We find that the use of discounts to fund duplicative services contravenes the requirement that discounts be awarded to meet the ''reasonable needs and resources'' of applicants. We find that requests for discounts for duplicative services are unreasonable because they impact the fair distribution of discounts to schools and libraries. The schools and libraries mechanism of the universal service fund is capped at $2.25 billion dollars. Under our rules, when total demand exceeds the cap, discounts for Priority Two services (internal connections) are awarded after all Priority One requests are satisfied, beginning with the most economically disadvantaged schools and libraries as determined by the schools and libraries discount matrix. Total demand for discounts from the schools and libraries program has exceeded the funding cap in the past two funding years and we expect this trend to continue. Thus, funding duplicative services would operate to award discounts to applicants higher on the matrix twice for the same services, while some others, because of their lower rank on the matrix, could not receive discounts for the same service because the Priority Two funds available under the cap had had been exhausted.

14. In addition, we find that it is inconsistent with the Commission's rules to deliver services that provide the same functionality for the same population in the same location during the same period of time. We believe that requests for duplicative services are not consistent with the Commission's rules regarding competitive bidding, which require applicants to evaluate whether bids are cost effective. In the *Universal Service Order,* the Commission stated that price is the primary of several factors to be considered. Thus, applicants must evaluate these factors to determine whether an offering is cost effective. We find that it is not cost effective for applicants to seek discounts to fund the delivery of duplicative services. Therefore, we conclude that this rule can be violated by the delivery of services that provide the same functionality for the same population in the same location during the same period of time. We recognize that determining whether particular services are functionally equivalent may depend on the particular circumstances presented. In addition, we amend § 54.511(a) of our rules to make clear that applicants must consider whether the service is cost effective.

15. *Eligibility of Wireless Services.* Under section 254(h)(1)(B), eligible schools, libraries, and consortia that include eligible schools and libraries, are eligible for discounts on telecommunications services. Accordingly, basic telephone service, which includes mobile and fixed wireless service, is eligible for discounts pursuant to the schools and libraries universal service support mechanism. The cost of telephones or associated maintenance of equipment is not eligible for discount. In the *Schools and Libraries NPRM,* we sought comment on whether we needed to modify any rules and policies regarding the eligibility of wireless services. We also sought comment on whether broadening the eligibility of wireless services under the schools and libraries universal service support mechanism, consistent with the statute, would improve the application review process.

16. We reiterate that wireline and wireless telecommunications services are equally eligible under our current rules. If wireless service is used at the school or library for educational purposes, that service is eligible for support to the same extent as requests for wireline-based telecommunications services. We emphasize that, under existing rules, requests for wireline and wireless services must be reviewed under the same standard. It would be inappropriate, for instance, to presume that wireline services are used for educational purposes while presuming that wireless services are not used for similar purposes. What is relevant, for purposes of determining compliance with the statutory standard, is whether the service in question is integral, immediate, and proximate to the provision of education or library services, regardless of the technology platform. As we stated, we presume that activities that occur in a library or classroom or on library or school property, are integral, immediate, and proximate to education of students, or, in the case of libraries, to the provision of library services to library providers, and therefore qualify as educational purposes.

17. We believe that this restatement of technology neutrality, in tandem with our clarification of educational purposes set forth, will serve to reduce confusion and uncertainty regarding the eligibility of wireless services and thus further our streamlining efforts by making the application process more predictable for applicants.

18. *Eligibility of Voice Mail.* In the *Universal Service Order,* the Commission decided that certain information services—namely Internet access—would be funded. The Commission also determined, without further discussion, that voice mail would not ''at [that] time'' be eligible, based, in part, on the recommendation of the Federal-State Joint Board on Universal Service that such information services not be eligible. Specifically, the Joint Board had recommended that, ''by establishing a discount mechanism for telecommunications and Internet access, we conclude that the intent of Congress will be met and it is not necessary to support the full panoply of information services at this time.'' We now think it appropriate to revisit this issue, in light of our experience over the last five years.

19. The prevalence of and need for voice mail as a way of communicating with school and library staff for educational purposes causes us to reexamine the eligibility of voice mail. Virtually all commenters supported making voice mail an eligible service, including the state members of the Federal-State Joint Board on Universal Service. After reviewing the record on this issue, we conclude that voice mail should be eligible for discounts as a Priority One service under the universal service support mechanism in the same way that Internet access, *i.e.*, e-mail, is currently eligible. Voice mail services are used in conjunction with telecommunications services. We agree with commenters that voice mail is functionally equivalent to e-mail. Therefore, we believe that it is administratively and operationally appropriate for such requests to be processed within the same priority as telecommunications services and Internet access. After five years of experience with the schools and libraries universal service support

mechanism, we find that making voice mail now eligible for discount is consistent with Congress's intent ''to enhance * * * access to advanced telecommunications and information services'' for schools and libraries. Indeed, voice mail is an integral part of communications, especially in schools. We conclude that voice mail enhances access to information services for schools and libraries by allowing meaningful communication among parents, teachers, and school and library administrators.

20. Moreover, making voice mail eligible will reduce administrative costs, because neither applicants nor USAC will need to go through the exercise of breaking out the cost of voice mail from a bundled price for telecommunications service. We believe this modification will further our goals of improving program operation, without increasing opportunities for waste, fraud, and abuse. Accordingly, we deem voice mail to be eligible for discounts under the schools and libraries universal service support mechanism and amend §§ 54.503, 54.507, and 54.517 of our rules. We instruct USAC to process funding requests for voice mail services starting in Funding Year 2004 consistent with this *Order*.

21. *Computerized Eligible Service List.* We conclude that it would be beneficial to develop a process that would simplify applicants' selection of eligible services. The Commission currently directs the Administrator to determine whether particular services fall within the eligibility criteria established under the 1996 Act and the Commission's rules and policies. The Administrator evaluates, in consultation with the Commission on an ongoing basis, particular services and products offered by service providers, and determines their eligibility. In order to provide applicants with general guidance, the Administrator makes available on its website a list of categories of service that are conditionally eligible or ineligible, although it does not identify specific eligible brands or items. Applicants or service providers may appeal the Administrator's decision that a given service is ineligible for discounts only after a requested discount for that service is denied.

22. In the *Schools and Libraries NPRM,* we specifically sought comment on whether to establish an online computerized list of actual products and services, whereby applicants could select a specific product or service as part of their FCC Form 471 application. We suggested that under such a proposal, the number of instances in which applicants seek funding for ineligible services might decrease. We also suggested that such a process would considerably simplify the application review process. We sought comment on the desirability and feasibility of this approach. Specifically, we sought comment on how often such a list should be updated; how to ensure that such a list would not inadvertently limit access to products and services newly introduced to the marketplace; and how to obtain input on an ongoing basis regarding what specific products and services should be eligible.

23. After reviewing the record, we conclude that there is merit to creating an online computerized list system for internal connections. We decline, however, to mandate a similar computerized list system at this time for telecommunications services and Internet access.

24. In general, we agree with commenters that such a list would aid applicants to more clearly understand which items have already been approved by USAC as eligible. Use of such a list should facilitate expedited processing of many funding requests, decrease rejection of requests for ineligibility, and decrease the chances that any ineligible request would be accidentally awarded discounts. The use of this list by applicants, therefore, should reduce the burden on applicants in completing their applications. In addition, use of such a list would streamline review by the Administrator, allowing it to focus on more complex matters arising in the application process. Finally, by helping to avoid support of ineligible services, an online computerized list would further the Commission's goal of preventing fraud and abuse.

25. At the same time, we are persuaded by the Administrator's concerns and those of certain commenters that such a list should be developed with care. For example, the list should be careful not to favor certain vendors over others. Thus, we conclude that the development of such a list should proceed in stages. The Administrator should first test the use of such a list on a limited portion of the eligible services and products list. Therefore, we direct USAC, in conjunction with the Wireline Competition Bureau (Bureau), to develop and test as a pilot program an online list for internal connections equipment. We believe that such a pilot program would assist in further developing a record regarding how such a list could, in practice, provide clearer guidance about the potential eligibility of telecommunications and Internet access services than the current website posting.

26. We direct the Administrator to design a pilot program in consultation with the Bureau that is in keeping with the following principles: (1) the pilot system should continue to allow flexibility of choice of products by applicants; (2) this list should operate as a safe harbor, rather than a complete list of all eligible items; (3) all equipment and services listed will be automatically eligible for discounts provided the use is eligible and other funding requirements are satisfied; (4) there should be a procedure to have new products added to the list; (5) applicants and service providers may use the existing appeals procedures to appeal decisions by the Administrator rejecting the addition of specific items on the list; (6) applicants may also seek support for internal connections equipment that is not on this list; (7) such requests will be evaluated consistent with the Administrator's existing practice of ensuring that the equipment and proposed use are consistent with educational purposes.

27. We expect that the Administrator will be able to implement the pilot program no later than Funding Year 2005. The Administrator will timely report to the Commission about the effectiveness of the program during and after successful implementation. USAC's report should include information that details the effect of the list on the administrative review process, including the cost, and the number of applicants making use of such a list. We will evaluate this data and take it into consideration when evaluating whether and how to proceed to make this list accessible from the online FCC Form 471, and whether and how to incorporate telecommunications and Internet access services into such a list. In addition, in the accompanying FNPRM we seek further comment on the feasibility of an online eligible services brand name list for telecommunications services and Internet access.

B. Codification of 30 Percent Policy

28. *Discussion* We conclude that the 30 percent policy should be codified in the Commission's rules. We find that the procedure improves program operation and is important in reducing the administrative costs of the program because it enables SLD to efficiently process requests for support for services that are eligible for discounts but that also include some ineligible components. We further find that the 30 percent policy provides an appropriate incentive to applicants to seek discounts for only eligible products and services.

We find that the 30 percent policy provides an adequate safe harbor for applicants that inadvertently request ineligible products or services, and appropriately balances applicant accountability with effective administrative review. The 30 percent policy allows the Administrator to process efficiently requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants to determine what part of the discounts requested is associated with eligible services. It also provides an incentive to applicants to eliminate ineligible services from their requests before submitting their applications, further reducing the Administrator's administrative costs. Accordingly, we add § 54.504(c)(1) to our rules as provided.

29. We decline to adopt one suggestion that would require SLD to inform an applicant that its application is about to be rejected under the 30 percent procedure and allow that applicant to provide evidence to refute SLD's determination. Applicants bear the burden of ensuring that the items requested are eligible for support under the program rules. Implementation of such a proposal would result in greater administrative costs and burden, thereby defeating the primary purpose of this policy. Moreover, the applicant still has an opportunity to refute SLD's determination by availing itself of the appeals process.

C. Choice and Timing of Payment Method

30. *Discussion* We first conclude that we should adopt a rule requiring service providers to give applicants the choice each funding year either to pay the discounted price or to pay the full price and then receive reimbursement through the BEAR process. In addition, we find that the period for remittance of the BEAR payment should be 20 days. Accordingly, we amend § 54.514 of our rules as set forth.

31. Some commenters argued that the choice of payment method should ultimately be made by the service provider, asserting that a mandate requiring all providers to adopt billing systems capable of handling both payment methods would impose significant financial and administrative burdens, particularly on small providers. However, the vast majority of commenters that responded to the *Schools and Libraries NPRM* supported the Commission's proposal. Numerous commenters noted instances of services providers requiring applicants to use the BEAR method.

32. We find that providing applicants with the right to choose payment method is consistent with section 254. Although section 254(h)(1)(B) requires that telecommunications carriers providing discounted service be permitted to choose the method by which they receive reimbursement for the discounts that they provide to schools and libraries, *i.e.,* between receiving either a reimbursement for the discount or an off-set against their obligations to contribute to the universal service fund, the statute does not require that they be permitted to choose the method by which they provide those discounts to the school or library in the first place.

33. In addition, we find that providing applicants with the right to choose which payment method to use will help to ensure that all schools and libraries have affordable access to telecommunications and Internet access services. The Commission previously noted in the *Universal Service Order* that ''requiring schools and libraries to pay in full could create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries.'' The comments in the present record have confirmed that many applicants cannot afford to make the upfront payments that the BEAR method requires. In light of the record before us, we conclude that the potential harm to schools and libraries from being required to make full payment upfront, if they are not prepared to, justifies giving applicants the choice of payment method.

34. As with any agreement, one way that applicants could memorialize the particular payment method chosen would be to place the agreement in the service agreement, or, where there is no written service contract, in a separate agreement. Although applicants are not required to take such action, it has been suggested that doing so would decrease the number of customer complaints and strengthen the Administrator's ability to take action for compliance failures.

35. Once an applicant has made and memorialized its choice for a funding year, the applicant may not unilaterally shift from one form of payment to the other within that funding year. Commenters argued that, in cases where the service begins before the Administrator makes its funding decision, applicants should be able to make discounted payments and then shift to BEAR payments after the funding decision is issued. We find that the administrative costs of such a procedure exceed the limited benefits to the applicant. Furthermore, service providers are under no obligation to provide discounts or reimbursements until a funding decision is approved, and we therefore find that it would be inappropriate to require providers to offer discounted service before any funding decision is made to authorize such discounts.

36. In response to service providers that argue that such a change will result in significant administrative costs to them, we reiterate that it is consistent with section 254 to provide applicants with the right to choose their payment method. Nevertheless, we anticipate that applicants and service providers will be able to work together in order to determine which payment method is most suitable. For example, a small carrier may enter into an agreement with a school district to provide telecommunications services. Under this contract, the payments could change from month to month based on usage. If the costs of instituting a new billing system to account for the changing levels of discounted service are significant, and the service provider is going to pass on the costs of such a system to the school district, the parties may find it more appropriate to negotiate a set discounted amount to be billed each month, with a true-up bill at the end of the contract. In recognition, however, of potential changes to billing systems that some providers may need to undertake in order to allow any applicant to elect the BEAR process, this rule change concerning election of payment type will be effective for the start of Funding Year 2004.

37. We also conclude that we should adopt a rule expressly requiring service providers to remit BEAR payments to the applicant within 20 days after receipt of such payments from the Administrator. BEAR payments are reimbursements for services that have already been provided to and paid for by a school or library. The structure of the schools and libraries support mechanism necessitates that reimbursement must flow to the applicant through the services provider. BEAR payments are not the property of the service provider, which has been paid in full. The Administrator has received many complaints about service providers failing to remit the BEAR payments in a timely fashion or, in some cases, at all. According to the Administrator, formalizing the remittance requirement in a rule would strengthen its ability to ensure compliance. The majority of commenters found that 20 days is an appropriate period for remittance. We therefore adopt a rule requiring a provider who receives a BEAR check

from the Administrator to remit payment to the applicant within 20 days of receipt. Because providers are already required to remit BEAR payments within a limited timeframe, and thus should not need to implement major billing system changes, this rule change, like other rule changes unless otherwise noted, will be effective upon publication in the **Federal Register**.

D. Appeals Procedure

38. *Deadline Extension* In the first four funding years of the school and libraries universal service support mechanism, twenty-two percent of all appeals to the Commission were dismissed as being untimely filed. In addition, the Administrator states that eighteen percent of all appeals filed with the Administrator for Funding Year 2001 were dismissed as being outside of the 30-day period. In light of this information, we sought comment on how to modify the current appeals procedures.

39. We agree with commenters that it is appropriate to increase the time limit for filing initial appeals with the Administrator and with the Commission to 60 days. Unlike many parties that typically practice before the Commission, many applicants in this program have no experience with regulatory filing processes. Thus the 30-day time period is often not adequate to allow potential petitioners to gather the documents and synthesize the arguments needed to file pleadings in order to challenge funding decisions. Commenters suggest that extending the filing period meets the goals of improving program operations and ensuring equitable distribution of benefits. Commenters suggest that given schools' and libraries' unique resource limitations, the extension of time for filing appeals will also provide applicants an opportunity to review the relevant decision and determine whether there are valid bases for appeal. We conclude that the time limit for filing an initial appeal with the Administrator and with the Commission should be extended to 60 days. We therefore amend § 54.720(a) through (d) of our rules.

40. *Postmark.* We also agree with commenters that we should treat appeals to the Administrator or the Commission has having been received on the date that they are postmarked rather than the date they are filed. Commenters note that this change would be consistent with other program filing deadlines. For example, such a change would make the appeal procedure consistent with the Administrator's practice of treating FCC Form 471 applications as having been filed as of the postmark date. In cases where a postmark is unclear or illegible, the Commission will require the applicant to submit a sworn affidavit stating the date that the appeal was mailed. Given this possibility, we continue to encourage parties to file appeals electronically, in order to ensure timely submission. In addition, we agree with commenters that using the postmarked date furthers the goals of improving program operation and ensuring a fair and equitable distribution of the benefits of the program. Thus, we find that it is consistent with public interest that we treat appeals to the Administrator or the Commission as having been filed on the date they are postmarked. We therefore add a new § 54.720(e) to our rules.

41. *Docket Number Change.* We adopt a minor procedural amendment conforming our rules to reflect the change in docket numbers for filing appeals. Specifically, we change the wording of § 54.721, which describes the filing requirements for requests for reviews for the entire Universal Service program, to replace the last line of paragraph (a) as follows: instead of stating ''and shall reference FCC Docket Nos. 97–21 and 96–45,'' the line shall read ''and shall reference the applicable docket numbers.'' The docket number for schools and libraries appeals is CC Docket No. 02–6, and the docket number for Rural Health Care support mechanism appeals is WC Docket No. 02–60. Petitioners should reference these docket numbers when filing pleadings with the FCC.

E. Funding of Successful Appeals

42. *Discussion* Based on the record, we conclude that all successful appeals should be awarded discounts to the extent they would have been had the discounts been awarded through the normal funding process. We further conclude that the Administrator should not wait to grant post-appeal funding until all appeals have been decided, but should instead fund applications if and when they are granted. We further find it appropriate to adopt a rule that authorizes using funds budgeted for future funding years, if the Administrator-set appeals reserve is inadequate to award discounts to all successful appeals. We recognize that utilizing such funds will reduce the total amount of funding available in subsequent funding years. However, we believe that this result is necessary in order to assure that no applicants are prejudiced because they were awarded discounts through the appeal process rather than through the initial application process.

43. The few commenters that addressed the use of funding from future years were mixed in their assessment. In particular, we disagree with commenters such as the Council of Chief State School Officers, who state that using funding budgeted for future years would penalize applicants in the next funding year. We conclude that the inequity of failing to award discounts for a timely appeal far outweighs the impact granting such appeals would have in reducing the overall available funding in future funding years. Indeed, any modest reduction in the total amount of funds budgeted for future funding years is equally distributed among all successful applicants. In contrast, the alternative imposes any shortfall on an individual applicant, who, after successfully appealing, has done nothing to merit the denial of funding. In balancing these outcomes, we conclude the more equitable solution is to spread the impact by using funds budgeted for future funding years, should the appeal reserve be exhausted. Consequently, we adopt a rule that authorizes USAC to use funds budgeted from subsequent funding years to fund discounts for successful appeals in the unlikely case that the appeals reserve is exhausted.

F. Suspension and Debarment

44. *Discussion.* We agree with the majority of commenters that we should adopt rules to prevent bad actors from receiving the benefits associated with the schools and libraries support mechanism. By prohibiting bad actors from involvement with the schools and libraries support mechanism, we will deter waste, fraud, and abuse, thus helping to ensure that support is used for schools' and libraries' access to advanced telecommunications and information services consistent with section 254. It is not our intention to use this debarment to punish. Rather, debarring applicants, service providers, consultants, or others that have defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism is necessary to protect the integrity of the program. We conclude that these debarment procedures are prudent and consistent with our goal of ensuring that the universal service support mechanisms operate without waste, fraud, or abuse.

45. We conclude that persons convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and

libraries support mechanism shall be debarred from activities associated with or related to the schools and libraries support mechanism for a specified period, absent extraordinary circumstances. The debarment rules we adopt are informed by the nonprocurement debarment regulations for federal agencies, which do not apply to independent agencies such as the Commission. Specifically, we find that persons convicted of, or held civilly liable for, the attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or other fraud or criminal offense arising out of activities associated with or related to the schools and libraries universal service support mechanism shall be debarred from involvement with the schools and libraries support mechanism for a period of three years. Where circumstances warrant, a longer period of debarment may be imposed if the extension is necessary to protect the public interest. In the case of multiple convictions or judgments, the Commission shall determine based on the facts before it whether debarments shall run concurrently or consecutively.

46. A person subject to debarment, or a person that has contracted or intends to contract with a person subject to debarment to provide or receive services in connection with the schools and libraries support mechanism, may file arguments in writing and supported by documentation in opposition to the proposed debarment action or supporting a reduction in the period or scope of debarment. The Commission shall consider any such request, and may, upon the filing of arguments against the proposed suspension or debarment by an interested party or on its own motion, grant such a request for extraordinary circumstances. For example, reversal of the conviction or civil judgment upon which the debarment was based shall constitute extraordinary circumstances.

47. In light of the serious nature of a conviction or civil judgment relating to participation in the support mechanism, upon becoming aware of a person's criminal conviction or civil judgment under the specified circumstances, the Commission shall suspend the person from activities associated with or related to the schools and libraries support mechanism. Suspension is an immediate but temporary measure pending a final determination of debarment. Suspension will help to ensure that a person that has been convicted or held civilly liable for behavior with respect to the schools and libraries support mechanism cannot continue to benefit from the mechanism pending resolution of the debarment process. The Commission shall send notice to the person's last known address by certified mail, return receipt requested, and shall publish notice in the **Federal Register**. Suspension is effective immediately upon the earlier of the person's receipt of such notice or publication in the **Federal Register**.

48. The notice of suspension shall include notice of debarment proceedings. Such notice shall (1) give the reasons for the proposed debarment in terms sufficient to put the person on notice of the conduct or transaction(s) upon which it is based and the cause relied upon, namely, the entry of a criminal conviction or civil judgment; (2) explain the applicable debarment procedures; (3) describe the potential effect of debarment. A person subject to debarment or a person that has contracted or intends to contract with a person subject to debarment to provide or receive services in connection with the schools and libraries support mechanism, that elects to file arguments in opposition to the suspension and proposed debarment, must do so with any relevant documentation within 30 days after receiving notice or publication in the **Federal Register**, whichever is earlier. Any suspended person or person who has contracted or intends to contract with a suspended person also may request, in writing and supported by documentation, reversal of the suspension action or a reduction in the period or scope of suspension. The Commission shall consider such a request, but such action will not ordinarily be granted. Within 90 days of receipt of any such request, the Commission, in the absence of extraordinary circumstances, shall provide the person prompt notice of the decision to debar, and shall publish the decision in the **Federal Register**. Debarment shall be effective upon the earlier of receipt of notification or publication in the **Federal Register**.

49. Consistent with the federal agency regulations, we define ''person'' as ''[a]ny individual, corporation, partnership, association, unit of government or legal entity, however organized.'' Under this definition, persons may include applicants, service providers, consultants, or others engaged in activities associated with or related to the support mechanism.

50. Consistent with the federal agency regulations, suspension or debarment of a corporation, partnership, association, unit of government or legal entity, however organized, defined as a ''person'' under these regulations, constitutes suspension or debarment of all its divisions and other organizational elements from all activities associated with or related to the schools and libraries support mechanism for the debarment period, unless the suspension or debarment decision is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements or to specific types of transactions.

51. Consistent with the federal agency regulations, we define ''conviction'' as ''a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere'' and ''civil liability'' or ''civilly liable'' as ''the disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement with admission of liability, stipulation, or otherwise creating a civil liability for the wrongful acts complained of, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–12).'' We further conclude that, for purposes of these rules, ''activities associated with or related to the schools and libraries support mechanism'' include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.

52. A conviction or civil judgment in the specified circumstances therefore automatically results in suspension and the initiation of debarment proceedings, providing a clear and stringent response on the part of the Commission and serving to deter waste, fraud, and abuse in the program. Although the governmentwide rules provide that agencies ''may'' debar or suspend persons convicted or held civilly liable, we conclude that a rule requiring the Commission to suspend and debar such persons absent extraordinary circumstances will better serve the Commission's goal of limiting waste, fraud, and abuse. In light of our statutory obligation to preserve and advance universal service, we believe it appropriate to set a very high threshold for parties seeking to persuade us that debarment is not warranted in circumstances where a court of competent jurisdiction has concluded that person has committed some form of fraud related to the schools and libraries program. We conclude that under our rules the Commission shall debar

persons convicted or held civilly liable after immediate suspension, absent extraordinary circumstances. These automatic actions in the clear circumstances where legal proceedings have concluded with due process are an appropriate and prudent means of maintaining the integrity of the schools and libraries support mechanism.

53. We recognize that where a service provider is debarred, an applicant relying on that service provider for discounted services may need to change service providers for that funding year in order to continue to receive the benefits of the support mechanism. Under existing USAC procedures, after an application has been approved and before the last day for invoicing, an applicant may change its service provider. Consistent with these procedures, therefore, applicants whose service providers have been debarred after an application has been approved may change service providers for that funding year.

54. The Enforcement Bureau shall undertake suspension and debarment proceedings under this section. The Wireline Competition Bureau shall make any necessary changes to FCC forms, including a notification that a person convicted of or held civilly liable for the conduct specified shall be suspended and debarred absent extraordinary circumstances. We also direct the Wireline Competition Bureau to oversee the implementation and coordination of debarment procedures and policies with the Administrator, including, but not limited to, the publication and maintenance of a list on the Administrator's web site of persons suspended or debarred from the program. We direct the Wireline Competition Bureau to ensure that the Administrator implements procedures to ensure that any person who has been suspended or debarred not benefit from the schools and libraries support mechanism for the specified period of time.

55. These rules constitute an important step in continuing to ensure program integrity. We are committed to considering other deliberate and appropriate measures in order to provide for compliance with statutory requirements and our rules, thereby ensuring that the benefits of this universal service support mechanism are available to the largest number of schools and libraries on an equitable basis. In the companion FNPRM, we seek further comment on whether to debar persons in other circumstances and related issues.

G. Utilization of Unused Funds

56. *Discussion.* We decline, at this time, to adopt additional measures to reduce unused funds. The *First Order,* 67 FR 41862, June 20, 2002, adopted a framework for the treatment of unused funds from the schools and libraries universal service support mechanism. In that Order, we determined that it was in the public interest to take immediate action to stabilize the contribution factor, and that beginning no later than the second quarter of 2003, any unused funds from the schools and libraries support mechanism shall, consistent with the public interest, be carried forward for disbursement in subsequent funding years of the schools and libraries support mechanism.

57. As noted, the Administrator has taken certain measures that will also address the issue of unused funds from the schools and libraries program. We find that these changes will help improve the disbursement of program funds. In addition, we continue to explore procedural and programmatic changes to the schools and libraries support mechanism that may help reduce the amount of funds that are not disbursed. We find that such actions will help us to most effectively implement the goals of section 254 of the Act.

58. Commenters noted that during the application process, applicants have difficulty predicting needs, usage, and non-contracted rates. Therefore, applicants may apply for more funding than is actually needed. Commenters also cited certain factors beyond the program's control that contribute to unclaimed funds. Indeed, the Administrator and the Commission are aware of these issues. In an effort to reduce the amount of unused funds, starting with Funding Year 2001, the Administrator is issuing funding commitments slightly in excess of the $2.25 billion funding cap. The Administrator reports that as of October 28, 2002, it had committed approximately $2.257 billion for Funding Year 2001. Specifically, the Administrator is basing overcommitments on past levels of unused funds, allowing a margin for error.

59. Commenters also state that some committed funds go unused because of late funding commitment decisions. We agree with commenters that receiving funding commitment decisions earlier in the process would help reduce the amount of unused funds. The Administrator has continued to improve its processing. An increasing percentage of applicants now receive funding decisions earlier in the funding cycle. In addition, the Administrator has created a new website where the public, applicants and providers, can view funding commitment data the day after it is released, rather than having to wait for the delivery of funding letters. We believe that each of these changes will help prevent the likelihood of waste by improving the disbursement of program funds.

60. In addition, several commenters noted that there is no incentive for applicants to turn committed funds back to USAC when an applicant realizes that it will not use the full committed amount. Some commenters also stated that the Form 500, which applicants may use to notify the Administrator that committed funds are no longer required, is an ineffective tool for commitment cancellation. The form is still a relatively new addition to the program. At this time, we do not believe that it is appropriate or necessary to change the Form 500. As with all aspects of the program, should the Administrator have recommendations about how to improve the Form 500 or related processes, the Administrator will bring these issues to our attention. We trust that as applicants become more familiar with the form and are better able to judge their funding supply through data newly provided on the Administrator's website, applicants will inform the Administrator when they will not fully use committed funds.

H. Conforming Rule Changes

61. *Discussion.* We adopt minor changes to our rules to conform our definitions of eligible schools to the current definitions of and citations for ''elementary school'' and ''secondary school'' following the passage of the No Child Left Behind Act. First, we amend the definition of elementary school at § 54.500(b) by adding, after ''residential school,'' the phrase ''including a public elementary charter school,'' and the definition of secondary school at § 54.500(j) by adding, after ''residential school,'' the phrase ''including a public secondary charter school.''

62. In so doing, we are not expanding the scope of either definition because public elementary and secondary charter schools were already eligible under the original definitions. Under these definitions, the Commission looked to applicable State law to determine which entities qualified as public elementary and secondary schools. Thus, where applicable State laws provided for public elementary and secondary charter schools, such schools were eligible for discounts under the old definition. The regulatory

change merely makes this eligibility explicit.

63. Second, we amend § 54.501(b)(1) of our rules, to reflect the new citations for the elementary school and secondary school definitions following the passage of the No Child Left Behind Act. Specifically, we replace the citations to 20 U.S.C. 8801(14) and 8801(25) with citations to 20 U.S.C. 7801(18) and 7801(38), respectively. Because the new provisions are substantively the same as the original definitions, we conclude that all of these rule changes are minor and technical, and we therefore find good cause to conclude that notice and comment procedures of the Administrative Procedure Act (APA) are unnecessary.

I. Removal of Obsolete Rules

64. The Biennial Regulatory Review 2000 Staff Report (Staff Report) recommended that §§ 54.701(b) through (e) of our rules, which mandate the merger of the Schools and Libraries Corporation and the Rural Health Care Corporation into the Universal Service Administrative Company, be removed. Given that the merger has been completed, the Staff Report concluded that these transitional provisions were no longer applicable. We now adopt the recommendations of the Staff Report and remove §§ 54.701(b) through (e), and renumber current provisions §§ 54.701(f) through (h) as §§ 54.701(b) through (d). Again, because the rule sections in question are now obsolete, we conclude that these rule changes are minor and technical, and we therefore find good cause to conclude that notice and comment under the APA is not necessary.

III. Procedural Issues

A. Paperwork Reduction Act Analysis

65. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA. Section 54.514(b) contains information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section. Sections 54.500(k), 54.503, 54.507(g)(i–ii), 54.517(b), and 54.514(a) will go into effect July 1, 2004, following OMB approval.

B. Final Regulatory Flexibility Analysis

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

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

67. In this Order, the Commission adopted a number of rules to streamline program operation, and promote the Commission's goal of reducing the likelihood of fraud, waste, and abuse. We clarify the statutory term ''educational purpose,'' the prohibition of funding of discounts for duplicative services, and that wireless services are eligible to the same extent wireline services are eligible. We conclude that voice mail should be eligible for discounts under the schools and libraries universal service support mechanism. We direct USAC to develop a pilot program testing an online list of internal connections equipment that is eligible for discounts. We codify an existing policy that a request must include less than ''30 percent'' of ineligible services. We adopt a rule requiring service providers to give applicants the choice each funding year whether to pay the discounted price or pay the full price and then receive reimbursement, and a rule requiring service providers to remit any reimbursement payments to the applicant within a set time period. We extend the time limit for filing an initial appeal to 60 days, and agreed to accept appeals as filed when postmarked. We also conclude that all successful appeals should be funded to the extent that they would have been funded had the discounts been awarded through the normal funding process. We adopt rules debarring persons convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries program, absent extraordinary circumstances. We also make several minor and technical rule changes to conform rules with the No Child Left Behind Act of 2002, clarify the docket for appeals filing, and remove certain obsolete sections.

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

68. There were no comments filed that specifically addressed the rules and policies presented in the IRFA. Nevertheless, the agency has considered the potential impact of the rules proposed in the IRFA on small entities.

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

69. 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.

70. 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, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 government jurisdictions in the United States. This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small government jurisdictions must be 75,955 or fewer. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services, including telecommunications service providers, Internet Service Providers (ISPs) and vendors of internal connections.

a. Schools and Libraries

71. 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 as small entities elementary and secondary schools and libraries having $6 million or less in annual receipts. In Funding Year 2 (July 1, 1999 to June 20, 2000) approximately 83,700 schools and 9,000 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 83,700 schools and 9,000 libraries might be affected annually by our action, under current operation of the program.

b. Telecommunications Service Providers

72. 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.

73. *Local Exchange Carriers and Competitive Access Providers.* Neither the Commission nor the SBA has developed a size standard specifically for small providers of local exchange services. The closest applicable size standard under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data there are 1,619 local services providers with 1,500 or fewer employees. Because it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's size standard. Of the 1,619 local service providers, 1,024 are incumbent local exchange carriers, 411 are Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), 131 are resellers and 53 are other local exchange carriers. Consequently, we estimate that no more than 1,619 providers of local exchange service are small entities that may be affected.

74. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable size standard under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data regarding the number of these carriers nationwide of which we are aware, there are 181 IXCs with 1,500 or fewer employees. Because it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's size standard. Therefore, we estimate that the majority of those 181 IXCs may be affected by our action.

75. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunications, which consists of all such firms having 1,500 or fewer employees. According to data for 1997, a total of 977 such firms operated for the entire year. Of those, 965 firms employed 999 or fewer persons for the year, and 12 firms employed 1,000 or more. Therefore, nearly all such firms were small businesses. In addition, we note that there are 1807 cellular licenses; however, a cellular licensee may own several licenses. According to Commission data, 858 carriers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio telephony services, which are placed together in the data. We have estimated that 291 of these are small under the SBA small business size standard.

76. *Paging.* In the *Paging Second Report and Order,* we adopted a small size standard for ''small businesses'' for purposes of determining eligibility for special provisions for the auctions held in 2000. For those purposes, a small business was defined as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA approved this definition. There were 440 licenses sold, and 57 companies claiming small business status won licenses. In addition, at present there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. The SBA has developed a small business size standard for Paging, which consists of all such firms having 1500 or fewer employees. According to Commission data, 608 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Of these, we estimate that 589 are small, under the SBA-approved small business size standard. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

c. Internet Service Providers

77. SBA has developed a small business size standard for Online Information Services. According to SBA regulations, a small business under this category is one having annual receipts of $21 million or less. According to Census data, there are a total of 2,829 firms with annual receipts of $9,999,999 or less, and an additional 111 firms with annual receipts of $10,000,000 or more. Thus, the number of Online Information Services firms that are small under the SBA's $21 million size standard is between 2,829 and 2,940. Further, some of these Internet Service Providers (ISPs) might not be independently owned and operated. Consequently, we estimate that the great majority of ISPs are small.

d. Vendors of Internal Connections

78. The Commission has not developed a definition of small entities applicable to the manufacturers of internal network connections. The most applicable definitions of a small entity are the 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.

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

79. There are no additional reporting or recordkeeping requirements relating directly to the decisions in this Order. The decision to have the Universal Service Administrative Company notify applicants of suspension and debarment proceedings, and maintain a list of persons debarred from the program does not add any reporting, recordkeeping, or compliance requirements to small entities.

80. Regarding other compliance burdens, the Order clarifies a compliance requirement that would affect all participating entities, by requiring service providers to allow applicants to choose whether they should be provided with discounted bills or whether they should pay the service provider for the undiscounted price and later be reimbursed. In addition, the Order establishes a time limit for service providers to reimburse the applicant. This potentially could require small service providers to implement accounting systems to allow them to provide such discounts and remit such payments within the required time frame. In the *Schools and Libraries NPRM,* we specifically invited commenters to discuss the impact of such changes on small businesses and schools and libraries that might also be small entities. We find that this would have a positive economic impact on the schools and libraries, including small ones, that cannot afford upfront payments. We are not persuaded that any burden regarding this billing clarification is significant and conclude that it will not be a burden upon small providers that wish to participate in the program to provide applicants with such a choice. Regarding the remittance deadline, we find this will not be a burden to small providers and that it will positively impact schools and libraries, including small ones, waiting for reimbursement.

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

81. 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.''

82. Although there were no comments specifically regarding the IRFA, there were concerns from commenters about how an online eligible services list might impact businesses providing services, and might help small schools and libraries. Consistent with our desire to assist small entities, we have directed USAC to develop a pilot program testing an online list of internal connections equipment that is eligible for discounts and report back to the Commission about its impact.

83. The Order also allows for the funding of discounts for voice mail, a proposal that garnered overwhelming support of commenters. We find that adoption of this proposal would reduce the administrative burden on schools and libraries participating in the program because they would no longer have to segregate out the voice mail portion of their phone bills when they apply for funding. The inclusion of voice mail would have a positive effect on entities that receive discounts for telecommunications in that this commonly used service would now be included in discounts.

84. In addition, we codify an existing policy of less than ''30 percent'' of a request to include ineligible services. This maintains the status quo.

85. We also extend the time limit for filing an initial appeal with the Schools and Libraries Division and the Commission to 60 days and accept appeals as filed when postmarked based on comments that this would benefit all entities involved in the program. Also, all entities will benefit by the steps we have taken to ensure that all successful appeals will be funded to the extent that they would have been funded had the discounts been awarded through the normal funding process.

86. Additionally, we direct the Enforcement Bureau to undertake suspension and debarment proceedings for persons convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism. We have given a suspended or debarred person, or a person that has contracted or intends to contract with a suspended or debarred person to provide or receive services in connection with the schools and libraries support mechanism the opportunity to request that the Commission reverse or reduce the period or scope of suspension or debarment.

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

IV. Ordering Clauses

88. 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 Second Report and Order is adopted.

89. Part 54 of the Commission's rules, 47 CFR part 54, is amended as set forth, effective July 21, 2003, except for §§ 54.500(k), 54.503, 54.507(g)(1)(i) and (g)(1)(ii), 54.514(a), and 54.517(b) will become effective July 1, 2004. In addition, § 54.515(b) contains information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

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

List of Subjects

47 CFR Part 0

Classified information, Organization and functions (government agencies),

Privacy, Reporting and recordkeeping requirements.

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 and 54 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. In § 0.111 redesignate paragraphs (a)(14) through (a)(22) as paragraphs (a)(15) through (a)(23) and add new paragraph (a)(14) to read as follows:

§ 0.111 Functions of the Bureau.

(a) * * *

(14) Resolve universal service suspension and debarment proceedings pursuant to § 54.521 of this chapter.

* * * * *

PART 54—UNIVERSAL SERVICE

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

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

■ 4. Amend § 54.500 by redesignating paragraphs (b) through (l) as paragraphs (c) through (m), add new paragraph (b) and revise newly redesignated paragraphs (c) and (k) to read as follows:

§ 54.500 Terms and definitions.

* * * * *

(b) *Educational purposes.* For purposes of this subpart, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate and proximate to the provision of library services to library patrons, qualify as ''educational purposes.'' Activities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services to library patrons.

(c) *Elementary school.* An ''elementary school'' is a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

* * * * *

(k) *Secondary school.* A ''secondary school'' is a non-profit institutional day or residential school that provides secondary education, including a public secondary charter school, as determined under state law. A secondary school does not offer education beyond grade 12.

* * * * *

■ 5. Amend § 54.501 by revising paragraph (b) to read as follows:

§ 54.501 Eligibility for services provided by telecommunications carriers.

* * * * *

(b) *Schools.* (1) Only schools meeting the statutory definitions of ''elementary school,'' as defined in 20 U.S.C. 7801(18), or ''secondary school,'' as defined in 20 U.S.C. 7801(38), and not excluded under paragraphs (b)(2) or (b)(3) of this section shall be eligible for discounts on telecommunications and other supported services under this subpart.

* * * * *

■ 6. Revise § 54.503 to read as follows:

§ 54.503 Other supported special services.

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

■ 7. Amend § 54.504 by redesignating paragraph (d) as (e) and adding a new paragraph (d) to read as follows:

§ 54.504 Requests for services.

* * * * *

(d) *Mixed eligibility requests.* If 30 percent or more of a request for discounts made in an FCC Form 471 is for ineligible services, the request shall be denied in its entirety.

* * * * *

■ 8. Amend § 54.507 by revising the first sentence of paragraphs (g)(1)(i) and (g)(1)(ii) to read as follows:

§ 54.507 Cap.

* * * * *

(g) * * *

(1) * * *

(i) Schools and Libraries Corporation shall first calculate the demand for telecommunications services, voice mail, and Internet access for all discount categories, as determined by the schools and libraries discount matrix in § 54.505(c). * * *

(ii) Schools and Libraries Corporation shall then calculate the amount of available funding remaining after providing support for all telecommunications services, voice mail, and Internet access for all discount categories. * * *

* * * * *

■ 9. Amend § 54.511 by revising paragraph (a) to read as follows:

§ 54.511 Ordering services.

(a) *Selecting a provider of eligible services.* In selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers but price should be the primary factor considered.

* * * * *

■ 10. Add § 54.514 to read as follows:

§ 54.514 Payment for discounted service.

(a) *Choice of payment method.* Service providers providing discounted services under this subpart in any funding year shall, prior to the submission the Form 471, permit the billed entity to choose the method of payment for the discounted services from those methods approved by the Administrator, including by making a full, undiscounted payment and receiving subsequent reimbursement of the discount amount from the service provider.

(b) *Deadline for remittance of reimbursement checks.* Service providers that receive discount reimbursement checks from the Administrator after having received full payment from the billed entity must remit the discount amount to the billed entity no later than 20 business days after receiving the reimbursement check.

■ 11. Amend § 54.517 by revising paragraph (b) to read as follows:

§ 54.517 Services provided by non-telecommunications carriers.

* * * * *

(b) *Supported services.* Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing voice mail, Internet access, and installation

and maintenance of internal connections.

* * * * *

■ 12. Add § 54.521 to read as follows:

§ 54.521 Prohibition on participation: suspension and debarment.

(a) *Definitions*—(1) *Activities associated with or related to the schools and libraries support mechanism.* Such matters include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism described in this section (§ 54.500 *et seq.*).

(2) *Civil liability.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement with admission of liability, stipulation, or otherwise creating a civil liability for the wrongful acts complained of, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–12).

(3) *Consultant.* A person that for consideration advises or consults a person regarding the schools and libraries support mechanism, but who is not employed by the person receiving the advice or consultation.

(4) *Conviction.* A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered by verdict or a plea, including a plea of *nolo contendere.*

(5) *Debarment.* Any action taken by the Commission in accordance with these regulations to exclude a person from activities associated with or relating to the schools and libraries support mechanism. A person so excluded is ''debarred.''

(6) *Person.* Any individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.

(7) *Suspension.* An action taken by the Commission in accordance with these regulations that immediately excludes a person from activities associated with or relating to the schools and libraries support mechanism for a temporary period, pending completion of the debarment proceedings. A person so excluded is ''suspended.''

(b) *Suspension and debarment in general.* The Commission shall suspend and debar a person for any of the causes in paragraph (c) of this section using procedures established in this section, absent extraordinary circumstances.

(c) *Causes for suspension and debarment.* Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.

(d) *Effect of suspension and debarment.* Unless otherwise ordered, any persons suspended or debarred shall be excluded from activities associated with or related to the schools and libraries support mechanism. Suspension and debarment of a person other than an individual constitutes suspension and debarment of all divisions and/or other organizational elements from participation in the program for the suspension and debarment period, unless the notice of suspension and proposed debarment is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements or to specific types of transactions.

(e) *Procedures for suspension and debarment.* The suspension and debarment process shall proceed as follows:

(1) Upon evidence that there exists cause for suspension and debarment, the Commission shall provide prompt notice of suspension and proposed debarment to the person. Suspension shall be effective upon the earlier of receipt of notification or publication in the **Federal Register**.

(2) The notice shall: (i) Give the reasons for the proposed debarment in terms sufficient to put the person on notice of the conduct or transaction(s) upon which it is based and the cause relied upon, namely, the entry of a criminal conviction or civil judgment arising out of activities associated with or related to the schools and libraries support mechanism;

(ii) Explain the applicable debarment procedures;

(iii) Describe the effect of debarment.

(3) A person subject to proposed debarment, or who has an existing contract with the person subject to proposed debarment or intends to contract with such a person to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support mechanism, may contest debarment or the scope of the proposed debarment. A person contesting debarment or the scope of proposed debarment must file arguments and any relevant documentation within thirty (30) calendar days of receipt of notice or publication in the **Federal Register**, whichever is earlier.

(4) A person subject to proposed debarment, or who has an existing contract with the person subject to proposed debarment or intends to contract with such a person to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support mechanism, may also contest suspension or the scope of suspension, but such action will not ordinarily be granted. A person contesting suspension or the scope of suspension must file arguments and any relevant documentation within thirty (30) calendar days of receipt of notice or publication in the **Federal Register**, whichever is earlier.

(5) Within ninety (90) days of receipt of any information submitted by the respondent, the Commission, in the absence of extraordinary circumstances, shall provide the respondent prompt notice of the decision to debar. Debarment shall be effective upon the earlier of receipt of notice or publication in the **Federal Register**.

(f) *Reversal or limitation of suspension or debarment.* The Commission may reverse a suspension or debarment, or limit the scope or period of suspension or debarment, upon a finding of extraordinary circumstances, after due consideration following the filing of a petition by an interested party or upon motion by the Commission. Reversal of the conviction or civil judgment upon which the suspension and debarment was based is an example of extraordinary circumstances.

(g) *Time period for debarment.* A debarred person shall be prohibited from involvement with the schools and libraries support mechanism for three (3) years from the date of debarment. The Commission may, if necessary to protect the public interest, set a longer period of debarment or extend the existing period of debarment. If multiple convictions or judgments have been rendered, the Commission shall determine based on the facts before it whether debarments shall run concurrently or consecutively.

§ 54.701 [Amended]

■ 13. Amend § 54.701 by removing paragraphs (b) through (e), and redesignating paragraphs (f) through (h) as paragraphs (b) through (d).

■ 14. Amend § 54.720 by revising paragraphs (a) through (d), redesignating paragraph (e) as (f), and adding a new paragraph (e), to read as follows:

§ 54.720 Filing deadlines.

(a) An affected party requesting review of an Administrator decision by the Commission pursuant to § 54.719(c), shall file such a request within sixty (60) days of the issuance of the decision by a division or Committee of the Board of the Administrator.

(b) An affected party requesting review of a division decision by a Committee of the Board pursuant to § 54.719(a), shall file such request within sixty (60) days of issuance of the decision by the division.

(c) An affected party requesting review by the Board of Directors pursuant to § 54.719(b) regarding a billing, collection, or disbursement matter that falls outside the jurisdiction of the Committees of the Board shall file such request within sixty (60) days of issuance of the Administrator's decision.

(d) The filing of a request for review with a Committee of the Board under § 54.719(a) or with the full Board under § 54.719(b), shall toll the time period for seeking review from the Federal Communications Commission. Where the time for filing an appeal has been tolled, the party that filed the request for review from a Committee of the Board or the full Board shall have sixty (60) days from the date the Committee or the Board issues a decision to file an appeal with the Commission.

(e) In all cases of requests for review filed under § 54.719, the request for review shall be deemed filed on the postmark date. If the postmark date cannot be determined, the applicant must file a sworn affidavit stating the date that the request for review was mailed.

* * * * *

■ 15. Amend § 54.721 by revising the last sentence of paragraph (a) and by removing the effective date note immediately following this section to read as follows:

§ 54.721 General filing requirements.

(a) * * * The request for review shall be captioned ''In the matter of Request for Review by (name of party seeking review) of Decision of Universal Service Administrator'' and shall reference the applicable docket numbers.

* * * * *

[FR Doc. 03–14928 Filed 6–19–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 208

[DFARS Case 2003–D006]

Defense Federal Acquisition Regulation Supplement; Deletion of Federal Prison Industries Clearance Exception

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to delete obsolete text pertaining to an exception from requirements for purchase of products from Federal Prison Industries, Inc. (FPI). The DFARS text has become obsolete due to a broader exception to FPI clearance requirements published in Item V of Federal Acquisition Circular 2001–14 on May 22, 2003.

EFFECTIVE DATE: June 20, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D006.

SUPPLEMENTARY INFORMATION:

A. Background

The FPI Board of Directors recently adopted a resolution increasing, to $2,500, the blanket waiver threshold relating to small dollar-value purchases from FPI. An interim rule amending the Federal Acquisition Regulation (FAR) to implement this waiver was published as Item V of Federal Acquisition Circular (FAC) 2001–14 on May 22, 2003 (68 FR 28094). The preamble provides information for parties interested in providing public comment on that rule.

The text at DFARS 208.606(1) implements a previous blanket waiver granted by FPI for DoD purchases totaling $250 or less that require delivery within 10 days. Since the broader waiver implemented at FAR 8.606 by FAC 2001–14 applies to all Federal agencies, the text at DFARS 208.606(1) is no longer necessary and is being deleted.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2003–D006.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 208

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 208 is amended as follows:

■ 1. The authority citation for 48 CFR part 208 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Section 208.606 is revised to read as follows:

208.606 Exceptions.

For DoD, FPI clearances also are not required if market research shows that the FPI product is not comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery.

[FR Doc. 03–15653 Filed 6–19–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 228

[DFARS Case 2002–D030]

Defense Federal Acquisition Regulation Supplement; Payment Bonds on Cost-Reimbursement Contracts

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit the use of alternative payment protections for fixed-price construction subcontracts between $25,000 and $100,000 issued under