Nos. 24-354, 24-422 (consolidated)

In the

Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Petitioners,
v.
CONSUMERS' RESEARCH, ET AL.,
Respondents.

SHLB COALITION, ET AL.,
Petitioners,
v.
CONSUMERS' RESEARCH, ET AL.,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF FOR PETITIONERS SHLB COALITION, BENTON INSTITUTE, NDIA, AND MEDIAJUSTICE

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RULE 29.6 STATEMENT

The disclosure statement included in the Petition for Writ of Certiorari in Case No. 24-422 remains accurate as to SHLB Coalition, Benton Institute for Broadband & Society, National Digital Inclusion Alliance, and Center for Media Justice dba MediaJustice.

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REPLY BRIEF FOR PETITIONERS SHLB COALITION, BENTON INSTITUTE, NDIA, AND MEDIAJUSTICE

Congress enacted Section 254 nearly thirty years ago in the Telecommunications Act of 1996. Congress explicitly endorsed the continued pursuit of universal service and provided the FCC significant guidance as to how to do so in a competitive environment. Pursuant to strict statutory deadlines, the FCC soon thereafter established the Universal Service Fund support mechanisms. Over the ensuing years, courts have scrutinized and reversed the FCC's actions where appropriate, and Congress has amended the statute, conducted countless oversight hearings, and more.

Against these decades of experience, Respondents' caricature of the Fund as a "nightmare scenario" of "delegation running riot" and a harbinger of a future where "[t]he entire federal government could be funded with a single, vague delegation to the IRS" blinks reality. *See* Resp. Br. 1-5.

Respondents have little choice but to resort to these extreme positions in their attempt to find a constitutional violation that does not exist. In reality, however, the relevant provisions reflect an explicit congressional adoption and updating of universal service policies that pre-dated the 1996 Act. More broadly, Respondents' arguments reflect a misapprehension of the long history of the FCC's congressionally mandated preservation and advancement of universal service, this Court's approval of agency discretion to regulate utilities, and the actual text and operation of both Section 254 and the FCC's rules governing the Fund. And even if

there were some doubt on these issues, precedent teaches that the statute should be read to avoid, not to create, constitutional problems. We address these points further below, as do Competitive Carriers Association et al. in their reply brief.

At the outset, however, we note that Respondents' basic narrative regarding the trajectory of the Fund is misguided. For example, in painting the Fund as "skyrocketing" in size, Respondents compare the recent size of the Fund to the amount required for universal service in 1995, *see* Resp. Br. 11-12—*before* Congress passed the 1996 Act and directed the FCC to convert the implicit support baked into monopoly rates into explicit support mechanisms, *see* 47 U.S.C. § 254(e), and to establish new support mechanisms for schools, libraries, and rural healthcare facilities, *see id.* § 254(h). In fact, the overall size of the Fund established by the 1996 Act has shrunk in real dollars over the past two decades. In the first quarter of 2001, the projected needs of the Fund mechanisms were $1.353 billion[1]—which would be approximately $2.2 billion in inflation-adjusted 2022 dollars. For the first quarter of 2022 at issue in this case, the actual projected Fund needs were $1.841 billion[2]—nearly $400 million less as adjusted for inflation.

To be sure, while the Fund's size has remained steady, the contribution factor has risen over time. Respondents attribute that increase to an out-of-control bureaucracy, but, in reality, the contribution factor has increased because the "contribution

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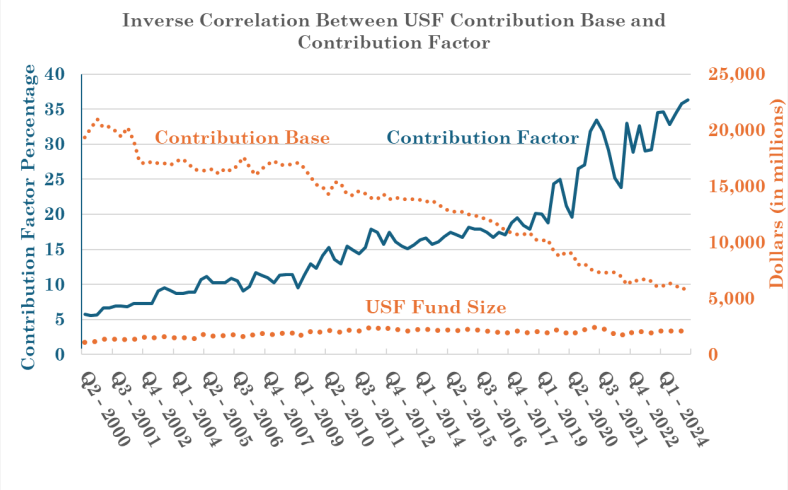
[1] *Proposed First Quarter 2001 Universal Service Contribution Factor*, 15 FCC Rcd. 24089 (2000).
[2] Pet. App. 143a.

base"—the assessable "revenue[] from interstate telecommunications services"—has decreased steadily over time.[3] That, in turn, is because the communications industry has increasingly shifted away from the telecommunications services Congress made subject to the contribution requirement in 1996, *see* 47 U.S.C. § 254(d), and toward other kinds of services (*e.g.*, broadband internet) to which the contribution factor percentage does not apply.

The graph below illustrates this phenomenon. The most important line is the dotted orange one at the bottom. Contrary to Respondents' repeated claim that the Fund has "skyrocketed," it shows that the Fund's size has remained relatively flat. Although the contribution factor has increased (the blue line), that is because the contribution base has decreased (the higher dotted orange line).



[3] *Report on the Future of the Universal Service Fund*, 37 FCC Rcd. 10041, ¶ 91 (2022).

Policymakers may debate whether and how to expand the contribution base, but the limitations at issue derive from statutory text, which is pretty much the opposite of a nondelegation problem.

Respondents' assertions regarding waste, fraud, and abuse likewise miss the mark. *See* Resp. Br. 12-14. Respondents cite a colorful example of one executive's fraud—a case in which the FCC's Enforcement Bureau secured a settlement of over $16 million repaid to the Fund. *See American Broadband & Telecommunications Company; Jeffrey S. Ansted*, 37 FCC Rcd. 6332 (2022). Respondents also cite (at 13) a 2017 report in which the Government Accountability Office (GAO) could not verify whether 36% of Lifeline subscribers "participated in [a] qualifying benefit program," such as Medicaid.[4] That GAO report noted that a 2016 FCC order to create a "national eligibility verifier" might "address many of the issues" identified,[5] and a 2023 GAO report noted substantial reductions in improper payments in the following years, attributed to the "National Verifier system" the FCC established.[6] The real story, then, is one where the Fund is subject to substantial oversight and the FCC has made positive changes to address these kinds of concerns.

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[4] U.S. Gov't Accountability Off., GAO-17-538, *Additional Action Needed to Address Significant Risks in FCC's Lifeline Program* 38 (2017).

[5] *Id.* at 57.

[6] U.S. Gov't Accountability Off., GAO-23-106585, *Programs Reporting Reductions Had Taken Corrective Actions That Shared Common Features* 12 (2023).

The Universal Service Fund, in short, is not the nightmare scenario that Respondents claim it is as either a legal or factual matter. This Court should reverse the Fifth Circuit's judgment.

I. Respondents Ignore or Misapprehend the Ways Section 254 Limits the FCC's Discretion.

A. The Court need not guess whether Section 254 meaningfully restricts FCC authority. For nearly three decades, Congress, the FCC, the federal courts, and private stakeholders have all understood that the text of Section 254 provides real and substantial constraints on the FCC's actions. The statute tells the FCC what services may be supported, who may receive support, which entities may be assessed to support those services, how they may be assessed, and how much support can be required, among many other things. As a bipartisan group of nine FCC Commissioners whose terms cover nearly the full span of Section 254's existence has explained, "Congress controls the Commission through the statutory framework it enacted," so that, over three decades, the Commission has "expressly considered and rejected regulatory proposals that would exceed the statutory authority Congress granted it."[7]

The significance of these statutory constraints is especially evident as to the size of the Universal Service Fund. For instance, although Respondents barely mention Section 254(b)(3)'s statement that

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[7] Brief of Bipartisan Former Commissioners of the Federal Communications Commission as *Amici Curiae* in Support of Petitioners at 17, 21 ("Bipartisan FCC Comm'rs Br.").

customers in rural areas should have access to service at rates "reasonably comparable" to those in urban areas, that guidance underpins the FCC High Cost program's rule that rural rates within two standard deviations of urban ones satisfy the statutory requirement. *See* SHLB Br. 8. That same language in Section 254(h)(1)(A) has led to the FCC's rule in the Rural Health Care program that the unsubsidized portion that rural health care providers must pay for services should be no higher than the highest rate in the nearest large city in the same state. *See id.* at 9.

Likewise, the repeatedly stated statutory principle that rates should be "specific, predictable, and sufficient," 47 U.S.C. § 254(b)(5), (d), (e), has led the FCC to establish firm caps on the size of its USF programs. *See* SHLB Br. 9. Both the FCC and the Fifth Circuit itself have rejected Respondents' assertion that the term "sufficient" imposes no ceiling on the USF.[8] Even Respondents' own definition of the term (at 56) as "enough to meet the needs of a situation" supports the same result. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 475-76 (2001) (interpreting "requisite" to mean "not lower or higher than is necessary").

All these limits, and numerous others discussed in our opening brief (at 20-31), cannot be dismissed as mere "procedural hurdles," Resp. Br. 47, as

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[8] *High-Cost Universal Service Support, et al.*, 25 FCC Rcd. 4072, ¶¶ 3, 30 (2010) (term requires support "that is adequate, but no greater than necessary"); *Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) ("excessive funding may itself violate the sufficiency requirements").

Respondents assert repeatedly but without elaboration.[9] Rather, they are—and have been treated as—real, substantive, and binding limits on FCC authority.

Contrary to Respondents' arguments (at 55), moreover, these limits on the size of the USF programs directly restrict the amount of USF contributions. *See* SHLB Br. 10-11 (explaining how projected demand for programs translates into the contribution factor). And, as the government confirms (at 3), the statute would permit no other result, as it authorizes USF funds to be used only for "provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e). Respondents' counterargument is based solely on a misreading of *Texas Office of Public Util. Counsel v. FCC*, 183 F.3d 393, 412 (5th Cir. 1999) ("*TOPUC I*"), which did not permit USF support or contributions greater than costs, but rather approved of the FCC *reducing* the size of the fund by reliance on forward-looking *measures* of costs. *See* SHLB Br. 28-29.

B. The reality of how the statute has constrained FCC action over many years contradicts the narrative that Respondents need to support their claim, so they create a fictitious alternative. Under their imagined statutory scheme, the FCC is free to

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[9] The language in *United States v. Rock Royal Co-op.*, 307 U.S. 533 (1939), that Respondents quote involved the "right to object" if the Secretary's order was unlawful and to appeal adverse decisions. *See id.* at 576. Those rights are not remotely analogous to the substantive limits provided by Section 254.

"roam at will," Resp. Br. 49 (internal quotation omitted), unbound by any statutory constraint.

That effort fails at every turn. To begin, Respondents assert repeatedly that the principles that Congress set out in Section 254(b) are merely "aspirational" or "precatory." *E.g.*, Resp. Br. 47. As discussed, that claim is belied by decades of experience. And the FCC's record of treating Section 254(b) as binding follows directly from the statutory text. In language Respondents studiously disregard, Congress mandated that the FCC "*shall* base [its] policies" on the enumerated principles. 47 U.S.C. § 254(b) (emphasis added). The federal courts have agreed: the FCC "*must* work to achieve each one [of the principles] unless there is a direct conflict between it and either another listed principle or some other obligation or limitation on the FCC's authority." *Qwest Corp. v. FCC*, 258 F.3d 1191, 1199 (10th Cir. 2001) (emphasis added). And the government itself confirms that understanding in its brief to this Court. *See* U.S. Br. 31.

Respondents cite *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001) ("*TOPUC II*"), but it is not to the contrary. That case merely applied the now-discarded *Chevron* framework to determine that the relevant FCC determination was "permissible," not that it was the best reading of the statute; in any event, it stated only that the FCC cannot "ignore or contravene the [Section 254(b)] goal of affordability," but could permissibly consider it "along with other policy goals" that Congress imposed in the 1996 Act. *Id.* at 322. Balancing Congress's policy goals is commonplace for agencies, and it does not mean that the policies are precatory or create a nondelegation

violation. *See, e.g., Yakus v. United States*, 321 U.S. 414, 420 (1944) (finding no violation where statute required agency to balance, *inter alia*, policy goals "to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents"; "to assist in securing adequate production of commodities and facilities"; and "to prevent a post emergency collapse of values").

Nor is it the case that the requirements of Section 254(b) are "contentless." Resp. Br. 48-49. Notably, Respondents never come to grips with much of the actual language of Section 254(b)(3), including the requirement that rates be "reasonably comparable," which is never mentioned in their argument. Instead, they repeat (at 49-50) the canard that Section 254(b)(1)'s requirement that rates be "affordable" is meaningless for products and services that are in significant demand. That argument simply ignores the FCC's explanation, highlighted in our opening brief, that "affordability" necessarily includes an analysis of financial burden. *See* SHLB Br. 31 & nn. 44-45. As the FCC has long understood, that term "takes into account whether consumers are spending a disproportionate amount of their income on telephone service" and thus does have real limiting significance.[10] Nor was affordability a novel concept in the universal service context when Congress passed the 1996 Act. The FCC previously considered that same factor in determining, for instance, the extent to which adding implicit subsidies to the prices end users paid for "inelastic" services would affect consumers. *See Nat'l Ass'n of*

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[10] *Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 8776, ¶ 110 (1997) ("*1997 Universal Service Order*").

Regul. Util. Comm'rs v. FCC, 737 F.2d 1095, 1119 (D.C. Cir. 1984) ("*NARUC*") (affirming FCC analysis on this point).

As is true throughout Respondents' brief, the only reason to ignore the FCC's actual, reasonable understanding of this term is to suggest the most extreme statutory interpretation to seek to establish a nonexistent constitutional violation. That runs directly contrary to the established principle that, where possible, statutes should be interpreted to avoid constitutional issues. *See, e.g., Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). As the Court has explained in prior nondelegation cases, so long as the choice is "between reasonably available interpretations" of a statute, *Whitman*, 531 U.S. at 471, "[i]t is the duty of federal courts to construe a statute in order to save it from constitutional infirmities," *Mistretta v. United States*, 488 U.S. 361, 406 n.28 (1989) (internal citations omitted).

To be sure, Section 254(b)(7) permits the FCC to add principles to those Congress enumerated, subject to specific statutory limits, but the FCC has done so very rarely and in accordance with those limits. *See* SHLB Br. 29-30. At least as importantly, Respondents do not and cannot contend that the two statutorily grounded principles the FCC has added (competitive neutrality and supporting advanced services) have added to the size of the contribution factor.

Respondents fare no better in arguing (at 53-56) that Section 254(c)'s mandate that the FCC decide what services qualify for "universal service" support does not provide any substantive limit on FCC action. Respondents, unlike the Fifth Circuit, notably

do not contest that requiring a determination as to whether a service is "essential" to "education, public health, or safety" or has been "subscribed to by a substantial majority of residential customers" is a meaningful limit on authority. They argue instead (at 54) that, because the FCC must "consider" the "extent to which" those factors apply, they are irrelevant.

Congress did not understand that its specific guidance could be so easily disregarded. *See* S. Rep. No. 104-23, at 27 (1995) ("the subsection *requires* the FCC to include, at a minimum, any telecommunications service that is subscribed to by a substantial majority of residential customers") (emphasis added). And the FCC has adhered scrupulously to this standard, for example, by determining that, where the enumerated factors are not satisfied, a service should not be eligible for support. *See Federal-State Board on Universal Service*, 18 FCC Rcd. 15090, ¶¶ 7-10 (2003) (adopting Joint Board recommendation against including advanced or high-speed services among supported services under Section 254(c) at that time; while carriers were increasingly deploying those services, they were neither "essential" to "education[], public health, or public safety," nor "subscribed to by a substantial majority of residential consumers"). That is far from a mere "procedural" protection. Resp. Br. 54.

Finally, contrary to Respondents' argument, the multiple circuit court cases reversing the FCC over time do in fact show that the key textual limitations have real bite. Far from demonstrating only that it is not "impossible to transgress" Section 254, Resp. Br. 51, the cases show that the FCC must enunciate

and apply standards that faithfully implement the statute's core requirements, including the requirements that funding mechanisms be "sufficient" and "explicit" and that services and rates be "reasonably comparable." *See* SHLB Br. 25-26 (citing, *inter alia*, *Qwest Corp.*, 258 F.3d at 1202, and *TOPUC I*, 183 F.3d at 425). There would be no basis to require more precise explanations from the FCC if those terms were in fact "contentless." And that federal-court scrutiny will be even more significant going forward, as, under *Loper Bright,* courts will no longer give deference to the FCC's interpretation of the text of Section 254. *See id.* at 26.

II. Under Any Reasonable Nondelegation Test, Section 254 Is Constitutional.

Applying Section 254 as it was drafted and has been applied for decades, that statute passes muster under any reasonable understanding of nondelegation requirements. Congress explicitly made the major policy choices that shape the federal program—the services and entities that may receive support, how much that support should be, who should contribute to support the program, and how much may be collected from those entities. In all these respects, there are, to say the very least, "'intelligible principle[s]' to guide the delegee's exercise of authority." *Gundy v. United States*, 588 U.S. 128, 145 (2019) (plurality opinion) (quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928)).

The Court need not consider whether to revise that established standard in this case because, while Section 254 appropriately calls on the FCC to apply the statute to changing markets and technologies, Congress has "announced the controlling general

polic[ies]" underlying Section 254 within the meaning of Justice Gorsuch's *Gundy* dissent. *Id.* at 157; *see* SHLB Br. 35-37 (describing the many ways in which Congress has established standards "'sufficiently definite and precise to enable Congress, the courts, and the public to ascertain' whether Congress's guidance has been followed") (quoting *Gundy*, 588 U.S. at 158, in turn quoting *Yakus*, 321 U.S. at 426).[11]

Respondents are thus left arguing for a test that is not supported by a single case from this Court. In their view, because this case allegedly involves "revenue raising," "Congress must set definite limits" on the size of the USF. Resp. Br. 44. Even assuming that this case did involve that authority, that argument is directly contrary to *Skinner*'s unequivocal statement that "we hold that the delegation of discretionary authority under Congress' taxing power is subject to no constitutional scrutiny greater than that we have applied to other nondelegation challenges." 490 U.S. at 223; *cf.* Resp. Br. 72 (stating incorrectly that *Skinner*'s holding was "likely *dicta*") (internal quotation omitted).

In any event, Respondents are wrong as to the relevant constitutional history and analysis.

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[11] Respondents' invocation of a modern test requiring that Congress "'clearly delineate'" the boundaries of delegated authority relies on a single phrase from *Skinner v. Mid-Am. Pipeline Co.*, 490 U.S. 212, 219 (1989), which in turn quoted from *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946). The Court has never read that phrase, as Respondents do, to establish a different standard from the Court's intelligible-principle precedents discussed at length in the opening briefs.

Section 254 does not "implicate the legislative power to raise revenue." Resp. Br. 29. Rather, in contexts like this one, Congress is exercising its Article I, Section 8 power to regulate interstate commerce. *See* U.S. Br. 34-35.

Indeed, this case involves a particular form of interstate commerce where the Court has accepted the necessity of broad delegations: utility regulation. In that context, this Court has made clear that Congress may appropriately grant agencies considerable latitude. *See, e.g.*, *Gulf States Utils. Co. v. Fed. Power Comm'n*, 411 U.S. 747, 756 (1973) (discussing the "broad and impressive" mandate Congress imposed on agency in Federal Power Act to determine whether issuance of security by public utility was "compatible with the public interest").

And as to rate regulation in particular, the Court has never suggested that Congress must specify the maximum rate that the agency can permit a utility to assess. Rather, the Court has long understood Congress to delegate "broad power[]" to the regulatory agency to use its best judgment so long as the result allows that entity to maintain its financial integrity, to attract capital, and to compensate its investors. *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 605, 611 (1944); *see Gundy*, 588 U.S. at 146 (citing *Hope Natural Gas* as an example of the "very broad delegations" the Court has permitted). The Court has refused to "substitute our opinions for the expert judgment of the administrators to whom Congress entrusted the decision." *Hope Natural Gas*, 320 U.S. at 615; *see Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968) ("any rate selected by the Commission from the broad zone of reasonableness permitted by the Act cannot properly be attacked as

confiscatory"). The Court's approach is especially appropriate in such contexts because, as exemplified by the extensive congressional oversight of the USF, *e.g.,* SHLB Br. 7-8, one can expect Congress carefully to monitor agency actions that directly affect many ratepaying constituents.

These precedents are directly relevant here. Before the 1996 Act, the FCC used its "just and reasonable" ratemaking authority to determine how much regulated carriers could assess in implicit subsidies to some customers to reduce rates for other, more rural and lower-income consumers. *See* SHLB Br. 3, 20 & n.27; *1997 Universal Service Order* ¶ 329 (summarizing pre-1996 Act authority). No court ever suggested that the delegation of this broad authority over regulated entities threatened to breach the limits of permissible delegations. *See generally NARUC*, 737 F.2d at 1108 n.6 (affirming the FCC's authority to impose these implicit subsidies).

Against this background, Congress's decision in the 1996 Act to transition to an updated regulatory regime more consistent with a competitive environment and to embrace explicit subsidies in lieu of implicit ones[12] is an affirmative improvement from a nondelegation standpoint. For all the reasons we have discussed, this regime provides substantially *more* guidance as to the amount of universal service

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[12] *See* 47 U.S.C. § 254(e); H.R. Rep. No. 104-458, at 131 (1996) ("In keeping with the conferees' intent that all universal service support should be clearly identified, this subsection states that such support should be made explicit and should be sufficient to achieve the purposes of new section 254.").

support that can be required. And, although the new statutory regime imposes the contribution obligations in the first instance on the regulated telecommunications carriers, they can and do pass that charge on to their end users, as Respondents themselves stress. *See* Resp. Br. 8 ("The bill is … footed by millions of Americans who pay a separate line item for the USF on their monthly phone bills."); 47 C.F.R. § 54.712(a) ("Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users.").

Thus, while the pre- and post-1996 Act mechanisms differ, at the end of the day, the current scheme is still one by which the FCC must calculate how much regulated utilities and ultimately their customers must contribute to support longstanding universal service goals and those explicitly added by Congress. And there is no arguable constitutional reason that Congress should not be permitted to move from traditional rate regulation to this alternative scheme. *Cf. CFPB v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416, 434 (2024) (appropriations need specify only "source of public funds and purpose"). On the contrary, as the government stressed in its opening brief, for at least two centuries the Court has understood that this particular mechanism—requiring those who participate in interstate markets to pay money to the government—is an appropriate exercise of Commerce Clause authority. *See* U.S. Br. 35 (quoting *Gibbons v. Ogden*, 9 Wheat. 1, 202 (1824)).

Even aside from this history and precedent, Respondents err in suggesting that this case must involve revenue raising because "most contributors

receive nothing in return" for paying a USF fee. Resp. Br. 28. In fact, it is a basic principle of network economics that carriers (and their customers) benefit from having more Americans connected to telecommunications networks. In this regard, the broader the network, the better for all providers. As the FCC has explained, interstate carriers are "dependent on the widespread telecommunications network for the maintenance and expansion of their business, and they directly benefit[] from a larger and larger network."[13] The Fifth Circuit itself has previously concurred on this point. It held that USF contributions are not "revenue" under the Origination Clause because "Congress designed the universal service scheme to exact payments from those companies *benefiting from the provision of universal service*." *TOPUC I*, 183 F.3d at 428 (emphasis added); *see also Rural Cellular Ass'n v. FCC*, 685 F.3d 1083, 1091 (D.C. Cir. 2012) (similarly rejecting such a challenge and explaining in the USF context that, "[t]hrough these so-called network effects, the carriers whose contributions fund the temporary reserve will benefit from the use to which that reserve will be put.").

Respondents are likewise incorrect that USF contributions are not "incident to a voluntary act." Resp. Br. 27 (internal quotation omitted). Contribution requirements apply nearly exclusively to interstate "telecommunications carriers," that is, common carriers subject to FCC licensing obligations. 47 U.S.C. § 153(51), (53). There are established processes for entities to cease providing

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[13] *Universal Service Contribution Methodology et al.*, 21 FCC Rcd. 7518, ¶ 43 (2006) (internal quotation omitted).

those services if they do not desire to do so. *See* 47 C.F.R. § 63.71 (specifying means to relinquish licenses). Respondent Cause Based Commerce does not dispute that it or any other carrier could exit the interstate telecommunications market if the burdens of participation became too great.

III. Respondents' Private Nondelegation Arguments Rely on a False Conception of the Administrator's Role.

The FCC's rules regarding the calculation of the quarterly contribution factor are clear: the factor "shall be determined *by the Commission* based on the ratio of" projected Fund expenses and the projected contribution base. 47 C.F.R. § 54.709(a)(2) (emphasis added). To facilitate that process, the Administrator "must submit" projections of demand and the total contribution base well in advance of each quarter for FCC review. *Id.* § 54.709(a)(3). The projected expenses "must be approved *by the Commission* before they are used to calculate the quarterly contribution factor and individual contributions." *Id.* (emphasis added). After that approval, the contribution factor "shall be announced by the Commission," followed by a 14-day period during which the Commission may alter the projections, or else its previously announced factor is "deemed approved by the Commission." *Id.*

In short, as this Court recently summarized: "Under those rules, the FCC determines each quarter the percentage of revenues that a carrier must contribute." *Wis. Bell v. United States ex rel. Heath*, 604 U.S. ___, No. 23-1127, slip op. at 2 (U.S. Feb. 21, 2025).

A. To counter the straightforward operation of the FCC's rules, Respondents press a vision of the Administrator's role that blinks reality. In their telling, each quarter the Administrator begins anew on its own motion in deciding the Nation's needs for universal service, reaches its own judgment, and then transmits its decision to the FCC for the mere formality of adoption. *See* Resp. Br. 3. "The FCC does not even have mechanisms to substantively review USAC's figures." *Id.* Unsurprisingly, in Respondents' estimation, this fictitious scheme violates the private nondelegation doctrine.

Both former FCC Commissioners and former Administrator leadership, however, confirm that this description is inconsistent with both "the Commission's rules" and "how the Commission and the Administrator actually operate in practice when the FCC establishes the quarterly contribution factor." Bipartisan FCC Comm'rs Br. 7; *see also* Brief of Former Leadership of the Universal Service Administrative Company as *Amicus Curiae* in Support of Petitioners at 10-11 ("Former USAC Br."). Indeed, Respondents' picture of the Administrator's role is skewed at every step of the process.

To start, Respondents make much of the Administrator's role in "mak[ing] 'projections' … about how much money to raise for an expansive federal program." Resp. Br. 77. But they disregard the extensive FCC rules implementing Section 254 that govern eligibility, supported services, support amounts, and more, which closely guide those projections. *See* U.S. Br. 42 (citing examples of FCC rules and explaining that the "Administrator must apply those rules when projecting the programs' expenses"); Former USAC Br. 11-13 (similar).

Particularly damning to Respondents' arguments are the caps and budgets the Commission has adopted for the Fund programs. These "budget-capping regulations constitute direct Commission action that shapes the ultimate contribution factor even before the Administrator sends its projections." Bipartisan FCC Comm'rs Br. 17. The Administrator's projections are not pulled from thin air or based on the Administrator's judgment, but from the facts that have developed based on the FCC's rules implementing Section 254.

Respondents nonetheless claim that the "amount to be raised is … highly dependent on USAC's voluminous decisionmaking" in the handling of individual eligibility determinations and claims for reimbursement. Resp. Br. 77. Aside from a bald assertion (at 83) that "USAC *inherently* makes policy because it exercises judgment and discretion," however, Respondents ignore the FCC's rules that tightly constrain the Administrator's decisions. Those rules forbid the Administrator not only from "mak[ing] policy," but also from "interpret[ing] unclear provisions of the statute or rules," and they specifically direct the Administrator to "seek guidance from the Commission" where matters are unclear. 47 C.F.R. § 54.702(c). Those rules, of course, are extensive. *See, e.g.*, *id.* §§ 54.500-.523 (rules defining eligible recipients, services, discounts, and more just for the E-Rate program). Respondents cite a list of FCC rules containing "terms like 'reasonable' and 'suitable,'" Resp. Br. 78, but nothing in those rules confers discretion on the Administrator to

determine the contours of those standards.[14] On top of that, the FCC conducts "*de novo* review" of any challenged Administrator decisions. 47 C.F.R. § 54.723.

Respondents likewise get wrong the FCC's review of the Administrator's projections in connection with the contribution factor. In Respondents' telling, "[t]he FCC lets USAC's proposals become binding on the public without proper vetting or formal approvals." Resp. Br. 79; *see also id.* at 3 (FCC has no "mechanisms to substantively review USAC's figures"). That assertion disregards the rules requiring the Administrator to submit demand projections and the "basis for those projections" 60 days before the start of a quarter, and to submit the projected contribution base 30 days in advance of the quarter. *See* 47 C.F.R. § 54.709(a)(3); *see also* U.S. Br. 42-43 (discussing these rules); SHLB Br. 44 (same). And at the end of that process, of course, the projections "must be approved by the Commission before they are used." 47 C.F.R. § 54.709(a)(3).

Instead of coming to grips with those rules, Respondents assert that the lack of major substantive changes to the projections in the final stages before the FCC determines the quarterly contribution factor means that "no … review occurs."

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[14] To take just one of Respondents' examples, 47 C.F.R. § 54.322(g) requires mobile carriers receiving certain High Cost support to offer service in the subsidized areas at rates "reasonably comparable to those rates offered in urban areas," and then spells out what rates "shall be considered reasonably comparable." Nothing in the rule suggests this is a determination for the Administrator to make in disbursing funds.

Resp. Br. 80. Never mind the briefs from former participants in this process explaining that "[i]n fact, the FCC conducts a thorough review of USAC's projections every quarter and has adjusted those projections several times." Former USAC Br. 16. Or that the FCC Office of Managing Director "has already informally reviewed and provided 'any necessary feedback' on the Administrator's projections" before the Administrator submits them for the FCC's formal consideration and use. Bipartisan FCC Comm'rs Br. 13-14 n.3 (quoting Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company 7 (Oct. 17, 2024), https://www.fcc.gov/sites/default/files/usac-mou.pdf). With FCC rules providing the framework for the Administrator's projections and FCC staff providing feedback in advance, "[i]t should come as no surprise" that the FCC can adopt the quarterly contribution factor without a significant overhaul. *Id.*

B. Given these facts, this Court need not expand upon the standard for a private-nondelegation-doctrine violation. As in *Sunshine Anthracite Coal Co. v. Adkins*, the Administrator "function[s] subordinately to" the FCC, and the FCC, "not the [Administrator], determines the" contribution factor. 310 U.S. 381, 399 (1940). The Administrator's role here is in fact narrower than that of the code members in *Sunshine Anthracite*. Whereas the code members were tasked with "propos[ing] minimum prices" based on their own judgment according to statutory standards, *id.* at 388, the Administrator here is making projections based on extensive FCC regulations for the various Fund programs (including caps) and using forms whose contents are dictated by FCC rules. *See* SHLB Br. 40-42.

Respondents' only response to *Sunshine Anthracite* is to double down on their incorrect assertions that the FCC "passive[ly] acquiesce[s]" to the Administrator's proposals and that such inaction makes Administrator's "recommendations legally binding." Resp. Br. 85 (quoting Pet. App. 68a). For example, Respondents argue that the FCC fails to "formally adopt USAC's proposals before they bind the public" and "independently perform its reviewing, analytical, and judgmental functions," *id.* at 79, 82 (cleaned up), but those are the same arguments addressed above in a different form. The Court can dispose of this issue by recognizing that it is more than sufficient for private nondelegation purposes that the FCC supervises the Administrator's work and is the party that adopts the quarterly contribution factor.

IV. The Court Should Reject the Fifth Circuit's "Combination" Approach.

Respondents barely defend the Fifth Circuit's "combination" approach, even though it is the exclusive basis for the judgment below. Respondents' attempted distinction of *Sunshine Anthracite*—that the Court there "rejected both statutory and private delegation claims" while the Fifth Circuit here "recognized 'grave concerns,'" Resp. Br. 88 (quoting Pet. App. 42a)—lacks any limiting principle and ignores the Fifth Circuit's much broader position that "two constitutional parts do not necessarily add up to a constitutional whole." Pet. App. 66a-67a. But given the common ground among the parties that the "combination" theory is inapplicable where the Court "reject[s]" the underlying claims, Resp. Br. 88, this Court can and should reject both Respondents' claims and reverse on that ground.

Respondents' attempt to recast *Schechter Poultry* as support for this "combination" approach fails too, as the Court's express concern was "the authority which § 3 of the Recovery Act vests in the President to approve or prescribe" codes. *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935). Respondents' suggestion that the Court in *Sunshine Anthracite* simply overlooked this "common sense" combination approach, Resp. Br. 88-89, is unpersuasive given the myriad other cases in which this Court has considered multiple constitutional issues without suggesting that a separate "combination" analysis was warranted. *See* SHLB Br. 49-51.

Finally, Respondents' continued conflation of this context with restrictions on the President's removal power remains incorrect. Whereas each additional layer of restriction imposed by Congress further restricts the President's removal power, *see Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 495 (2010), Respondents' two complaints—that Congress delegated too much authority and the executive then delegated too much responsibility to a private party—do not even involve impermissible action by the same branch.

CONCLUSION

The judgment of the Fifth Circuit should be reversed.

Respectfully submitted,

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APPENDIX

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APPENDIX

47 U.S.C. § 153 provides, in relevant part:

Definitions

For the purposes of this chapter, unless the context otherwise requires—

[…]

(51) Telecommunications carrier

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of this title). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

47 C.F.R. § 54.322 provides, in relevant part:

Public interest obligations and performance requirements, reporting requirements, and non-compliance mechanisms for mobile legacy high-cost support recipients.

[…]

(g) ***Reasonably comparable rates.*** A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall offer its services in the areas for which it receives such monthly support at rates that are reasonably comparable to those rates offered in urban areas and must advertise the voice and broadband services it offers in its subsidized service areas. A mobile competitive eligible telecommunications carrier's rates shall be considered reasonably comparable to urban rates, based upon the most recently-available decennial U.S. Census Bureau data identifying areas as urban, if rates for services in rural areas fall within a reasonable range of urban rates for reasonably comparable voice and broadband services.

(1) If the carrier offers service in urban areas, it may demonstrate that it offers reasonably comparable rates if it offers the same rates, terms, and conditions (including usage allowances, if any, for a specific rate) in both urban and rural areas or if one of the carrier's stand-alone voice service plans and one service plan offering data are substantially similar to plans it offers in urban areas.

(2) If the carrier does not offer service in urban areas, it may demonstrate that it offers reasonably comparable rates by identifying a carrier that does offer service in urban areas and the specific rate plans

to which its plans are reasonably comparable, along with submission of corroborating evidence that its rates are reasonably comparable, such as marketing materials from the identified carrier.

47 C.F.R. § 54.500 provides:

Terms and definitions.

Basic maintenance. A service is eligible for support as a "basic maintenance" service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services. Basic maintenance services do not include services that maintain equipment that is not supported by E-rate or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information.

Billed entity. A "billed entity" is the entity that remits payment to service providers for services rendered to eligible schools and libraries.

Consortium. A "consortium" is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for E-rate support that seeks competitive bids for eligible services or funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support. Eligible schools and libraries may not join consortia with ineligible private sector members unless the pre-discount prices of any services that such consortium receives are generally tariffed rates.

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.

Elementary school. An "elementary school" means an elementary school as defined in 20 U.S.C. 7801(18), a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

Internal connections. A service is eligible for support as a component of an institution's "internal connections" if such service is necessary to transport or distribute broadband within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch.

Library. A "library" includes:

(1) A public library;

(2) A public elementary school or secondary school library;

(3) A Tribal library;

(4) An academic library;

(5) A research library, which for the purpose of this section means a library that:

(i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(ii) Is not an integral part of an institution of higher education; and

(6) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.

Library consortium. A "library consortium" is any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries. For the purposes of these rules, references to library will also refer to library consortium.

Lowest corresponding price. "Lowest corresponding price" is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services.

Managed internal broadband services. A service is eligible for support as "managed internal broadband services" if provided by a third party for the operation, management, and monitoring of the eligible components of a school or library local area network (LAN) and/or wireless LAN.

Master contract. A "master contract" is a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider.

Minor contract modification. A "minor contract modification" is a change to a universal service

contract that is within the scope of the original contract and has no effect or merely a negligible effect on price, quantity, quality, or delivery under the original contract.

National school lunch program. The "national school lunch program" is a program administered by the U.S. Department of Agriculture and state agencies that provides free or reduced price lunches to economically disadvantaged children. A child whose family income is between 130 percent and 185 percent of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced price lunch. A child whose family income is 130 percent or less of applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

Pre-discount price. The "pre-discount price" means, in this subpart, the price the service provider agrees to accept as total payment for its telecommunications or information services. This amount is the sum of the amount the service provider expects to receive from the eligible school or library and the amount it expects to receive as reimbursement from the universal service support mechanisms for the discounts provided under this subpart.

Secondary school. A "secondary school" means a secondary school as defined in 20 U.S.C. 7801(38), a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12.

State telecommunications network. A "state telecommunications network" is a state government entity that procures, among other things, telecommunications offerings from multiple service providers and bundles such offerings into packages available to schools, libraries, or rural health care providers that are eligible for universal service support, or a state government entity that provides, using its own facilities, such telecommunications offerings to such schools, libraries, and rural health care providers.

Tribal. An entity is "Tribal" for purposes of E-Rate funding if it is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if it is a school or library operated by any Tribe, Band, Nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Voice services. "Voice services" include local phone service, long distance service, plain old telephone service (POTS), radio loop, 800 service, satellite telephone, shared telephone service, Centrex, wireless telephone service such as cellular, interconnected voice over Internet protocol (VoIP), and the circuit capacity dedicated to providing voice services.

Wide area network. For purposes of this subpart, a "wide area network" is a voice or data network that provides connections from one or more computers within an eligible school or library to one or more computers or networks that are external to such

eligible school or library. Excluded from this definition is a voice or data network that provides connections between or among instructional buildings of a single school campus or between or among non-administrative buildings of a single library branch.

Wi-Fi. "Wi-Fi" is a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11.

Wi-Fi hotspot. A "Wi-Fi hotspot" is a device that is capable of receiving advanced telecommunications and information services, and sharing such services with another connected device through the use of Wi-Fi.

47 C.F.R. § 54.501 provides:

Eligible recipients.

(a) ***Schools.***

(1) Only schools meeting the statutory definition of "elementary school" or "secondary school" as defined in § 54.500 of this subpart, and not excluded under paragraphs (a)(2) or (3) of this section shall be eligible for discounts on telecommunications and other supported services under this subpart.

(2) Schools operating as for-profit businesses shall not be eligible for discounts under this subpart.

(3) Schools with endowments exceeding $50,000,000 shall not be eligible for discounts under this subpart.

(b) ***Libraries.***

(1) Only libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (20 U.S.C. 9122) and not excluded under paragraph (b)(2) or (3) of this section shall be eligible for discounts under this subpart.

(2) Except as provided in paragraph (b)(4) of this section, a library's eligibility for universal service funding shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for discounts as libraries under this subpart.

(3) Libraries operating as for-profit businesses shall not be eligible for discounts under this subpart.

(4) A Tribal college or university library that

serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community shall be eligible for discounts under this subpart.

(c) ***Consortia.***

(1) For consortia, discounts under this subpart shall apply only to the portion of eligible telecommunications and other supported services used by eligible schools and libraries.

(2) Service providers shall keep and retain records of rates charged to and discounts allowed for eligible schools and libraries—on their own or as part of a consortium. Such records shall be available for public inspection.

47 C.F.R. § 54.502 provides:

Eligible services.

(a) ***Supported services.*** All supported services are listed in the Eligible Services List as updated annually in accordance with paragraph (d) of this section. The services in this subpart will be supported in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms. The supported services fall within the following general categories:

(1) ***Category one.*** Telecommunications services, telecommunications, and Internet access, as defined in § 54.5 and described in the Eligible Services List are category one supported services.

(2) ***Category two.*** Internal connections, basic maintenance and managed internal broadband services as defined in § 54.500 and described in the Eligible Services List are category two supported services.

(b) ***Funding years 2015-2019.*** Libraries, schools, or school districts with schools that receive funding for category two services in any of the funding years between 2015 and 2019 shall be eligible for support for category two services pursuant to paragraphs (b)(1) through (6) of this section.

(1) ***Five-year budget.*** Each eligible school or library shall be eligible for a budgeted amount of support for category two services over a five-year funding cycle beginning the first funding year support is received. Excluding support for internal

connections received prior to funding year 2015, each school or library shall be eligible for the total available budget less any support received for category two services in the prior funding years of that school's or library's five-year funding cycle. The budgeted amounts and the funding floor shall be adjusted for inflation annually in accordance with § 54.507(a)(2).

(2) ***School budget.*** Each eligible school shall be eligible for support for category two services up to a pre-discount price of $150 per student over a five-year funding cycle. Applicants shall provide the student count per school, calculated at the time that the discount is calculated each funding year. New schools may estimate the number of students, but shall repay any support provided in excess of the maximum budget based on student enrollment the following funding year.

(3) ***Library budget.*** Each eligible library shall be eligible for support for category two services, up to a pre-discount price of $2.30 per square foot over a five-year funding cycle. Libraries shall provide the total area for all floors, in square feet, of each library outlet separately, including all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public.

(4) ***Funding floor.*** Each eligible school and library will be eligible for support for category two services up to at least a pre-discount price of $9,200 over five funding years.

(5) ***Requests.*** Applicants shall request support for category two services for each school or library based on the number of students per school building or square footage per library building. Category two funding for a school or library may not be used for

another school or library. If an applicant requests less than the maximum budget available for a school or library, the applicant may request the remaining balance in a school's or library's category two budget in subsequent funding years of a five year cycle. The costs for category two services shared by multiple eligible entities shall be divided reasonably between each of the entities for which support is sought in that funding year.

(6) ***Non-instructional buildings.*** Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in § 54.500. When applying for category two support for eligible services to a non-instructional school building or library administrative building, the applicant shall allocate the cost of providing services to one or more of the eligible school or library buildings that benefit from those services being provided.

(c) ***Funding year 2020.*** Libraries, schools, or school districts with schools that receive funding for category two services in funding year 2020 shall be eligible for support for category two services pursuant to paragraphs (c)(1) through (6) of this section.

(1) ***Six-year funding cycle.*** Each eligible school or library shall be eligible for a budgeted amount of support for category two services over a six-year funding cycle. Each school or library shall be eligible for the total available budget less the pre-discount

amount of any support received for category two services in the prior funding years of that school's or library's six-year funding cycle.

(2) ***School budget.*** Each eligible school shall be eligible for support for category two services up to a pre-discount price of $150 plus an additional prorated 20% (adjusted for inflation dating back to funding year 2015) over six funding years that will be completed at the end of funding year 2020. Applicants shall provide the student count per school, calculated at the time that the discount is calculated each funding year. New schools may estimate the number of students but shall repay any support provided in excess of the maximum budget based on student enrollment the following funding year.

(3) ***Library budget.*** Each eligible library located within the Institute of Museum and Library Services locale codes of "11—City, Large," defined as a territory inside an urbanized area and inside a principal city with a population of 250,000 or more, "12—City, Midsize," defined as a territory inside an urbanized area and inside a principal city with a population less than 250,000 and greater than or equal to 100,000, or "21—Suburb, Large," defined as a territory outside a principal city and inside an urbanized area with population of 250,000 or more, shall be eligible for support for category two services, up to a pre-discount price of $5.00 per square foot plus an additional prorated 20% (adjusted for inflation dating back to funding year 2015) over six funding years that will be completed at the end of funding year 2020. All other eligible libraries shall be eligible for support for category two services, up to a pre-discount price of $2.30 per square foot plus an additional prorated 20% (adjusted for inflation dating back to funding year

2015) over a six-year funding cycle that will be completed at the end of funding year 2020. Libraries shall provide the total area for all floors, in square feet, of each library outlet separately, including all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public.

(4) ***Funding floor.*** Each eligible school and library will be eligible for support for category two services of at least a pre-discount price of $9,200 plus an additional prorated 20% (adjusted for inflation dating back to funding year 2015) over six funding years that will be completed at the end of funding year 2020.

(5) ***Requests.*** Applicants shall request support for category two services for each school or library based on the number of students per school building or square footage per library building. Category two funding for a school or library may not be used for another school or library. The costs for category two services shared by multiple eligible entities shall be divided reasonably between each of the entities for which support is sought in that funding year.

(6) ***Non-instructional buildings.*** Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in § 54.500. When applying for category two support for eligible services to a non-instructional school building or library administrative

building, the applicant shall allocate the cost of providing services to one or more of the eligible school or library buildings that benefit from those services being provided.

(d) ***Funding year 2021 and beyond.*** Schools, school districts, libraries, and library systems shall be eligible for support for category two services pursuant to the five-year budgets described in paragraphs (d)(1) through (6) of this section.

(1) ***Fixed five-year funding cycle.*** Beginning in funding year 2021, each eligible school, school district, library, or library system shall be eligible for a budgeted amount of pre-discount support for category two services over a five-year funding cycle that will reset in funding year 2026 and subsequently, after every five funding years. Each school, school district, library, or library system shall be eligible for the total available budget less the pre-discount amount of any support received for category two services in the prior funding years of that fixed five-year funding cycle.

(2) ***School and school district multipliers.*** Each eligible school district and schools operating independently of a school district shall be eligible for support for category two services up to a pre-discount price of $167 per student over a five-year funding cycle. The amount of support will be calculated at the time that the discount is calculated in the first funding year of the five-year cycle in which the applicant requests category two support, unless the school or school district elects to seek additional program support using updated enrollment numbers in subsequent funding years in the five-year cycle. School districts shall provide the total number of students within the school district. Independent charter schools, private schools, and other eligible

educational facilities that operate under the control of a central administrative agency shall provide the total number of students under the control of that agency. Schools that are not affiliated financially or operationally with a school district or central administrative agency shall provide the total number of students in the school.

(3) ***Library and library system multipliers.*** Library systems and libraries operating independently of a system shall be eligible for support for category two services, up to a pre-discount price of $4.50 per square foot over a five-year funding cycle. The amount of support will be calculated at the time that the discount is calculated in the first funding year of the five-year cycle in which the applicant requests category two support, unless the library or library system elects to seek additional program support using updated square footage in subsequent funding years in the five-year cycle. Library systems shall provide the total area for all floors, in square feet, of all of its library outlets, including all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public. Independent libraries shall provide the total area for all floors, in square feet, of all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public.

(4) ***Funding floor.*** Each eligible school and library shall be eligible for support for category two services of at least a pre-discount price of $25,000 over five funding years. Tribal libraries shall be eligible for support for category two services of at least a pre-discount price of $55,000 over five funding years.

(5) ***Calculation increase.*** Before funding year 2026 and every subsequent five-year funding cycle, the Wireline Competition Bureau shall announce the multipliers and funding floor as adjusted for inflation at least 60 days before the start of the filing window for the next five-year funding cycle. The Bureau shall use the last four quarters of data on the Gross Domestic Product Chain-type Price Index (GDP-CPI) compared with the equivalent quarters from the beginning of the five-year funding cycle. The increase shall be rounded to the nearest 0.1 percent and shall be used to calculate the category two budget multipliers and funding floor for that five-year funding cycle. The multipliers and funding floor shall be rounded to the nearest cent.

(6) ***Non-instructional buildings.*** Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in § 54.500. When applying for category two support for eligible services within a non-instructional school building or library administrative building, the applicant shall not be required to deduct the cost of the non-instructional building's use of the category two services or equipment.

(e) ***Off-premises Wi-Fi hotspot program.*** Each eligible school district, school operating independently of a school district, library system and library operating independently of a system shall be eligible

for support for category one services for a maximum pre-discount budget for off-premises Wi-Fi hotspots and recurring services pursuant to the formula described in paragraphs (e)(1) through (4) of this section and subject to the limitations described in paragraphs (e)(5) and (6) of this section.

(1) ***Fixed three-year funding cycle.*** Beginning in funding year 2025, each eligible school, school district, library, or library system shall be eligible for a budgeted amount of pre-discount support for category one off-premises Wi-Fi hotspots and recurring services over a three-year funding cycle that will reset every three funding years. Each school, school district, library, or library system shall be eligible for the total available budget less the pre-discount amount of any support received for these services in the prior funding years of that fixed three-year funding cycle.

(2) ***School and school district mechanism.*** Each eligible school operating independently of a school district or school district shall be eligible for up to a pre-discount price calculated by multiplying the student count by 0.2 and the category one discount rate, rounded up to the nearest ten. This value is then multiplied by $630. The formula will be based on the number of full-time students.

(3) ***Library and library system mechanism.*** Each eligible library operating independently of a system, or library system shall be eligible for up to a pre-discount price calculated by multiplying the square footage by 0.0055 and the category one discount rate, rounded up to the nearest ten. This value is then multiplied by $630.

(4) ***Wi-fi Hotspots and service funding caps.*** The available funding for Wi-Fi hotspots is capped at

$90 and services at $15 per month. An applicant may not request more than 45 percent of the Wi-Fi hotspot budget in a single funding year. Each E-Rate-supported Wi-Fi hotspot must have an accompanying request for recurring service.

(5) ***Non-usage notice and termination requirements.*** At least once every 31 days, service providers shall determine whether any E-Rate-supported lines have zero data usage in the prior 60 days and provide notice to the applicant of the particular lines within 5 business days. If there is zero data usage for 90 days, service providers shall discontinue service to such lines.

(6) ***Early termination.*** Service providers must exclude or waive early termination fees for lines of service associated with Wi-Fi hotspots that are lost, broken, or unused, including those for which service is discontinued in paragraph (e)(5) of this section. Service providers shall not bill applicants for unused lines of service that are discontinued.

(7) ***Off-premises hotspots program adjustments.*** The Chief, Wireline Competition Bureau, is delegated authority to adjust the limiting mechanism amounts and the Wi-Fi hotspot program cost caps, after seeking comment on a proposed adjustment.

(8) ***Eligible users.*** Eligible schools and libraries are permitted to request and receive support for the purchase of Wi-Fi hotspots and services for off-premises use by:

(i) In the case of a school, students and school staff; and

(ii) In the case of a library, patrons of the library.

(9) ***Per user limitation.*** Support for eligible Wi-Fi hotspots and services used off-premises is limited to not more than one Wi-Fi hotspot per student, school staff member, or library patron.

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

47 C.F.R. § 54.503 provides:

Competitive bidding requirements.

(a) All entities participating in the schools and libraries universal service support program must conduct a fair and open competitive bidding process, consistent with all requirements set forth in this subpart.

Note to paragraph (a):

The following is an illustrative list of activities or behaviors that would not result in a fair and open competitive bidding process: the applicant for supported services has a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with inside information; someone other than the applicant or an authorized representative of the applicant prepares, signs, and submits the FCC Form 470 and certification; a service provider representative is listed as the FCC Form 470 contact person and allows that service provider to participate in the competitive bidding process; the service provider prepares the applicant's FCC Form 470 or participates in the bid evaluation or vendor selection process in any way; the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process; an applicant employee with a role in the service provider selection process also has an ownership interest in the service provider seeking to participate in the competitive bidding process; and the applicant's FCC Form 470 does not describe the supported services with sufficient specificity to enable interested service providers to submit responsive

bids.

(b) ***Competitive bid requirements.*** Except as provided in § 54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

(c) ***Posting of FCC Form 470.***

(1) An eligible school, library, or consortium that includes an eligible school or library seeking bids for eligible services under this subpart shall submit a completed FCC Form 470 to the Administrator to initiate the competitive bidding process. The FCC Form 470 and any request for proposal cited in the FCC Form 470 shall include, at a minimum, the following information:

(i) A list of specified services for which the school, library, or consortium requests bids;

(ii) Sufficient information to enable bidders to reasonably determine the needs of the applicant;

(iii) To the extent an applicant seeks the following services or arrangements, an indication of the applicant's intent to seek:

(A) Construction of network facilities that the applicant will own;

(B) A dark-fiber lease, indefeasible right of use, or other dark-fiber service agreement or the modulating electronics necessary to light dark fiber; or

(C) A multi-year installment payment agreement with the service provider for the non-discounted share of special construction costs;

(iv) To the extent an applicant seeks construction of a network that the applicant will own, the applicant must also solicit bids for both the services provided over third-party networks and construction of applicant-owned network facilities, in the same request for proposals;

(v) To the extent an applicant seeks bids for special construction associated with dark fiber or bids to lease and light dark fiber, the applicant must also solicit bids to provide the needed services over lit fiber; and

(vi) To the extent an applicant seeks bids for equipment and maintenance costs associated with lighting dark fiber, the applicant must include these elements in the same FCC Form 470 as the dark fiber.

(2) The FCC Form 470 shall be signed by a person authorized to request bids for eligible services for the eligible school, library, or consortium, including such entities.

(i) A person authorized to request bids on behalf of the entities listed on an FCC Form 470 shall certify under oath that:

(A) The schools meet the statutory definition of "elementary school" or "secondary school" as defined in § 54.500 of these rules, do not operate as for-profit businesses, and do not have endowments exceeding $50 million.

(B) The libraries or library consortia eligible

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

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

(ii) A person authorized to both request bids and order services on behalf of the entities listed on an FCC Form 470 shall, in addition to making the certifications listed in paragraph (c)(2)(i) of this section, certify under oath that:

(A) The services the school, library, or consortium 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, except as allowed by § 54.513.

(B) All bids submitted for eligible products and services will be carefully considered, with price being the primary factor, and the bid selected will be for the most cost-effective service offering consistent with § 54.511.

(3) The Administrator shall post each FCC Form 470 that it receives from an eligible school, library, or

consortium that includes an eligible school or library on its Web site designated for this purpose.

(4) After posting on the Administrator's Web site an eligible school, library, or consortium FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's Web site before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

(d) ***Gift restrictions.***

(1) Subject to paragraphs (d)(3) and (4) of this section, an eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth $20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this rule, if the value of these items received by any individual does not exceed $50 from any one service provider per funding year. The $50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph

(d)(2)(ii) of this section.

(2) For purposes of this paragraph:

(i) The terms "school, library, or consortium" include all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such school, library, or consortium with the Schools and Libraries Program of the Universal Service Fund (E-rate Program), including individuals who prepare, approve, sign or submit E-rate applications, or other forms related to the E-rate Program, or who prepare bids, communicate or work with E-rate service providers, E-rate consultants, or with USAC, as well as any staff of such entities responsible for monitoring compliance with the E-rate Program; and

(ii) The term "service provider" includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions:

(i) Are motivated solely by a personal relationship,

(ii) Are not rooted in any service provider business activities or any other business relationship with any such eligible school, library, or consortium, and

(iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible school, library, or consortium that includes an eligible school or library in the support of its programs as long as such contributions are not directly or indirectly related to E-rate procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other E-rate program rules, including those in paragraph (c)(2)(i)(C) of this section, requiring schools and libraries to pay their own non-discount share for the services they are purchasing.

(e) ***Exemption to competitive bidding requirements.***

(1) An applicant that seeks support for commercially available high-speed internet access services for a pre-discount price of $3,600 or less per school or library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section.

(i) internet access, as defined in § 54.5, is eligible for this exemption only if the purchased service offers at least 100 Mbps downstream and 10 Mbps upstream.

(ii) The Chief, Wireline Competition Bureau, is delegated authority to lower the annual cost of high-speed internet access services or raise the speed threshold of broadband services eligible for

this competitive bidding exemption, based on a determination of what rates and speeds are commercially available prior to the start of the funding year.

(2) A library applicant that seeks support for category two services for a total pre-discount price of $3,600 or less per library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section. Applicants must select a cost-effective service offering, based on the price of the equipment or services.

47 C.F.R. § 54.504 provides:

Requests for services.

(a) ***Filing of the FCC Form 471.*** An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart shall, upon entering into a signed contract or other legally binding agreement for eligible services, submit a completed FCC Form 471 to the Administrator.

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

(i) The schools meet the statutory definition of "elementary school" or "secondary school" as defined in § 54.500 of this subpart, do not operate as for-profit businesses, and do not have endowments exceeding $50 million.

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

(iii) The entities listed on the FCC Form 471 application have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services purchased. The entities listed on the FCC

Form 471 will pay the discounted charges for eligible services from funds to which access has been secured in the current funding year or, for entities that will make installment payments, they will ensure that they are able to make all required installment payments. The billed entity will pay the non-discount portion of the cost of the goods and services to the service provider(s).

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

(v) The services the school, library, or consortium 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, except as allowed by § 54.513.

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

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

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

(ix) Except as exempted by § 54.503(e), all bids submitted to a school, library, or consortium seeking eligible services were carefully considered and the most cost-effective bid was selected in accordance with § 54.503 of this subpart, with price being the primary factor considered, and it is the most cost-effective means of meeting educational needs and technology goals.

(2) All pricing and technology infrastructure information submitted as part of an FCC Form 471 shall be treated as public and non-confidential by the Administrator unless the applicant specifies a statute, rule, or other restriction, such as a court order or an existing contract limitation barring public release of the information.

(i) Contracts and other agreements executed after adoption of this rule may not prohibit disclosure of pricing or technology infrastructure information.

(ii) The exemption for existing contract limitations shall not apply to voluntary extensions or renewals of existing contracts.

(b) ***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.

(c) ***Rate disputes.*** Schools, libraries, and consortia including those entities, and service providers may have recourse to the Commission, regarding interstate rates, and to state commissions, regarding intrastate rates, if they reasonably believe that the lowest corresponding price is unfairly high or low.

(1) Schools, libraries, and consortia including those entities may request lower rates if the rate offered by

the carrier does not represent the lowest corresponding price.

(2) Service providers may request higher rates if they can show that the lowest corresponding price is not compensatory, because the relevant school, library, or consortium including those entities is not similarly situated to and subscribing to a similar set of services to the customer paying the lowest corresponding price.

(d) ***Service substitution.***

(1) The Administrator shall grant a request by an applicant to substitute a service or product for one identified on its FCC Form 471 where:

(i) The service or product has the same functionality;

(ii) The substitution does not violate any contract provisions or state or local procurement laws;

(iii) The substitution does not result in an increase in the percentage of ineligible services or functions; and

(iv) The applicant certifies that the requested change is within the scope of the controlling FCC Form 470, including any associated Requests for Proposal, for the original services.

(2) In the event that a service substitution results in a change in the pre-discount price for the supported service, support shall be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service.

(3) For purposes of this rule, the two categories of

eligible services are not deemed to have the same functionality as one another.

(e) ***Mixed eligibility services.*** A request for discounts for a product or service that includes both eligible and ineligible components must allocate the cost of the contract to eligible and ineligible components.

(1) ***Ineligible components.*** If a product or service contains ineligible components, costs must be allocated to the extent that a clear delineation can be made between the eligible and ineligible components. The delineation must have a tangible basis, and the price for the eligible portion must be the most cost-effective means of receiving the eligible service.

(2) ***Ancillary ineligible components.*** If a product or service contains ineligible components that are ancillary to the eligible components, and the product or service is the most cost-effective means of receiving the eligible component functionality, without regard to the value of the ineligible component, costs need not be allocated between the eligible and ineligible components. Discounts shall be provided on the full cost of the product or service. An ineligible component is "ancillary" if a price for the ineligible component cannot be determined separately and independently from the price of the eligible components, and the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality.

(3) The Administrator shall utilize the cost allocation requirements of this paragraph in evaluating mixed eligibility requests under paragraph (e)(1) of this section.

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

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

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

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

(4) The service provider listed on the FCC Form 473 certifies that the invoices that are submitted by this Service Provider to the Billed Entity for reimbursement pursuant to Billed Entity Applicant Reimbursement Forms (FCC Form 472) are accurate and represent payments from the Billed Entity to the

Service Provider for equipment and services provided pursuant to E-rate program rules.

(5) The service provider listed on the FCC Form 473 certifies that the bills or invoices issued by this service provider to the billed entity are for equipment and services eligible for universal service support by the Administrator, and exclude any charges previously invoiced to the Administrator by the service provider.

47 C.F.R. § 54.505 provides:

Discounts.

(a) ***Discount mechanism.*** Discounts for eligible schools and libraries shall be set as a percentage discount from the pre-discount price.

(b) ***Discount percentages.*** Except as provided in paragraph (f), the discounts available to eligible schools and libraries shall range from 20 percent to 90 percent of the pre-discount price for all eligible services provided by eligible providers, as defined in this subpart. The discounts available to a particular school, library, or consortium of only such entities shall be determined by indicators of poverty and high cost.

(1) For schools and school districts, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. School districts shall divide the total number of students eligible for the National School Lunch Program within the school district by the total number of students within the school district to arrive at a percentage of students eligible. This percentage rate shall then be applied to the discount matrix to set a discount rate for the supported services purchased by all schools within the school district. Independent charter schools, private schools, and other eligible educational facilities should calculate a single discount percentage rate based on the total number of students under the control of the central administrative agency.

(2) For libraries and library consortia, the level of poverty shall be based on the percentage of the

student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism in the public school district in which they are located and should use that school district's level of poverty to determine their discount rate when applying as a library system or as an individual library outlet within that system. When a library system has branches or outlets in more than one public school district, that library system and all library outlets within that system should use the address of the central outlet or main administrative office to determine which school district the library system is in, and should use that school district's level of poverty to determine its discount rate when applying as a library system or as one or more library outlets. If the library is not in a school district, then its level of poverty shall be based on an average of the percentage of students eligible for the national school lunch program in each of the school districts that children living in the library's location attend.

(3) The Administrator shall classify schools and libraries as "urban" or "rural" according to the following designations.

> (i) The Administrator shall designate a school or library as "urban" if the school or library is located in an urbanized area or urban cluster area with a population equal to or greater than 25,000, as determined by the most recent rural-urban classification by the Bureau of the Census. The Administrator shall designate all other schools and libraries as "rural."

(4) School districts, library systems, or other billed entities shall calculate discounts on supported services described in § 54.502(a) that are shared by

two or more of their schools, libraries, or consortia members by calculating an average discount based on the applicable district-wide discounts of all member schools and libraries. School districts, library systems, or other billed entities shall ensure that, for each year in which an eligible school or library is included for purposes of calculating the aggregate discount rate, that eligible school or library shall receive a proportionate share of the shared services for which support is sought. For schools, the discount shall be a simple average of the applicable district-wide percentage for all schools sharing a portion of the shared services. For libraries, the average discount shall be a simple average of the applicable discounts to which the libraries sharing a portion of the shared services are entitled.

(c) ***Matrices.*** Except as provided in paragraphs (d), (f), and (g) of this section, the Administrator shall use the following matrices to set discount rates to be applied to eligible category one and category two services purchased by eligible schools, school districts, libraries, or consortia based on the institution's level of poverty and location in an "urban" or "rural" area.

	Category one schools and libraries discount matrix		Category two schools and libraries discount matrix	
	Discount level		Discount level	
% of students eligible for national school lunch program	Urban discount	Rural discount	Urban discount	Rural discount
<1	20	25	20	25
1-19	40	50	40	50
20-34	50	60	50	60
35-49	60	70	60	70
50-74	80	80	80	80
75-100	90	90	85	85

(d) ***Voice Services.*** Discounts for category one voice services shall be reduced by 20 percentage points off applicant discount percentage rates for each funding year starting in funding year 2015, and reduced by an additional 20 percentage points off applicant discount percentage rates each subsequent funding year.

(e) ***Interstate and intrastate services.*** Federal universal service support for schools and libraries shall be provided for both interstate and intrastate services.

(1) Federal universal service support under this subpart for eligible schools and libraries in a state is contingent upon the establishment of intrastate discounts no less than the discounts applicable for interstate services.

(2) A state may, however, secure a temporary waiver of this latter requirement based on unusually compelling conditions.

(f) ***Additional discounts for State matching funds for special construction.*** Federal universal service discounts shall be based on the price of a service prior to the application of any state-provided support for schools or libraries. When a governmental entity described below provides funding for special construction charges for networks that meet the long-term connectivity targets for the schools and libraries universal service support program, the Administrator shall match the governmental entity's contribution as provided for below:

(1) ***All E-rate applicants.*** When a State government provides funding for special construction charges for a broadband connection to a school or library the Administrator shall match the State's contribution on a one-dollar-to-one-dollar basis up to an additional 10 percent discount, provided however that the total support from federal universal service and the State may not exceed 100 percent.

(2) ***Tribal schools.*** When a State government, Tribal government, or federal agency provides funding for special construction charges for a

broadband connection to a school operated by the Bureau of Indian Education or by a Tribal government, the Administrator shall match the governmental entity's contribution on a one-dollar-to-one-dollar basis up to an additional 10 percent discount, provided however that the total support from federal universal service and the governmental entity may not exceed 100 percent.

(3) ***Tribal libraries.*** When a State government, Tribal government, or federal agency provides funding for special construction charges for a broadband connection to a library operated by Tribal governments, the Administrator shall match the governmental entity's contribution on a one-dollar-to-one-dollar basis up to an additional 10 percent discount, provided however that the total support from federal universal service and the governmental entity may not exceed 100 percent.

(g) ***Tribal Library Category Two Discount Level.*** For the costs of category two services, Tribal libraries at the highest discount level shall receive a 90 percent discount.

47 C.F.R. § 54.506 provides:

Duplicate support.

Entities participating in the E-Rate program may not seek E-Rate support or reimbursement for eligible equipment and services that have been purchased and reimbursed with other Federal, State, Tribal, or local funding.

47 C.F.R. §§ 54.508-.509 provides:

[Reserved]

47 C.F.R. § 54.513 provides:

Resale and transfer of services.

(a) ***Prohibition on resale.*** Eligible supported services provided at a discount under this subpart shall not be sold, resold, or transferred in consideration of money or any other thing of value, except as provided in paragraph (b) of this section.

(b) ***Disposal of obsolete equipment components of eligible services.*** Eligible equipment components of eligible services purchased at a discount under this subpart shall be considered obsolete if the equipment components have been installed for at least five years, except that Wi-Fi hotspots for off-premises use shall be considered obsolete after three years. Obsolete equipment components of eligible services may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded.

(c) ***Permissible fees.*** This prohibition on resale shall not bar schools, school districts, libraries, and library consortia from charging either computer lab fees or fees for classes in how to navigate over the Internet. There is no prohibition on the resale of services that are not purchased pursuant to the discounts provided in this subpart.

(d) Eligible services and equipment components of eligible services purchased at a discount under this subpart shall not be transferred, with or without consideration of money or any other thing of value, for a period of three years after purchase, except that eligible services and equipment components of eligible services may be transferred to another eligible school or library in the event that the particular location where the service originally was received is permanently or temporarily closed, or is part of the

same eligible school district or library system as the location receiving the eligible services or equipment components of eligible services. If an eligible service or equipment component of a service is transferred pursuant to this paragraph, both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years.

47 C.F.R. § 54.514 provides:

Payment for discounted services.

(a) ***Invoice filing deadline.*** Invoices must be submitted to the Administrator:

(1) 120 days after the last day to receive service;

(2) 120 days after the date of the FCC Form 486 Notification Letter; or

(3) 120 days after the date of the Revised Funding Commitment Decision Letter approving a post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request, whichever is latest.

(b) ***Invoice deadline extension.*** In advance of the deadline calculated pursuant to paragraph (a) of this section, service providers or billed entities may request a one-time extension of the invoicing deadline. The Administrator shall grant a 120 day extension of the invoice filing deadline, if it is timely requested.

(c) ***Choice of payment method.*** Service providers providing discounted services under this subpart in any funding year shall, prior to the submission of the FCC 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 Administrator.

47 C.F.R. § 54.515 provides:

Distributing support.

(a) A telecommunications carrier providing services eligible for support under this subpart to eligible schools and libraries may, at the election of the carrier, treat the amount eligible for support under this subpart as an offset against the carrier's universal service contribution obligation for the year in which the costs for providing eligible services were incurred or receive a direct reimbursement from the Administrator for that amount. Carriers shall elect in January of each year the method by which they will be reimbursed and shall remain subject to that method for the duration of the calendar year. Any support amount that is owed a carrier that fails to remit its monthly universal service contribution obligation, however, shall first be applied as an offset to that carrier's contribution obligation. Such a carrier shall remain subject to the offsetting method for the remainder of the calendar year in which it failed to remit their monthly universal service obligation. A carrier that continues to be in arrears on its universal service contribution obligations at the end of a calendar year shall remain subject to the offsetting method for the next calendar year.

(b) If a telecommunications carrier elects to treat the amount eligible for support under this subpart as an offset against the carrier's universal service contribution obligation and the total amount of support owed to the carrier exceeds its universal service obligation, calculated on an annual basis, the carrier shall receive a direct reimbursement in the amount of the difference. Any such reimbursement due a carrier shall be submitted to that carrier no

later than the end of the first quarter of the calendar year following the year in which the costs were incurred and the offset against the carrier's universal service obligation was applied.

47 C.F.R. § 54.516 provides:

Auditing and inspections.

(a) ***Recordkeeping requirements*** —

(1) ***Schools, libraries, and consortia.*** Schools, libraries, and any consortium that includes schools or libraries shall retain all documents related to the application for, receipt, and delivery of supported services for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well. Subject to paragraph (e) of this section, schools, libraries, and consortia shall maintain asset and inventory records for a period of 10 years after purchase.

(2) ***Service providers.*** Service providers shall retain documents related to the delivery of supported services for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well.

(b) ***Production of records.*** Schools, libraries, consortia, and service providers shall produce such records at the request of any representative (including any auditor) appointed by a State education department, the Administrator, the FCC, or any local, State or Federal agency with jurisdiction over the entity. Where necessary for compliance with Federal or State privacy laws, E-Rate participants may produce records regarding students, school staff, and

library patrons in an anonymized or deidentified format. When requested by the Administrator or the Commission, as part of an audit or investigation, schools, libraries, and consortia must seek consent to provide personally identifiable information from a student who has reach age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

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

(d) ***Inspections.*** Schools, libraries, consortia and service providers shall permit any representative (including any auditor) appointed by a state education department, the Administrator, the Commission or any local, state or federal agency with jurisdiction over the entity to enter their premises to conduct E-rate compliance inspections.

47 C.F.R. §§ 54.517-.518 provides:

[Reserved]

47 C.F.R. § 54.519 provides:

State telecommunications networks.

(a) ***Telecommunications services.*** State telecommunications networks may secure discounts under the universal service support mechanisms on supported telecommunications services (as described in § 54.502(a)) on behalf of eligible schools and libraries (as described in § 54.501) or consortia that include an eligible school or library. Such state telecommunications networks shall pass on such discounts to eligible schools and libraries and shall:

(1) Maintain records listing each eligible school and library and showing the basis for each eligibility determination;

(2) Maintain records demonstrating the discount amount to which each eligible school and library is entitled and the basis for such determination;

(3) Take reasonable steps to ensure that each eligible school or library receives a proportionate share of the shared services;

(4) Request that service providers apply the appropriate discount amounts on the portion of the supported services used by each school or library;

(5) Direct eligible schools and libraries to pay the discounted price; and

(6) Comply with the competitive bid requirements set forth in § 54.503.

(b) ***Internet access and installation and maintenance of internal connections.*** State telecommunications networks either may secure discounts on Internet access and installation and maintenance of internal connections in the manner

described in paragraph (a) of this section with regard to telecommunications, or shall be eligible, consistent with § 54.502(a), to receive universal service support for providing such services to eligible schools, libraries, and consortia including those entities.

47 C.F.R. § 54.520 provides:

Children's Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

(a) ***Definitions.***

(1) ***School.*** For the purposes of the certification requirements of this rule, school means school, school board, school district, local education agency or other authority responsible for administration of a school.

(2) ***Library.*** For the purposes of the certification requirements of this rule, library means library, library board or authority responsible for administration of a library.

(3) ***Billed entity.*** Billed entity is defined in § 54.500. In the case of a consortium, the billed entity is the lead member of the consortium.

(4) ***Statutory definitions.***

(i) The term "minor" means any individual who has not attained the age of 17 years.

(ii) The term "obscene" has the meaning given such term in 18 U.S.C. 1460.

(iii) The term "child pornography" has the meaning given such term in 18 U.S.C. 2256.

(iv) The term "harmful to minors" means any picture, image, graphic image file, or other visual depiction that—

(A) Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(B) Depicts, describes, or represents, in a

patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(C) Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(v) The terms "sexual act" and "sexual contact" have the meanings given such terms in 18 U.S.C. 2246.

(vi) The term "technology protection measure" means a specific technology that blocks or filters Internet access to the material covered by a certification under paragraph (c) of this section.

(b) ***Who is required to make certifications?***

(1) A school or library that receives discounts for Internet access and internal connections services under the federal universal service support mechanism for schools and libraries, must make such certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(2) Schools and libraries that only receive discounts for telecommunications services under the federal universal service support mechanism for schools and libraries are not subject to the requirements 47 U.S.C. 254(h) and (l), but must indicate, pursuant to the certification requirements in paragraph (c) of this section, that they only receive discounts for telecommunications services.

(c) ***Certifications required under 47 U.S.C. 254(h) and (l)*** —

(1) ***Schools.*** The billed entity for a school that receives discounts for Internet access or internal connections must certify on FCC Form 486 that an Internet safety policy is being enforced. If the school is an eligible member of a consortium but is not the billed entity for the consortium, the school must certify instead on FCC Form 479 ("Certification to Consortium Leader of Compliance with the Children's Internet Protection Act") that an Internet safety policy is being enforced.

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The school must enforce the operation of the technology protection measure during use of its computers with Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under paragraph (a)(1) of this section may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose. This Internet safety policy must also include monitoring the online activities of minors. Beginning July 1, 2012, schools' Internet safety policies must provide for educating minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms and cyberbullying awareness and response.

(ii) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(l) must address all of the following issues:

(A) Access by minors to inappropriate matter on the Internet and World Wide Web,

(B) The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications,

(C) Unauthorized access, including so-called "hacking," and other unlawful activities by minors online;

(D) Unauthorized disclosure, use, and dissemination of personal information regarding minors; and

(E) Measures designed to restrict minors' access to materials harmful to minors.

(iii) A school must satisfy its obligations to make certifications by making one of the following certifications required by paragraph (c)(1) of this section on FCC Form 486:

(A) The recipient(s) of service represented in the Funding Request Number(s) on this Form 486 has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any

necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) on this Form 486 is (are) receiving discount services only for telecommunications services, or is (are) receiving support under the Federal universal service support mechanism for schools and libraries for internet access or internal connections that will not be used in conjunction with a computer owned by the recipient(s).

(2) ***Libraries.*** The billed entity for a library that receives discounts for Internet access and internal connections must certify, on FCC Form 486, that an Internet safety policy is being enforced. If the library is an eligible member of a consortium but is not the billed entity for the consortium, the library must instead certify on FCC Form 479 ("Certification to Consortium Leader of Compliance with the Children's Internet Protection Act") that an Internet safety policy is being enforced.

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The library must enforce the operation of the technology protection measure during use of its

computers with Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under paragraph (a)(2) of this section may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

(ii) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(l) must address all of the following issues:

(A) Access by minors to inappropriate matter on the Internet and World Wide Web;

(B) The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;

(C) Unauthorized access, including so-called "hacking," and other unlawful activities by minors online;

(D) Unauthorized disclosure, use, and dissemination of personal information regarding minors; and

(E) Measures designed to restrict minors' access to materials harmful to minors.

(iii) A library must satisfy its obligations to make certifications by making one of the following certifications required by paragraph (c)(2) of this section on FCC Form 486:

(A) The recipient(s) of service represented in the Funding Request Number(s) on this Form 486 has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) on this Form 486 is (are) receiving discount services only for telecommunications services, or is (are) receiving support under the Federal universal service support mechanism for schools and libraries for internet access or internal connections that will not be used in conjunction with a computer owned by the recipient(s).

(3) ***Certifications required from consortia members and billed entities for consortia.***

(i) The billed entity of a consortium, as defined in paragraph (a)(3) of this section, other than one requesting only discounts on telecommunications services for consortium members, must collect from the authority for each of its school and library members, one of the following signed certifications on FCC Form 479 ("Certification to Consortium Leader of Compliance with the Children's Internet Protection Act"), which must be submitted to the

billed entity consistent with paragraph (c)(1) or paragraph (c)(2) of this section:

(A) The recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments, and for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) receiving discount services only for telecommunications services; and, or is (are) receiving support under the Federal universal service support mechanism for schools and libraries for internet access or

internal connections that will not be used in conjunction with a computer owned by the recipient(s); and

(ii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, must make one of the following two certifications on FCC Form 486: "I certify as the Billed Entity for the consortium that I have collected duly completed and signed Forms 479 from all eligible members of the consortium."; or I certify "as the Billed Entity for the consortium that the only services that I have been approved for discounts under the universal service support on behalf of eligible members of the consortium are telecommunications services, and therefore the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), do not apply."; and

(iii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, who filed an FCC Form 471 as a "consortium application" and who is also a recipient of services as a member of that consortium must select one of the certifications under paragraph (c)(3)(i) of this section on FCC Form 486.

(4) ***Local determination of content.*** A determination regarding matter inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may establish criteria for making such determination; review the determination made by the certifying school, school board, school district, local educational agency, library, or other authority; or consider the

criteria employed by the certifying school, school board, school district, local educational agency, library, or other authority in the administration of the schools and libraries universal service support mechanism.

(5) ***Availability for review.*** Each Internet safety policy adopted pursuant to 47 U.S.C. 254(l) shall be made available to the Commission, upon request from the Commission, by the school, school board, school district, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of the review of such Internet safety policy by the Commission.

(d) ***Failure to provide certifications*** —

(1) ***Schools and libraries.*** A school or library that knowingly fails to submit certifications as required by this section, shall not be eligible for discount services under the federal universal service support mechanism for schools and libraries until such certifications are submitted.

(2) ***Consortia.*** A billed entity's knowing failure to collect the required certifications from its eligible school and library members or knowing failure to certify that it collected the required certifications shall render the entire consortium ineligible for discounts under the federal universal service support mechanism for school and libraries.

(3) ***Reestablishing eligibility.*** At any time, a school or library deemed ineligible for discount services under the federal universal service support mechanism for schools and libraries because of failure to submit certifications required by this section, may reestablish eligibility for discounts by providing the required certifications to the Administrator and the

Commission.

(e) ***Failure to comply with the certifications*** —

(1) ***Schools and libraries.*** A school or library that knowingly fails to ensure the use of computers in accordance with the certifications required by this section, must reimburse any funds and discounts received under the federal universal service support mechanism for schools and libraries for the period in which there was noncompliance.

(2) ***Consortia.*** In the case of consortium applications, the eligibility for discounts of consortium members who ensure the use of computers in accordance with the certification requirements of this section shall not be affected by the failure of other school or library consortium members to ensure the use of computers in accordance with such requirements.

(3) ***Reestablishing compliance.*** At any time, a school or library deemed ineligible for discounts under the federal universal service support mechanism for schools and libraries for failure to ensure the use of computers in accordance with the certification requirements of this section and that has been directed to reimburse the program for discounts received during the period of noncompliance, may reestablish compliance by ensuring the use of its computers in accordance with the certification requirements under this section. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school or library shall be eligible for discounts under the universal service mechanism.

(f) ***Waivers based on state or local procurement rules and regulations and competitive bidding requirements.*** Waivers shall be granted to schools and libraries when the authority responsible for making the certifications required by this section, cannot make the required certifications because its state or local procurement rules or regulations or competitive bidding requirements, prevent the making of the certification otherwise required. The waiver shall be granted upon the provision, by the authority responsible for making the certifications on behalf of schools or libraries, that the schools or libraries will be brought into compliance with the requirements of this section, for schools, before the start of the third program year after April 20, 2001 in which the school is applying for funds under this title, and, for libraries, before the start of Funding Year 2005 or the third program year after April 20, 2001, whichever is later.

(g) ***Funding year certification deadlines.*** For Funding Year 2003 and for subsequent funding years, billed entities shall provide one of the certifications required under paragraph (c)(1), (c)(2) or (c)(3) of this section on an FCC Form 486 in accordance with the existing program guidelines established by the Administrator.

(h) ***Public notice; hearing or meeting.*** A school or library shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

47 C.F.R. § 54.522 provides:

[Reserved]

47 C.F.R. § 54.523 provides:

Payment for the non-discount portion of supported services.

An eligible school, library, or consortium must pay the non-discount portion of services or products purchased with universal service discounts. An eligible school, library, or consortium may not receive rebates for services or products purchased with universal service discounts. For the purpose of this rule, the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of the non-discount portion of the supported services.

47 C.F.R. § 54.712 provides, in relevant part:

Contributor recovery of universal service costs from end users.

(a) Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.

47 C.F.R. § 63.71 provides:

Procedures for discontinuance, reduction or impairment of service by domestic carriers.

Any domestic carrier that seeks to discontinue, reduce or impair service shall be subject to the following procedures:

(a) The carrier shall notify all affected customers of the planned discontinuance, reduction, or impairment of service and shall notify and submit a copy of its application to the public utility commission and to the Governor of the State in which the discontinuance, reduction, or impairment of service is proposed; to any federally-recognized Tribal Nations with authority over the Tribal lands in which the discontinuance, reduction, or impairment of service is proposed; and also to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon, Washington, DC 20301. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice. For purposes of this section, notice by email constitutes notice in writing. Notice shall include the following:

(1) Name and address of carrier;

(2) Date of planned service discontinuance, reduction or impairment;

(3) Points of geographic areas of service affected;

(4) Brief description of type of service affected; and

(5) One of the following statements:

(i) If the carrier is non-dominant with respect to the service being discontinued, reduced or impaired, the notice shall state: The FCC will

normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(ii) If the carrier is dominant with respect to the service being discontinued, reduced or impaired, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 30 days after the Commission releases public notice of the proposed discontinuance. You may file your comments

electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(6) For applications to discontinue, reduce, or impair an existing retail service as part of a technology transition, as defined in § 63.60(i), except for applications meeting the requirements of paragraph (f)(2)(ii) of this section, in order to be eligible for automatic grant under paragraph (f) of this section:

(i) A statement that any service offered in place of the service being discontinued, reduced, or impaired may not provide line power;

(ii) The information required by § 12.5(d)(1) of this chapter;

(iii) A description of any security responsibilities the customer will have regarding the replacement service; and

(iv) A list of the steps the customer may take to ensure safe use of the replacement service.

(b) If a carrier uses email to provide notice to affected customers, it must comply with the following requirements in addition to the requirements generally applicable to the notice:

(1) The carrier must have previously obtained express, verifiable, prior approval from retail customers to send notices via email regarding their service in general, or planned discontinuance, reduction, or impairment in particular;

(2) A carrier must ensure that the subject line of the message clearly and accurately identifies the subject matter of the email; and

(3) Any email notice returned to the carrier as undeliverable will not constitute the provision of notice to the customer.

(c) The carrier shall file with this Commission, on or after the date on which notice has been given to all affected customers, an application which shall contain the following:

(1) Caption—"Section 63.71 Application";

(2) Information listed in § 63.71(a) (1) through (4) above;

(3) Brief description of the dates and methods of notice to all affected customers;

(4) Whether the carrier is considered dominant or non-dominant with respect to the service to be discontinued, reduced or impaired; and

(5) Any other information the Commission may require.

(d) [Reserved]

(e) Discontinuance applications and all related attachments to the application filed under this section shall be filed through the "Submit a Non-Docketed Filing" module of the Commission's Electronic Comment Filing System.

(f)

(1) The application to discontinue, reduce, or impair service, if filed by a domestic, non-dominant carrier, or any carrier meeting the requirements of paragraph (f)(2)(ii) of this section, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. The application to discontinue, reduce, or impair service, if filed by a domestic, dominant carrier, shall be automatically granted on the 60th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. For purposes of this section, an application will be deemed filed on the date the Commission releases public notice of the filing.

(2) An application to discontinue, reduce, or impair an existing retail service as part of a technology transition, as defined in § 63.60(i), may be automatically granted only if:

(i) The applicant provides affected customers with the notice required under paragraph (a)(6) of this section, and the application contains the showing or certification described in § 63.602(b); or

(ii) The applicant:

(A) Offers a stand-alone interconnected VoIP service, as defined in § 9.3 of this chapter, throughout the affected service area, and

(B) At least one other alternative stand-alone facilities-based wireline or wireless voice service is available from another unaffiliated

provider throughout the affected service area.

(iii) For purposes of this paragraph (f)(2), "stand-alone" means that a customer is not required to purchase a separate broadband service to access the voice service.

(g) Notwithstanding any other provision of this section, a carrier is not required to file an application to discontinue, reduce, or impair a service for which the requesting carrier has had no customers or reasonable requests for service during the 30-day period immediately preceding the discontinuance.

(h) An application to discontinue, reduce, or impair an existing retail service as part of a technology transition, as defined in § 63.60(i), except for an application meeting the requirements of paragraphs (f)(2)(ii) and (k) of this section, shall contain the information required by § 63.602. The certification or showing described in § 63.602(b) is only required if the applicant seeks eligibility for automatic grant under paragraph (f)(2)(i) of this section.

(i) An application to discontinue, reduce, or impair a service filed by a competitive local exchange carrier in response to a copper retirement notice filed pursuant to § 51.333 of this chapter shall be automatically granted on the effective date of the copper retirement; provided that:

(1) The competitive local exchange carrier submits the application to the Commission for filing at least 40 days prior to the copper retirement effective date; and

(2) The application includes a certification, executed by an officer or other authorized representative of the applicant and meeting the requirements of § 1.16 of this chapter, that the copper

retirement is the basis for the application.

(j) Procedures for discontinuance, reduction or impairment of international services are in § 63.19.

(k) Notwithstanding paragraphs (a)(5), (a)(6), and (f) of this section, the following requirements apply to applications for legacy voice services or data services operating at speeds lower than 1.544 Mbps:

(1) Where any carrier, dominant or non-dominant, seeks to:

(i) Grandfather any legacy voice service;

(ii) Grandfather any data service operating at speeds lower than 1.544 Mbps; or

(iii) Discontinue, reduce, or impair a legacy data service operating at speeds lower than 1.544 Mbps that has been grandfathered for a period of no less than 180 days consistent with the criteria established in paragraph (k)(2) of this section, the notice shall state:

The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 10 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications

Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(2) For applications to discontinue, reduce, or impair a legacy data service operating at speeds lower than 1.544 Mbps that has been grandfathered for a period of no less than 180 days, in order to be eligible for automatic grant under paragraph (k)(4) of this section, an applicant must include in its application a statement confirming that it received Commission authority to grandfather the service at issue at least 180 days prior to filing the current application.

(3) An application filed by any carrier seeking to grandfather any legacy voice service or to grandfather any data service operating at speeds lower than 1.544 Mbps for existing customers shall be automatically granted on the 25th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective.

(4) An application filed by any carrier seeking to discontinue, reduce, or impair a legacy data service operating at speeds lower than 1.544 Mbps that has been grandfathered for 180 days or more preceding the filing of the application, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant, unless the Commission has notified the

applicant that the grant will not be automatically effective.

(l) Notwithstanding paragraphs (a)(5), (a)(6), and (f) of this section, the following requirements apply to applications for data services operating at or above 1.544 Mbps in both directions but below 25 Mbps download, and 3 Mbps upload, provided that the carrier offers alternative fixed data services in the affected service area at speeds of at least 25 Mbps download and 3 Mbps upload:

(1) Where any carrier, dominant or non-dominant, seeks to:

(i) Grandfather such data service; or

(ii) Discontinue, reduce, or impair such data service that has been grandfathered for a period of no less than 180 days consistent with the criteria established in paragraph (l)(2) of this section, the notice to all affected customers shall state:

The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 10 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau,

Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(2) For applications to discontinue, reduce, or impair such data service that has been grandfathered for a period of no less than 180 days, in order to be eligible for automatic grant under paragraph (l)(4) of this section, an applicant must include in its application a statement confirming that it received Commission authority to grandfather the service at issue at least 180 days prior to filing the current application.

(3) An application seeking to grandfather such a data service shall be automatically granted on the 25th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective.

(4) An application seeking to discontinue, reduce, or impair such a data service that has been grandfathered under this section for 180 days or more preceding the filing of the application, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant, unless the Commission has notified the applicant that the grant will not be automatically effective.