

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 54****[CC Docket No. 02–6; FCC 10–33]****Schools and Libraries Universal Service Support Mechanism****AGENCY:** Federal Communications Commission.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In the companion order that accompanied a Notice of Proposed Rulemaking (NPRM), the Commission enabled schools that receive funding from the E-rate program (more formally, the schools and libraries universal service support program) to allow members of the general public to use the schools' Internet access during non-operating hours. The Commission waived, on its own motion, through funding year 2010 (which ends June 30, 2011), rules that currently discourage public use of resources funded under the E-rate program. In the NPRM, the Commission seeks comment on revising its rules to make this change permanent. This change will leverage universal service funding to serve a larger population at no increased cost to the E-rate program. The general public will be able to use the Internet access already present in schools, at the schools' discretion, for purposes such as job searches and applications, digital literacy programs, and online access to governmental services and resources.

**DATES:** Comments on the proposed rules are due on or before April 5, 2010 and reply comments are due on or before April 19, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements should be submitted on or before May 4, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit comments, identified by CC Docket No. 02–6, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov)

or phone: (202) 418–0530 or TTY: (202) 418–0432.

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

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

**FOR FURTHER INFORMATION CONTACT:** Regina Brown, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400 or TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking in CC Docket No. 02–6, FCC 10–33, adopted February 18, 2010, and released February 19, 2010. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

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

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than

one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

*In addition, one copy of each pleading must be sent to each of the following:*

- The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: [www.bcpweb.com](http://www.bcpweb.com); phone: 1–800–378–3160;

- Regina Brown, Telecommunications, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A5360, Washington, DC 20554; e-mail: [Regina.Brown@fcc.gov](mailto:Regina.Brown@fcc.gov); and

- Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554; e-mail: [Charles.Tyler@fcc.gov](mailto:Charles.Tyler@fcc.gov).

*People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [fcc504@fcc.gov](mailto:fcc504@fcc.gov); phone: (202) 418–0530 or (202) 418–0432 (TTY).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its Web site: <http://www.bcpweb.com>, by e-mail at [fcc@bcpweb.com](mailto:fcc@bcpweb.com), by telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562 (TTY), or by facsimile at (202) 488-5563.

## I. Synopsis of the Notice of Proposed Rulemaking

1. Currently, the Commission's rules require schools to certify that they will use E-rate funded services solely for "educational purposes," defined as activities that are integral, immediate, and proximate to the education of students. In the NPRM, the Commission specifically seeks comment on whether it should revise sections 54.504(b)(2)(v) and 54.504(c)(1)(vii) of its rules to allow schools to use underutilized services and equipment funded under the E-rate program for other, secondary purposes, instead of solely for "educational purposes" as is now required under its rules. Specifically, the Commission proposes to revise sections 54.504(b)(2)(v) and 54.504(c)(1)(vii) of its rules to require applicants to certify that "[t]he services the applicant purchases at discounts will be used primarily for educational purposes \* \* \*." It tentatively concludes that, if it revise sections 54.504(b)(2)(v) and 54.504(c)(1)(vii) of its rules to allow schools to use underutilized services and equipment funded under the E-rate program for other, secondary purposes, consistent with the Communications Act, E-rate funds must, in the first instance, be used for educational purposes and students shall always get first priority in use of the schools' resources. Any additional use of the services purchased under the E-rate program thus must be incidental to the primary purpose of the E-rate funds.

2. In the companion order, in granting a waiver of these rules, the Commission set forth certain conditions regarding other uses of school facilities that choose to allow the community to use their E-rate funded services: (1) Schools participating in the E-rate program are not permitted to request more services than are necessary for "educational purposes"; (2) any community use of E-rate funded services at a school facility is limited to non-operating hours, such

as after school hours or during times when the students are out of school; and (3) consistent with the Communications Act, schools' discounted services or network capacity may not be "sold, resold, or transferred by such user in consideration for money or any other thing of value." In the NPRM, the Commission, if it revises its rules, tentatively concludes that it would continue to impose these conditions and seeks comment on that conclusion. It also seeks comment on whether there are any additional conditions to guard against waste, fraud, and abuse that it should impose on schools that allow community use of their E-rate funded services and equipment. Further, the Commission seeks comment on any practical or operational implications such a change in its rules would have on schools and the community at large. Lastly, the Commission invites comment on whether it should modify our definition of educational purposes. Commenters should address whether modification of that definition would accomplish the objectives of maximizing the use of facilities and services supported by E-rate funding and reducing the likelihood of waste, fraud, and abuse.

3. The Commission proposes these rule revisions for a number of reasons. First, the Commission believes that changing these rules will leverage E-rate funds to serve a larger population at no increased cost to the E-rate program. Currently, services and facilities purchased using E-rate funding remain unused during evenings, weekends, school holidays, and summer breaks. Second, many people lack access or have limited access to affordable Internet services for educational and job training opportunities, particularly, for example, in rural, minority, and Tribal communities. Thus, by opening up these facilities to members of the public to use during non-operating hours, the Commission will maximize the use of facilities and services supported by E-rate funding and increase community access to the Internet. Third, the Commission finds that these rule changes are consistent with the goals of universal service by making Internet access available to more members of the general public. Fourth, the Commission believes these rule changes are consistent with the use of E-rate funding by libraries. Libraries currently provide access to the Internet to members of the general public as part of their mission. Allowing schools to do the same, at their discretion, would simply provide more opportunities for public access to Internet services. Finally, these rule

changes would further the Commission's directive from Congress to encourage access to advanced telecommunications and information services.

## II. Procedural Matters

### A. Initial Paperwork Reduction Act Analysis

4. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

### B. Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. 603, as amended, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA), *see* 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

(1) Need for, and Objectives of, the Proposed Rules

6. In the NPRM, we specifically seek comment on whether we should revise sections 54.504(b)(2)(v) and 54.504(c)(1)(vii) of our rules to allow schools to use underutilized services and equipment funded under the E-rate program for other, secondary purposes, instead of solely for "educational purposes" as is now required under our rules. Specifically, we propose to revise sections 54.504(b)(2)(v) and 54.504(c)(1)(vii) of our rules to require applicants to certify that "[t]he services the applicant purchases at discounts will be used primarily for educational purposes \* \* \*."

7. We propose these rule revisions for several reasons. As we noted above in our order granting a waiver of our rules requiring that services and facilities supported by E-rate be used solely for educational purposes through the end of funding year 2010, we believe changing

these rules will leverage E-rate funds to serve a larger population at no increased cost to the E-rate program. Currently, services and facilities purchased using E-rate funding remain unused during evenings, weekends, school holidays, and summer breaks. Moreover, many people lack access or have limited access to affordable Internet services for educational and job training opportunities, particularly, for example, in rural, minority, and Tribal communities. Thus, by opening up these facilities to members of the public to use during non-operating hours, we will maximize the use of facilities and services supported by E-rate funding and increase community access to the Internet. Further, we find that these rule changes are consistent with the goals of universal service by making Internet access available to more members of the general public. We also believe these rule changes are consistent with the use of E-rate funding by libraries. Libraries currently provide access to the Internet to members of the general public as part of their mission. Allowing schools to do the same, at their discretion, would simply provide more opportunities for public access to Internet services. Finally, these rule changes would further the Commission's directive from Congress to encourage access to advanced telecommunications and information services.

#### (2) Legal Basis

8. The legal basis for the NPRM is contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR 0.91, 0.291, and 1.3.

#### (3) Description and Estimate of the Number of Small Entities to Which Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A

small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

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

#### (a) Schools

11. As noted, “small entity” includes non-profit and small governmental entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools, an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.” A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12. For-profit schools, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program. Certain other statutory definitions apply as well. The SBA has also defined for-profit, elementary and secondary schools having \$7 million or less in annual receipts as small entities. In funding year 2007, approximately 105,500 schools received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these additional entities that would

qualify as small entities under SBA's size standard, we estimate that fewer than 105,500 such schools might be affected annually by our action, under current operation of the program.

#### (b) Telecommunications Service Providers

12. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Thus, under this category and associated small business size standard, we estimate that the majority of entities are small.

13. 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.

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

providers of interexchange services are small businesses.

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

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

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

wireless services other than wireless telephony are small businesses.

18. *Paging and Messaging Service Providers.* In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. In addition, at present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. Finally, according to Commission data, 281 carriers reported that they were engaged in the provision of paging services, messaging services, or other mobile services. Of those, the Commission estimates that 279 are small, under the SBA-approved small business size standard.

#### (c) Internet Service Providers

19. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of \$25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of

between \$10 million and \$24,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

#### (d) Vendors of Internal Connections

20. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.” The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: All such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year. Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

21. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

22. *Other Communications Equipment Manufacturing.* The Census

Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)." The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. The schools' voluntary offering of Internet resources, as proposed in the NPRM, would not result in additional compliance requirements for small businesses.

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

24. 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.

25. In the NPRM, we seek comment on whether we should revise sections

54.504(b)(2)(v) and 54.504(c)(1)(vii) of our rules to allow schools to use underutilized services and equipment funded under the E-rate program for other, secondary purposes, instead of solely for "educational purposes" as is now required under our rules. Specifically, we tentatively conclude that, if we revise sections 54.504(b)(2)(v) and 54.504(c)(1)(vii) of our rules to allow schools to use underutilized services and equipment funded under the E-rate program for other purposes, consistent with the Act, E-rate funds must, in the first instance, be used for educational purposes and students shall always get first priority in use of the schools' resources. Any additional use of the services purchased under the E-rate program must therefore be incidental to the primary purpose of the E-rate funds. Under this proposed rule, applicants will now be able to use their E-rate eligible facilities and services for other, secondary purposes, such as adult education, job training, and digital literacy programs, to benefit the community. We also invite comment on whether we should modify our definition of educational purposes to accomplish the same objective. We thus believe that these rule changes will not have an economic impact on small entities under the E-rate program since we are simply opening school facilities and services, already funded under the E-rate program, for community use during non-operating school hours. In fact, it will benefit participants by giving them the option to maximize the use of their facilities and services supported by E-rate funding. We welcome, however, comments from parties that have opinions different from those reached in this analysis.

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

26. None.

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

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

Federal Communications Commission.

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

**Proposed Rules**

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

**PART 54—UNIVERSAL SERVICE**

1. The authority citation continues to read as follows:

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

2. Section 54.504 is amended by revising paragraphs (b)(2)(v) and (c)(1)(vii) to read as follows:

**§ 54.504 Requests for services.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

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

\* \* \* \* \*

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