

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the matter of )  
 )  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )  
 )

REPORT AND ORDER

Adopted: June 27, 2001

Released: June 29, 2001

By the Commission: Commissioner Abernathy not participating.

I. INTRODUCTION

1. In this Report and Order, we adopt a rule proposed in the Further Notice of Proposed Rulemaking (*Notice*),<sup>1</sup> to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services.<sup>2</sup> We adopt a rule that will extend the deadline for receipt of non-recurring services from June 30, to September 30 following the close of the funding year. Further, we adopt a rule that will establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. We find that the amended rules will provide schools and libraries with more time to install non-recurring services, and thereby make greater use of their universal service discounts.

2. In the *Notice*, the Commission also sought comment on its rule addressing the allocation of discounts for schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. Specifically, the Commission sought comment on whether to modify the rule to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year. After consideration of the proposals, we conclude that we will not revise the Commission’s rules of priority for Funding Year 4 of the schools and libraries universal service mechanism.

<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 01-143 (rel. April 30, 2001) (*Notice*). For unabbreviated names of parties filing comments and reply comments, see Appendix B and C to this Report and Order.

<sup>2</sup> See Appendix A.

## II. BACKGROUND

3. Pursuant to section 254 of the Act,<sup>3</sup> eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounted eligible telecommunications, Internet access, and internal connections services.<sup>4</sup> Applicants must apply for discounts on an annual basis, in each funding year of the program.<sup>5</sup> The Commission's rules also require schools and libraries to use services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought.<sup>6</sup>

4. In the *Universal Service Order*, the Commission established a calendar funding year (January 1-December 31) for schools and libraries receiving universal service support.<sup>7</sup> The Commission revised its rules in the *Fifth Order on Reconsideration*, and changed the funding year for schools and libraries to a fiscal year (July 1-June 30).<sup>8</sup> In order to ease transition to the new fiscal year method, the Commission extended the first year by six months so the Funding Year 1 funding period ran from January 1, 1998-June 30, 1999.<sup>9</sup>

5. The Commission subsequently extended the deadline for schools and libraries to use their discounts on Funding Year 1 non-recurring services from June 30, 1999 (the end of the funding period) to September 30, 1999.<sup>10</sup> In Funding Year 1, a number of schools and libraries received late notice of funding commitment decisions from the Administrator, making it difficult for them to install internal connections in a timely manner.<sup>11</sup> The extension recognized delays in the implementation of the schools and libraries universal service support mechanism in the first year of the program, and provided applicants with additional flexibility in light of that delay.

6. The Common Carrier Bureau (Bureau) subsequently extended the deadline for schools and libraries to use their discounts on non-recurring services to September 30 for

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<sup>3</sup> 47 U.S.C. § 254.

<sup>4</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>5</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9062, para. 544 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

<sup>6</sup> *Id.* See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96045, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14921, para. 9 (1998) (*Fifth Order on Reconsideration*); 47 C.F.R. § 54.507(d), (e).

<sup>7</sup> *Universal Service Order*, 12 FCC Rcd at 9057, para. 535, and 9234, para. 710.

<sup>8</sup> *Fifth Order on Reconsideration*, 13 FCC Rcd at 14916, para. 1, and 1490, para. 8.

<sup>9</sup> *Id.*

<sup>10</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983, 5991-94, para. 17-23 (1999) (*Tenth Order on Reconsideration*).

<sup>11</sup> *Id.* at 5992-3, para. 19-20.

Funding Years 2 and 3.<sup>12</sup> Consistent with the prior Commission Order, the extended deadline was intended to give schools and libraries more time to implement non-recurring services, and make greater use of their universal service discounts. Furthermore, the Bureau concluded that extending the deadline until September 30 would allow schools to implement non-recurring services over the summer months when schools were in recess.<sup>13</sup>

### III. DISCUSSION

#### A. Modification of Implementation Schedule for Non-Recurring Services

##### 1. Extension of Installation Deadline for Non-Recurring Services

7. The Commission sought comment in the *Notice* regarding a modification to our rules relating to the deadline for implementation of non-recurring services. Non-recurring services are funding requests with a one-time cost listed on Block 5 of an applicant's FCC Form 471.<sup>14</sup> We conclude that it is reasonable for schools and libraries to have additional time to implement non-recurring services, given the fact that many of these services must be installed during the summer months when classes are not in session. Therefore, we adopt a rule change that would allow schools and libraries to implement non-recurring services by September 30, following the close of the funding year.<sup>15</sup>

8. As noted above, in each year of the schools and libraries program, the Commission has extended the deadline for receipt of non-recurring services. Non-recurring services often involve the installation of equipment or wiring, for which schools and libraries incur a one-time cost. As a result, many non-recurring services need to be performed while students are not in school or during a time period that will modify our rule to permanently minimize disruptions for classrooms and students. We now find that it is appropriate to extend the deadline from June 30 to September 30. The extended deadline is more realistic, and appropriately takes into consideration the needs of program participants.

9. We note that this rule change does not affect the twelve-month funding year for non-recurring and recurring services. Rather, this rule change only affects the deadline for receiving non-recurring services. In addition, we do not increase the amount that schools and libraries may receive for non-recurring services for each program year. Instead, we are merely providing schools and libraries with additional time in which to complete their receipt of these discounted non-recurring services.

##### 2. Limited Extension for Qualified Applicants

10. In the *Notice*, the Commission also sought comment regarding a rule that would further extend the deadline for implementation of non-recurring services for schools and libraries

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<sup>12</sup> See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 15 FCC Rcd 8064 (Com. Car. Bur. 2000)(*May 2000 Extension*); *Notice* at paras. 10-12.

<sup>13</sup> *May 2000 Extension* 15 FCC Rcd at 8067, paras. 5-6; *Notice* at para. 11.

<sup>14</sup> Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (Form 471).

<sup>15</sup> Under the revised rule, schools and libraries receiving funding commitments for non-recurring services in Funding Year 4 will have until September 30, 2002 to implement these services.

that are unable to meet the original deadline due to circumstances beyond their control.<sup>16</sup> We adopt the proposed rule, thereby extending the deadline for implementation of non-recurring services for certain qualified applicants who are unable to meet the September 30 deadline. Applicants may qualify for the extension, based on satisfaction of one of four criteria. Subsequently, the Administrator will calculate a revised implementation deadline, based on the date that the applicant satisfies one of the criteria.

11. We believe the revised rule will ensure that schools and libraries have a reasonable and predictable deadline for implementation of non-recurring services. External circumstances, like delayed funding decisions or manufacturing problems, can create situations where deadlines are both impractical and unreasonable. Adoption of the proposed rule will set in place a predictable mechanism to recalculate the implementation deadline in certain limited circumstances. Furthermore, consistent with the Commission's commitment to providing support for schools and libraries, we believe that this action will increase the likelihood that schools and libraries may successfully utilize discounts available from the schools and libraries universal service mechanism.

12. Specifically, under the revised rule, applicants will qualify for an extension of the implementation deadline for non-recurring services if they satisfy one of the following criteria: (1) applicants whose funding commitment decision letters are issued by the Administrator on or after March 1 of the funding year for which discounts are authorized; (2) applicants who receive service provider change authorizations or service substitution authorizations from the Administrator on or after March 1 of the funding year for which discounts are authorized; (3) applicants whose service providers are unable to complete implementation for reasons beyond the service provider's control; or (4) applicants whose service providers are unwilling to complete installation because funding disbursements are delayed while the Administrator investigates their application for program compliance.

13. Should an applicant satisfy one of the four criteria, March 1 is the key date for calculating the extended deadline. If one of the conditions is satisfied before March 1 (of any year), the applicant will have until the subsequent September 30 to complete implementation. If one of the conditions is satisfied after March 1, the applicant will have until September 30 of the following year to complete implementation. Therefore, if an applicant receives authorization for a service provider change on February 27, 2002 (before March 1), the deadline for receipt of non-recurring services will be September 30, 2002. By contrast, for funding commitments made in April 2002 for Funding Year 4 applications (after March 1), the deadline for receipt of non-

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<sup>16</sup> In Funding Year 2, the September 30 deadline was extended for eligible schools and libraries who, through no fault of their own, were unable to complete installation of non-recurring services by the deadline. Specifically, the deadline was extended by an additional year for those applicants: (1) whose Year 2 funding commitment letters were issued by the Administrator on or after April 4, 2000; (2) who received service provider change authorizations or service substitutions from the Administrator on or after April 4, 2000; (3) whose service providers were unable to complete implementation for reasons beyond the service provider's control; or (4) who had their funding disbursements delayed while the Administrator investigated their application for program compliance. *See Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 00-2444 (Com. Car. Bur., rel. November 1, 2000) (*November 2000 Extension Order*), paras. 8-9.

recurring service will be September 30, 2003.<sup>17</sup>

14. The Administrator will consider whether criteria (1) and (2) have been satisfied, respectively, based on the date that the funding commitment decisions are issued, or service provider changes or service substitutions are authorized. The revised deadline for implementation of non-recurring services will then be determined, based on the date that one of these events occurs.

15. Similar to the requirements outlined in the *November 2000 Extension Order*, applicants who wish to satisfy criteria (3) should submit documentation to the Administrator requesting relief on these grounds on or before the original non-recurring services deadline.<sup>18</sup> The revised deadline will be calculated based on the date of the Administrator's decision relating to the explanation. For example, if an entity is awarded discounts for internal connections in Funding Year 4, and installation is delayed due to circumstances beyond its control, it will need to file with the Administrator an explanation and evidence of the delay on or before September 30, 2002. If the Administrator grants an extension before March 1, 2003, they will have until September 30, 2003 to complete installation.

16. Furthermore, we recognize that there may be a wide range of situations under criteria (3) in which an applicant through no fault of its own is unable to complete installation by the applicant's original September 30 implementation deadline. Circumstances beyond the service provider's control may include manufacturing delays and natural disasters.<sup>19</sup> Commenters suggested that the Commission further clarify the type of events that may satisfy criteria (3).<sup>20</sup> Because we are unable to anticipate every type of circumstance that may arise under criteria (3), we instead direct the Administrator to address such situations on a case by case basis, consistent with the reasoning set forth in this Order.

17. With regard to criteria (4), applicants must certify to the Administrator that its service provider was unwilling to deliver or install non-recurring services before the expiration of the original non-recurring services installation deadline, because the Administrator had withheld payment for those services on a properly-submitted invoice for more than 60 days after the submission of the invoice. Applicants must make this certification on or before the original non-recurring services installation deadline. The revised implementation date will be calculated based on the date that the funds are released by the Administrator.

18. We conclude that a rule change will ensure schools and libraries are not penalized when they are not responsible for missing the installation deadline. Additionally, implementation of this policy will provide clarity to the Administrator and applicants by

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<sup>17</sup> In the case of Funding Year 2 "out of window applications" funding commitments made in April 2001 for Funding Year 2 applications (after March 1), the deadline for receipt of non-recurring service will be September 30, 2002.

<sup>18</sup> See *November 2000 Extension Order*, at para. 9. We note that the original non-recurring services installation deadline is considered to be September 30, following the close of the funding for which services were sought.

<sup>19</sup> See *Id.*; *Request for Waiver of September 30, 2000 Deadline for Implementation of Non-recurring Services by Baldwin County Board of Education, Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 01-747 (Com. Car. Bur. rel. March 27, 2001).

<sup>20</sup> See New York Public Library Comments at 4; Qwest Corporation Comments at 4.

establishing a certain deadline for installation. Ultimately, this rule gives all schools and libraries the opportunity to schedule implementation of non-recurring services over the summer months.

### 3. Extension of Competitive Bidding Rules

19. In addition, we adopt a rule granting a limited extension of the Commission's competitive bidding rules for contracts for non-recurring services. Under this rule, contracts for non-recurring services may be voluntarily extended to coincide with the appropriate deadline for implementation. Parties may not, however, extend other contractual provisions beyond the dates established by the Commission's rules without complying with the competitive bidding process. This action will ensure equitable treatment for recipients of discounts for non-recurring services.

#### B. Funding Priority for Internal Connections

20. In the *Notice*, the Commission also sought comment on two options relating to the Commission's rules of priority and the distribution of support for internal connections. The Commission determined it was appropriate to consider revising the rules of priority because of heavy demand in Funding Year 4 of the schools and libraries universal service mechanism. In April, the Administrator estimated that after funding priority one services (telecommunications services and Internet access) in Funding Year 4, there would not be enough funds available to fund priority two requests (internal connections) from the poorest schools and libraries, who qualify for a 90% discount under the schools and libraries discount matrix.<sup>21</sup>

21. The first proposal in the *Notice* was to maintain the Commission's rules as currently written, which direct that the remaining funds be prorated by discount band. The second proposal was to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year. After consideration of two proposals regarding the distribution of support for internal connections, we now conclude that we will not revise the rules of priority relating to the funding of internal connections for Funding Year 4 of the schools and libraries program. Therefore, under the current rules, the Administrator will allocate the available funds among applicants in the 90 percent discount level on a pro rata basis, so that each such applicant in Funding Year 4 receives a portion of the amount requested.<sup>22</sup>

22. The overwhelming majority of commenters expressed concern about revising the rules of priority during Funding Year 4, after the application process had closed.<sup>23</sup> In fact,

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<sup>21</sup> After processing applications for Funding Year 4 of the schools and libraries universal service mechanism, the Administrator estimated that in Funding Year 4 (July 1, 2001 to June 30, 2002) demand is \$5.195 billion, well above the \$2.25 billion funding cap. See Letter from Kate L. Moore, President, Universal Service Administrative Company, Schools and Libraries Division, to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, dated April 17, 2001 (*USAC Letter*). The Administrator based the demand estimate on the funding requests in 37,188 applications received or postmarked by January 18, 2001, the close of the Form 471 filing window for Funding Year 4.

<sup>22</sup> See 47 U.S.C. §54.507(g)(iv). Because Funding Year 4 demand exceeds the funding cap there is only enough money to fund applicants in the 90% discount level on a pro rata basis. See *USAC Letter*.

<sup>23</sup> See, e.g., School District of Philadelphia Comments at 3; City of Boston, Boston Public Schools, and Boston Public Library Comments at 2; Illinois State Board of Education at 2; Iberville Parish Schools Comments; Desert Communications Comments; New Mexico Council on Technology and Education Comments at 4.

commenters suggested that they would have structured their technology plans differently had they been aware of the proposed rules of priority.<sup>24</sup> Furthermore, commenters emphasized the need for predictability and raised operational questions regarding implementation of the rule in the current funding year.<sup>25</sup> Given the strong concerns voiced by the schools and libraries community, we agree that the Commission should not revise its rules of priority for Funding Year 4 of the schools and libraries universal service mechanism.

23. Several commenters supported giving funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.<sup>26</sup> Those commenters believed that the proposed rules would enable many needy schools and libraries, who have not previously been awarded discounts, the opportunity to receive funding for internal connections.<sup>27</sup> The Commission is strongly committed to ensuring that discounts continue to go to schools and libraries that are economically disadvantaged. Based on the current record, we conclude it is not reasonable to revise the rule for Funding Year 4 applications. We will continue to consider the operational and other implementation issues raised by commenters for future funding years.

#### IV. PROCEDURAL MATTERS

##### A. Paperwork Reduction Act (PRA)

24. 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, and will go into effect upon announcement in the Federal Register of OMB approval.

##### B. Final Regulatory Flexibility Analysis (FRFA)

25. As required by the Regulatory Flexibility Act (RFA),<sup>28</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice*.<sup>29</sup> The Commission sought written public comments on the proposals in the *Notice*, including comment on the IRFA. This present

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<sup>24</sup> See, e.g., Denver Public Schools Comments at 2; St. Louis City Schools District Comments at 2.

<sup>25</sup> See, e.g., New York City Board of Education Comments at 3 (classifying “recurring maintenance” within the internal connection category would result in many schools being ineligible in Funding Year 4); American Library Association Comments at 7 (substantive changes to program rules in Funding Year 4 violates the principles of predictability and program consistency).

<sup>26</sup> See, e.g., Evergreen School District Comments; Skiatook Schools Comments.

<sup>27</sup> See, e.g., Paramount Unified School District Comments; Anaheim Union High School District Comments; Pinkston Comments.

<sup>28</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>29</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 01-143 (rel. April 30, 2001) (*Notice*).

Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.<sup>30</sup>

### **1. Need for, and Objectives of, the Rules**

26. We modify our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. First, we extend the deadline for receipt of non-recurring services from June 30, to September 30 following the close of the funding year. Second, we establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline.

27. The Commission also sought comment on its rule addressing the allocation of discounts for schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. After consideration, the Commission will not revise the Commission's rules of priority for Funding Year 4 of the schools and libraries universal service mechanism.

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

28. The Commission received no comments directly addressing the IRFA.

### **3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply**

29. 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.<sup>31</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>32</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>33</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>34</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>35</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>36</sup>

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<sup>30</sup> See 5 U.S.C. § 604.

<sup>31</sup> 5 U.S.C. § 603(b)(3).

<sup>32</sup> 5 U.S.C. § 601(6).

<sup>33</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>34</sup> Small Business Act, 15 U.S.C. § 632.

<sup>35</sup> 5 U.S.C. § 601(4).

“Small governmental jurisdiction”<sup>37</sup> generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”<sup>38</sup> As of 1992, there were approximately 85,006 governmental entities in the United States.<sup>39</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>40</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities.

30. 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.”<sup>41</sup> A secondary school is generally 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.<sup>42</sup> 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.<sup>43</sup> Certain other statutory definitions apply as well.<sup>44</sup> The SBA has defined as small entities elementary and secondary schools and libraries having \$5 million or less in annual receipts.<sup>45</sup> In funding year 2 (July 1, 1999 to June 30, 2000) approximately 83,700 schools and 9,000 libraries received discounts 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 definition, we estimate that fewer than 83,700 schools and 9,000 libraries would be affected annually by the rules promulgated in this Order, under current operation of the program.

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

31. We adopt a rule that will require certain applicants, outlined in criteria (3) and (4) above, to submit information to the Administrator in order to qualify for an extension of the deadline for installation of non-recurring services. Under criteria (3), applicants whose service

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<sup>36</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>37</sup> 47 C.F.R. § 1.1162.

<sup>38</sup> 5 U.S.C. § 601(5).

<sup>39</sup> U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

<sup>40</sup> *Id.*

<sup>41</sup> 47 C.F.R. § 54.500(b).

<sup>42</sup> 47 C.F.R. § 54.500(j).

<sup>43</sup> 47 C.F.R. § 54.501.

<sup>44</sup> *See id.*

<sup>45</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) Codes 61111, 51412.

providers are unable to complete implementation for reasons beyond the service provider's control must submit documentation to the Administrator requesting relief on these grounds. In order to comply with the requirements for criteria (4), applicants must certify to the Administrator that its service provider was unwilling to deliver or install non-recurring services before the expiration of the original non-recurring services installation deadline, because the Administrator had withheld payment for those services on a properly-submitted invoice for more than 60 days after the submission of the invoice.

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

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.<sup>46</sup>

33. The Commission adopts two administrative modifications relating to the deadline for implementation of non-recurring services. First, the Commission extends the deadline for implementation of non-recurring services from June 30 of each funding year to September 30. Second, the Commission establishes an extended deadline for certain qualified applicants who are unable to meet the September 30 deadline. We believe that the extension of the deadline for the installation of non-recurring services has the same impact on small and large entities. Further, we believe that the extension of the deadline has no adverse or disparate effect on small or large entities. We previously determined that this was a situation that we needed to evaluate alternatives, had there been any concern expressed about the impact on small entities. After consideration, we conclude that all impact is beneficial and all impact is the same for small and large entities.

34. In the *Notice*, the Commission also sought comment relating to the allocation of discounts for schools and libraries when there is insufficient funding to support all requests for internal connections. We conclude in this Report and Order that we will not revise the Commission's rules of priority for Funding Year 4 of the schools and libraries universal service mechanism. Because the Commission promulgates no additional final rules with respect to the rules of priority, there is no impact on small businesses to consider.

35. **Report to Congress:** The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>47</sup> In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will

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<sup>46</sup> See 5 U.S.C. § 603.

<sup>47</sup> See 5 U.S.C. § 801(a)(1)(A).

also be published in the Federal Register.<sup>48</sup>

**C. Effective Date of Final Rules**

36. Pursuant to 5 U.S.C. § 553(d),<sup>49</sup> the rule changes adopted herein shall take effect thirty (30) days after publication in the Federal Register.

**V. ORDERING CLAUSES**

37. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 318-220, 254, 303(r), 403, section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order in CC Docket No. 96-45 IS ADOPTED. The collection of information contained within this Report and Order is contingent upon approval by the Office of Management and Budget.

38. IT IS FURTHER ORDERED that Part 54 of the Commission's Rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix A attached hereto, effective thirty (30) days after the publication of this REPORT AND ORDER in the Federal Register.

39. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>48</sup> See 5 U.S.C. § 604(b).

<sup>49</sup> See 5 U.S.C. § 553(d).

**APPENDIX A – FINAL RULES**

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 54 – UNIVERSAL SERVICE****Subpart F – Universal Service Support for Schools and Libraries**

1. Section 54.507 is amended by revising paragraph (d) to read as follows:

**§ 54.507 Cap.**

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(d) *Annual filing requirement.* Schools and libraries, and consortia of such eligible entities shall file new funding requests for each funding year no sooner than the July 1 prior to the start of that funding year. Schools, libraries, and eligible consortia must use recurring services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought. The deadline for implementation of non-recurring services will be September 30 following the close of the funding year. An applicant may request and receive from the Administrator an extension of the implementation deadline for non-recurring services if it satisfies one of the following criteria:

- (1) The applicant's funding commitment decision letter is issued by the Administrator on or after March 1 of the funding year for which discounts are authorized;
- (2) The applicant receives a service provider change authorization or service substitution authorization from the Administrator on or after March 1 of the funding year for which discounts are authorized;
- (3) The applicant's service provider is unable to complete implementation for reasons beyond the service provider's control; or
- (4) The applicant's service provider is unwilling to complete installation because funding disbursements are delayed while the Administrator investigates their application for program compliance.

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## APPENDIX B – COMMENTS

<u>Commenter</u>	<u>Abbreviation</u>
American Federation of Teachers	AFT
American Library Association	ALA
Anaheim Union High School District	Anaheim
Atkinson County School District	Atkinson
California Department of Education	CDE
Chandler, Rod	Chandler
City of Boston, Boston Public Schools and Boston Public Library	Boston Schools and Libraries
Cleveland Municipal School District	CMSD
Cleveland Public Schools	Cleveland
Coalition of Predictable E-rate Priorities	Coalition PEP
Comweb Technology Group	Comweb
Consortium for School Networking & Intern'l. Society for Technology in Education	CoSN
Council of the Great City Schools	Great City
Custom Fit, Inc.	Custom Fit
Denver Public Schools	DPS
Desert Communications	Desert
Dziuba, Mathew L.	Dziuba
Edgewood Independent School District	Edgewood
Emilienburg, Steven	Emilienburg
E-Rate Elite Services, Inc.	EES
Evergreen School District #50	Evergreen
Fisher, Wayne	Fisher
Gallup-McKinley County Public Schools	Gallup-McKinley
Garza, Juana	Garza
George, Micky D.	George
Iberville Parish Schools	Iberville
Illinois K-12	Illinois K-12
Illinois State Board of Education	Illinois
Information Technology Industry Council	ITI
Intelenet Commission	Intelenet
Kansas City, MO School District	Kansas City
Kellogg Consulting, LLC	Kellogg
Kelm, Paul E.	Kelm
King, Don	King
Lamont School District	Lamont
Los Angeles Unified School District	LAUSD
Lewis, Jon	Lewis
Lewis, Quinna	Lewis
Lloyd, Jim	Lloyd
Memphis City Schools	Memphis
Mid-Del Public Schools	Mid-Del

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National Independent Private Schools Association	NIPSA
The New Mexico Council on Technology In Education	Council NYC
The New York City Board of Education	NYPL
The New York Public Library	Olivier
Olivier, Betty	Paramount
Paramount Unified School District	School District
School District of Philadelphia	Pinkston
Pinkston, Mike	Qwest
Qwest Corporation	Skiatook
Skiatook Schools	Serban
Serban Sound & Communications	Consortium
The South Cook Education Consortium	St. Louis
St. Louis City School District	St. Michael's
St. Michael's School	Sulphur
Sulphur Public Schools	TeleComp
TeleComp Technologies	Tel/Logic
Tel/Logic, Inc. d.b.a. E-Rate Central	USTA
United States Telecom Association	Wehe
Wehe, Glenn	Weisiger
Weisiger, Greg	Williams
Williams, Virginia Kay	Wisconsin
Wisconsin Dept. of Public Instruction	WorldCom
WorldCom, Inc.	Zelley
Zelley, Bryan	

**APPENDIX C – REPLY COMMENTS****Commenter****Abbreviation**

Barnwell School District 19  
Calhoun County Public Schools  
Charleston County School District  
Cleveland Municipal School District  
The Council of the Great City Schools  
Education and Library Networks Coalition  
Funds For Learning, LLC  
Georgetown County School District  
Hampton County School District  
Johnakin Middle School of Marion  
Marion Intermediate School Media Center  
Marion School District One  
Marion School District #3  
Marlboro County, School District  
Orange Consolidated School District Five  
Williamsburg County School District

CMSD  
Great City Schools  
EdLiNC