

(4) That the Paperwork Reduction Act does not apply because the amendments do not impose any additional reporting or record-keeping requirements;

(5) That the Small Business Regulatory Enforcement Fairness Act of 1996 does not apply because it is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, and would not result in an annual effect on the economy of \$100 million or more; result in an increase in cost or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets; and

(6) That Executive Order 13132, "Federalism" does not apply because it would not have substantial direct effects on the States or the relationship between the national government and the States.

#### List of Subjects in 45 CFR Part 2553

Aged, Grant programs—social programs, Volunteers.

For the reasons set forth in the preamble, the Corporation for National and Community Service proposes to amend 45 CFR part 2553 as follows:

#### PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

1. The authority citation for part 2553 continues to read as follows:

**Authority:** 42 U.S.C. 4950 *et seq.*

2. In § 2553.43, add a new paragraph (e) to read as follows:

\* \* \* \* \*

(e) Other Volunteer Expenses. RSVP volunteers may be reimbursed for expenses incurred while performing their volunteer assignments provided these expenses are described in the Memorandum of Understanding negotiated with the volunteer station to which the volunteer is assigned.

#### § 2553.73 [Amended]

3. In § 2553.73, remove paragraph (d) and redesignate paragraphs (e) through (i) as paragraphs (d) through (h).

Dated: February 3, 2004.

**Tess Scannell,**

*Director, National Senior Service Corps.*

[FR Doc. 04-2803 Filed 2-9-04; 8:45 am]

BILLING CODE 6050--\$5-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 02-6; FCC 03-323]

#### Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission addresses several matters related to the administration of the schools and libraries universal service mechanism (also known as the e-rate program). The Commission seeks comment on several issues, including whether we should change the discount matrix used to determine the level of discounts for which applicants are eligible, the current competitive bidding process, the definition of "rural area" used in the program, the definition of Internet access, current rules relating to wide area networks, and current procedures for recovery of funds. The Commission also seeks comment on measures to limit waste, fraud, and abuse and improve the Commission's ability to enforce the rules governing the program.

**DATES:** Comments are due on or before March 11, 2004. Reply comments are due on or before April 12, 2004. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 12, 2004.

**ADDRESSES:** All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov), and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to [Kim.A.Johnson@omb.eop.gov](mailto:Kim.A.Johnson@omb.eop.gov) or by fax to 202-395-5167. Parties should also send three paper copies of their filings to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445

Twelfth Street, SW., Room 5-B540, Washington, DC 20554. See Supplemental Information for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Kathy Tofigh, Attorney, at (202) 418-1553, Karen Franklin, Attorney, at (202) 418-7706, or Jennifer Schneider, Attorney, at (202) 418-0425 in the Telecommunications Access Policy Division, Wireline Competition Bureau. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202-418-0214, or via the Internet at [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (*Second FNPRM*) in CC Docket No. 02-6; FCC 03-323, released on December 23, 2003. A companion Order was also released in CC Docket No. 02-6; FCC 03-323, on December 23, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

#### I. Introduction

1. In this Second Further Notice of Proposed Rulemaking, we address several matters related to the administration of the schools and libraries universal service mechanism (also known as the e-rate program). In the Second FNPRM, we seek comment on several issues, including whether we should change (1) the discount matrix used to determine the level of discounts for which applicants are eligible, (2) the current competitive bidding process, (3) the definition of "rural area" used in the program, (4) the definition of Internet access, (5) current rules relating to wide area networks, and (6) current procedures for recovery of funds. We also seek comment on measures to limit waste, fraud, and abuse and improve the Commission's ability to enforce the rules governing the program. Finally, we seek additional comment on how to ensure the goals of section 254 continue to be met.

#### II. Second Further Notice of Proposed Rulemaking

##### A. Discount Matrix

2. Under the Commission's rules, eligible schools and libraries may receive discounts ranging from 20 percent to 90 percent of the pre-discount price of eligible services, based on indicators of need. We seek comment on the effectiveness and efficiency of the discount matrix used to determine support payments for eligible

applicants. In particular, we seek comment on changing the matrix to adjust the levels of discounts received by schools and libraries for supported services. We also particularly seek comment from the State members of the Federal-State Joint Board on Universal Service, and commit to ongoing informal consultations on these issues.

3. Interested parties have indicated that an altered discount matrix may better serve the schools and libraries program. In response to the *Schools and Libraries NPRM*, 67 FR 7327, February 19, 2002, several commenters asserted that reducing the discount rate would make applicants more accountable for their funding requests and dissuade vendors from improperly offering to forgive or refund the 10 percent contribution required of applicants in the highest discount band. In addition, commenters stated that altering the discount rate would be an effective way to increase the availability of funds for eligible applicants outside the highest discount band. While the *Universal Service Order*, 62 FR 32862, June 17, 1997, prioritized support for entities with the greatest level of economic disadvantage, some interested parties have suggested that greater emphasis should be given to the equitable distribution of E-rate funds to eligible applicants from all discount bands, to ensure that they have comparable access to advanced telecommunications and information services. Participants in the Commission's Public Forum on the E-rate program in May 2003 also suggested that the Commission amend its discount matrix, and USAC's Task Force on Waste, Fraud, and Abuse has recommended that the discount level for internal connections be lowered from 90 percent to 80 percent.

4. For these reasons, we seek comment on whether the Commission should amend the discount matrix to reduce the discounts available in some or all of the discount bands, including the current 90 percent discount band. We propose that such a change, if adopted, become effective in Funding Year 2005. We seek comment on whether the current discount matrix provides sufficient incentives for schools and libraries to limit funding requests to services that can be efficiently used and for vendors to competitively price their services. We also seek comment on whether it would be appropriate to adjust the discount matrix in order to expand the reach of funding to lower discount bands. We note that the rules we adopt in the companion Order, limiting the availability of support for internal connections to twice every five years, is

intended to make support available to more applicants on a regular basis. How does this action affect the need to adjust the discount matrix? We further seek comment on which discount rates in the matrix, if any, other than the highest discount rate band, should be reduced. Additionally, we seek comment on whether developing a separate discount matrix for Priority Two funding would effectively address issues of waste, fraud, and abuse and expand the reach of funds to a larger number of schools and libraries. Many parties have suggested that, at a minimum, the maximum discount level for internal connections be lowered to 70 percent. What would be the effect of such a change? While we seek comment generally on revisions to the discount matrix, we note that we are not seeking comment on whether to combine the existing Priority One and Priority Two funding categories.

5. We ask that commenters address implementation issues surrounding a change in the discount matrix. Currently, in the event that there are not sufficient funds remaining under the annual cap to support all requests for discounts at a particular discount level, funds are allocated on a pro rata basis among applicants at that discount level. Should funds continue to be allocated among all applicants at the discount level on a pro rata basis, or is there some other means of allocating the remaining funds? We seek comment on how changes to the discount matrix should be implemented across all levels of need. Should certain existing discount levels be combined? For example, should the 90 and 80 percent discount levels be combined? In the alternative, should each discount level be reduced by a fixed amount? For example, should each discount level be reduced by 10 percent? Is there some other method of re-setting other discount levels below the highest discount level? Finally, we seek comment on how the transition to a new discount matrix, if adopted, should be implemented in order to minimize burdens on applicants and disruptions to the program.

#### *B. Competitive Bidding Process*

6. We seek comment on the current process of applying for discounted services. Pursuant to competitive bidding requirements, eligible schools and libraries that wish to receive support for discounted services must submit FCC Form 470 to the Administrator. The FCC Form 470 describes the applicant's telecommunication needs and notifies service providers of the applicant's intent to contract for eligible services.

After the FCC Form 470 has been posted to the Administrator's website for 28 days, the applicant may contract for the provision of services and file an FCC Form 471, requesting discounts for the services. We seek comment on whether this process typically results in competitive bids, and ask commenters to elaborate on the characteristics of recipients that do not ordinarily receive multiple bids. We seek comment on whether this process continues to suit the needs of the schools and libraries program, or if a different application process would better suit the program's needs. We specifically request that commenters discuss how the current process and any proposed processes address the Commission's goal of minimizing waste, fraud, and abuse in the program, while encouraging the benefits of competition as set out in the *Universal Service Order*.

7. A number of parties have suggested that the current Form 470 posting process should be modified for certain types of services. For instance, one participant in the Commission's public forum on the ways to improve the administration of the schools and libraries mechanism suggested that the Form 470 process be eliminated for requests for funding local telephone service. Others suggest that the FCC simplify the application process for applications that only seek funding for local and long distance service (including cell phone service), or that seek to continue an existing telecommunications service or Internet access service. We seek comment on whether it would serve our goals to simplify or eliminate the current FCC Form 470 posting process in such situations. What other mechanisms would ensure that our objective of ensuring that applicants are aware of potential service providers and select reasonably priced services is met? What would be the costs and benefits of such a change?

8. We also seek comment on how we can ensure that applicants select cost effective services in situations in which no entity, or only one entity, responds to a Form 470 posting. In some situations, there may be only one service provider capable of, or willing to, provide the requested service. How can we ensure that the prices for such services are reasonable, and do not waste scarce universal service funds? Should we adopt bright line rules that would impose limits on the amount of discounts that could be available in such situations?

9. We further seek comment on whether the Commission, as a condition of support, should require that each

service provider certify that the prices in its bid have been independently developed. Such a certification could be modeled after the certificate of independent price determination required under federal acquisition regulations. A fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources. Adopting a certification requirement would ensure that service providers are fully aware that they may not communicate with other service providers in a way that subverts the competitive bidding process. Moreover, service providers that violate a non-collusion certification will, in many instances, also violate federal antitrust laws. Requiring certifications of independent pricing would better enable the Commission or other government agencies to enforce the Commission's rules and to seek criminal sanctions where appropriate. We also seek comment on whether the Commission's rules should specifically require that records related to the competitive bidding process for services must be maintained by both the recipient and the service provider for a period of five years.

#### C. Definition of Rural Area

10. We seek comment on modifications to the definition of "rural area" for the schools and libraries mechanism. Currently, an area qualifies as rural under our rules for the schools and libraries support mechanism if it is located in a non-metropolitan county as defined by the Office of Management and Budget or is specifically identified in the Goldsmith Modification to 1990 Census data published by the Office of Rural Health Care Policy (ORHP). We understand, however, that ORHP no longer utilizes the definition adopted by the Commission in 1997, and that there will be no Goldsmith Modification to the most recent 2000 Census data.

11. We seek comment on whether we should adopt a new definition of rural area for the schools and libraries program, and, if so, what that new definition should be. We seek comment on whether there are definitions for rural areas used by other government agencies that would be appropriate for the schools and libraries program. In addition to describing any proposed new definitions, we ask commenters to address the specific proposals that have already been raised in the rural health care proceeding. In particular, several commenters in the rural health care proceeding suggest that the Commission adopt the rural designation system currently utilized by ORHP, the Rural Urban Commuting Area (RUCA) system.

Others propose to define rural as non-urbanized areas, as specified by the Census Bureau. We also recently sought comment on the definition of "rural area" in the context of increasing flexibility and the deployment of spectrum-based services in rural areas. There we identified and sought comment on the following potential definitions of "rural area," in addition to the ones already identified above: (1) Counties with a population density of 100 persons or fewer per square mile; (2) Rural Service Areas; (3) non-nodal counties within an Economic Area; (4) the definition of "rural" used by the Rural Utility Service for its broadband program; (5) the definition of "rural" based on census tracts as outlined by the Economic Research Service of the USDA; and (6) any census tract that is not within ten miles of any incorporated or census-designated place containing more than 2,500 people, and is not within a county or county equivalent which has an overall population density of more than 500 persons per square mile of land. Finally, some commenters in that proceeding assert that if the Commission adopts a new definition of rural, it should grandfather existing areas that currently qualify as rural area, if they would no longer qualify under the new definition.

12. Commenters are encouraged to describe the effects of any new definition on the reach of the schools and libraries program, e.g., how many existing rural areas would become non-rural and vice versa, and whether and how the Commission should consider any such changes in adopting a new definition for "rural area." We also seek comment on whether it is necessary or desirable to use the same definition of "rural" for both the schools and libraries program and rural health care program.

#### D. Definition of Internet Access

13. In the *Schools and Libraries NPRM*, the Commission sought comment on whether modifying our rules governing the funding of Internet content would improve program operation consistent with our other goals of ensuring a fair and equitable distribution of benefits and preventing waste, fraud, and abuse. In particular, the Commission sought comment on whether to permit funding for an Internet access package that includes content if that package is the most cost effective form of Internet access. Comments we received in response to the *Schools and Libraries NPRM* indicated that parties had widely varying views of what should be viewed as "content," although many parties

expressed concern about providing funding for Internet access bundled with subject matter content. The record developed on this issue, in conjunction with recent changes made in the rural health care program, leads us to seek more focused comment on whether we should alter the definition of Internet access used for the schools and libraries program. Support for Internet access under the schools and libraries program is provided only for "basic conduit access to the Internet." Support in the Internet access category has not been provided for virtual private networks, nor has it been provided for Internet access services that enable communications through private networks. In our recent *Rural Health Care Order*, we concluded that the definition currently used in the schools and libraries context was too limited for the rural health care program, because it precludes support for features that provide the capability to generate or alter the content of information. We concluded that adopting such a limitation in the rural health care context would significantly undercut the utility of providing support for Internet access to rural health care providers, because the ability to alter and interact with information over the Internet is a functionality that could facilitate improved medical care in rural areas.

14. We now seek comment on whether we should amend our definition of Internet access in the schools context to conform to the definition recently adopted for the rural health care mechanism. The Administrator has utilized cost allocation to ensure that support is not provided for features deemed ineligible under the Commission's definition of Internet access in the schools context, and also has provided discounts on services that provide ineligible features when that ineligible portion is provided on an ancillary basis. While we conclude that this has been a reasonable way to implement our rules in an administratively workable fashion, we are concerned that the definition adopted in 1997 may unintentionally preclude support for features of Internet access that would provide substantial benefits to school children and library patrons in the United States. We are concerned that the rule adopted six years ago may not adequately address the full ranges of features and functionalities in Internet access services that are available in the marketplace today. Moreover, we seek comment on whether amending the current definition of Internet access

would simplify and streamline program administration. We also seek comment on how broadening the definition of Internet access (a Priority One service) will impact the availability of funds for Priority Two services. To the extent commenters argue that the definition of Internet access should differ for the schools and libraries program, and the rural health care program, they should provide specific arguments outlining the legal, policy, or technical reasons for that position.

#### E. Wide Area Networks

15. In the *Schools and Libraries NPRM*, the Commission sought comment on whether to modify its policies regarding the funding of Priority One services (telecommunications service and Internet access) that include service provider charges for capital investments for wide area networks. The record we received demonstrated a wide range of views on what changes, if any, should be made in this area.

16. In light of our decision to impose limitations on funding of internal connections, we recognize that there may be even greater incentives than before for service providers to characterize charges for facilities that also could be viewed as internal connections as Priority One services. We believe it desirable, therefore, to seek more focused comment on specific proposals in this area to ensure that funds are distributed in a fair and equitable fashion. If we adopt rules in this area, we anticipate that those rules would be effective no earlier than Funding Year 2005. We seek comment on the advantages and disadvantages of the proposals set forth.

17. We seek comment on whether to refine a standard for determining whether expenditures that subsidize infrastructure investment, either on-premises or off-premises, may properly be viewed as Priority One services. In particular, we seek comment on whether we should adopt a rule that would limit recipients from receiving discounts for service provider upfront capital investments to the extent those capital investments exceed 25 percent of the funding request for the service in question. Such a rule could serve to spread funding for Priority One services more evenly across all recipients, and could limit the extent to which the universal service fund is used to finance significant service provider infrastructure investment.

18. In the *Brooklyn Order*, the Commission determined that recipients may receive discounts on non-recurring charges associated with capital

investment made by a service provider in an amount equal to the investment prorated equally over a term of at least three years. We now seek focused comment on whether we should adopt a rule that discounts for any service provider charges for capital investment of \$500,000 or more must be prorated over a period of at least five years. Like the other proposal, such a rule could serve to spread funding for Priority One services more evenly across all recipients, and could limit the extent to which the universal service fund is used to finance significant service provider infrastructure investment.

19. We also take this opportunity to address other issues related to the provision of service over wide area networks. Under our current rules, schools and libraries may receive support to obtain telecommunications services using lit fiber. Schools and libraries may also receive discounts when they obtain Internet access that uses lit fiber. In order to receive support for services using lit fiber as a Priority One service, the school or library must purchase a functioning service from either a telecommunications service provider or internet access provider, which in turn is responsible for ensuring that both the fiber and the equipment to light the fiber are provided. If a school or library enters a contract to lease unlit fiber, and obtain telecommunications service or Internet access using lit fiber, it must segregate the cost of the unsupported unlit fiber from the cost of the supported lit fiber service in its application for support.

20. We seek comment on the provision of funding for unlit (dark) fiber under the schools and libraries support mechanism. We note that the Commission has addressed dark fiber in several different contexts. We seek comment on whether we should permit funding for dark fiber, pursuant to section 254(h), to provide additional flexibility to applicants in meeting their communications needs. We also seek comment on whether any limitations should be adopted to preclude discounts on the full cost of dark fiber network buildout when the applicant will not be utilizing the full capacity of that network.

#### F. Recovery of Funds

21. In 1999, the Commission adopted the *Commitment Adjustment Order*, which directed the Administrator to recover funding erroneously committed to schools and libraries in violation of the Telecommunications Act of 1996. The Commission adopted a companion order on the same day granting a limited waiver of four Commission rules to first

year applicants who had received commitments and disbursements in violation of Commission rules. Shortly thereafter, pursuant to the *Commitment Adjustment Order*, USAC submitted to the Commission its plan to collect universal service funds that were erroneously disbursed in the first year of the program in violation of the statute. Subsequently, in 2000, the Commission adopted with minor modifications USAC's plan to implement the requirements of the *Commitment Adjustment Order*. In that Order, the Commission also emphasized that the recovery plan "is not intended to cover the rare cases in which the Commission has determined that a school or library has engaged in waste, fraud or abuse." The Commission stated that it would address such situations on a case-by-case basis.

22. At the time the Commission adopted the *Commitment Adjustment Order*, USAC had been distributing funds through the schools and libraries universal service support mechanism for approximately one year. The Commission and USAC then faced a limited range of situations in which errors had occurred requiring the recovery of funds. Since then, through the audit process, the Commission and USAC have become aware of additional scenarios that may require recovery of funds due to errors made by applicants and/or service providers. While the *Commitment Adjustment Implementation Order* implemented procedures, consistent with the Commission's debt collection rules, for recovery of funds that were disbursed in violation of *statutory* requirements, the Commission has not comprehensively addressed the question of what recovery procedures would be appropriate in situations where it is determined that funds have been disbursed in violation of particular programmatic rules that do not implicate statutory requirements. Likewise, the Commission has not addressed the question of what procedures are needed to govern the recovery of funds that have been committed or disbursed in situations later determined to involve waste, fraud or abuse.

23. In administering the schools and libraries program, we have become aware of instances in which funds were disbursed erroneously, and, depending upon the circumstances surrounding the particular error as well as the procedure or rule implicated, we determined whether recovery was appropriate. In light of these experiences, we now consider whether we should implement procedures or adopt rules governing fund recovery across particular

situations and, more generally, whether additional safeguards or procedures are needed to address the matter of erroneously disbursed funds.

24. In particular, we ask whether we should adopt specific recovery rules for funds that are disbursed in violation of statutory requirements. We also seek comment on whether the Commission should implement procedures or adopt rules for funds that are disbursed in violation of one or more programmatic rules or procedures under the schools and libraries program or in situations involving waste, fraud or abuse. If so, we ask whether we should adopt for all instances of improperly disbursed funds, procedures comparable to those adopted in the *Commitment Adjustment Implementation Order*, or whether we should modify any of those procedures. We note that, through petitions for reconsideration of the *Commitment Adjustment Order* and in comments filed in support of those petitions, particular service providers have argued that the Commission should recover erroneously disbursed funds from the party that received the benefit of the disbursement, specifically the school or library. Although the Commission continues to believe that there are valid reasons for seeking recovery only from service providers, we ask whether there are any circumstances under which recovery would be more appropriately sought from a school or library applicant. At this time we do not resolve the specific issues raised in the pending petitions for reconsideration. Instead, we seek to further develop the record in this area in light of particular issues that have come to our attention and as to which we seek comment in this notice.

25. We note that in some circumstances, there may be a series of rule violations that neither collectively nor individually implicate the full amount of the funding commitment. In the event that the full amount of the funding commitment has been disbursed under such circumstances, we seek comment on what circumstances would make recovery of the full amount of the funding commitment appropriate or inappropriate. We seek comment specifically on whether a pattern of systematic noncompliance with Commission rules warrants recovery of the full amount disbursed, irrespective of the dollars associated with specific audit findings. We note that, unlike errors resulting in statutory violations, the Commission may waive non-compliance with regulations in appropriate circumstances. We recognize that some errors made by applicants and/or service providers may

not violate the statute, may be minor in nature and may not affect the integrity of or otherwise undermine policies central to administration of the program. We invite comment on whether there are situations in which such errors would warrant a Commission decision not requiring the recovery of funds. For example, should we waive recovery if the dollars at issue are *de minimis*, either on absolute dollar or percentage of disbursement basis, and if so, what dollar level or percentage would be an appropriate threshold for deeming a violation to be *de minimis*? Parties advocating such a position should describe what mechanism the Commission should use to reach such a result, such as waiving the rules that are not statutory, are minor and do not affect program integrity, focusing particularly on how such a result could be achieved with administrative ease.

26. In addressing the issues, we also invite commenters to explain whether any additional policies or rules directed at circumstances involving waste, fraud and abuse would be necessary, or whether procedures we may adopt in response to our questions will be sufficient in correcting waste, fraud and abuse. In doing so, parties should consider whether certain violations are more critical in our attempts to control waste, fraud and abuse than others. Are the circumstances where waste, fraud and abuse are found the type that should result in recovery of funds from the entity that is responsible for the waste, fraud and abuse? How should we proceed if both the applicant and the service provider are culpable for such misconduct? We seek proposals that include detailed procedures for dealing with waste, fraud and abuse cases.

27. We also seek comment on whether we should implement other measures to ensure service provider and applicant accountability. In particular, we seek comment on whether we should implement procedures or adopt rules to defer action on any additional funding request involving a beneficiary for whom there is an outstanding commitment adjustment proceeding. Under such a policy, no discounts would flow to the beneficiary in subsequent years until there was full satisfaction of the outstanding commitment adjustment. We also seek comment on whether any applicant that has previously been subject to a commitment adjustment proceeding should be subjected to more rigorous scrutiny before receiving commitments in the future. If we were to implement such a policy, what additional showing should be required of the applicant in subsequent years, and how long should

the entity be subjected to such enhanced scrutiny?

28. Commenters should provide discrete proposals with examples or data to support their suggestions.

#### *G. Other Actions To Reduce Waste, Fraud, and Abuse*

29. We seek comment on a number of proposals intended to improve the abilities of the Commission and the Administrator to identify and enforce violations of the Commission's rules and, thereby, to reduce waste, fraud, and abuse in the schools and libraries universal service mechanism.

30. *Cost-Effective Funding Requests.* We seek comment on whether we should codify additional rules to ensure that applicants make informed and reasonable decisions in deciding for which services they will seek discounts. Currently, our rules specify that, in selecting a service provider, a recipient must carefully consider all bids submitted and must select the most cost-effective service offering. Moreover, the *Universal Service Order* makes clear that applicants must request services based on an assessment of their reasonable needs. Our rules do not expressly require, however, that the applicant consider whether a particular package of services are the most cost effective means of meeting its technology needs. Nor do our rules expressly establish a bright line test for what is a "cost effective" service. Would it be beneficial and administratively feasible to develop such a test, or, for example, a benchmark or formula for "cost-effective" funding requests, such as a specified dollar amount per student or per library patron for specified types of service? Should we adopt a ceiling on the total amount of annual funding that an applicant can request? If so, how would such a ceiling be calculated? Are there other rule changes that would ensure applicants are not requesting discounts for services beyond their reasonable needs?

31. *Recordkeeping Requirements.* We seek comment on whether to amend our rules governing the maintenance of records related to the receipt of universal service discounts. Currently, the Commission rules require each entity receiving supported services to keep records related to the receipt of discounted services similar to those that the entity maintains for other purchases, but do not specify how long such records should be maintained. Nor do our rules expressly require all entities to maintain records to demonstrate compliance with all rules. Recent beneficiary audits conducted by USAC's independent auditor identify a number

of instances in which the independent auditor was unable to perform certain procedures due to lack of documentation. We seek comment on whether to amend our rules to require that all records related to the receipt of or delivery of discounted services, sufficient to demonstrate compliance with the Commission's rules governing the schools and libraries mechanism, be maintained by the beneficiary for a period of five years after the last day of the delivery of the discounted services. We also seek comment on what types of documents would be sufficient to demonstrate compliance.

32. In addition, the Commission's rules require service providers to keep and retain records of rates charged to and discounts allowed for entities receiving supported services. We seek comment on requiring that service providers retain all records related to the delivery of discounted services for a period of five years after the completion of the discounted services. Further, we seek comment on a requirement that service providers comply with random audits or reviews that the Commission or USAC may undertake periodically to assure program compliance, including identifying the portions of applicant's bills that represent the costs of services provided to eligible entities for eligible purposes. In accordance with this proposed requirement, we also seek comment on requiring beneficiaries to authorize the release of such information.

33. Commenters are specifically requested to address the impact that these rule changes would have on the Commission's ability to enforce its substantive rules and reduce waste, fraud, and abuse in the schools and libraries universal service program. Commenters are also requested to identify with particularity any additional recordkeeping requirements that would improve the Commission's ability to enforce its rules in the schools and libraries program.

34. *Consultants and Outside Experts.* We seek comment on whether applicants should be required to identify any consultants or other outside experts, whether paid or unpaid, that aid in the preparation of the applicant's technology plan or in the applicant's procurement process. Additionally, we seek comment on whether consultants and other outside experts offering their services to applicants should be required to register with USAC and to disclose any potential conflicts of interests derived from relationships with service providers. Identifying these consultants and outside experts could facilitate the ability of the Commission,

and law enforcement officials, to identify and prosecute individuals that may seek to manipulate the competitive bidding process or engage in other illegal acts. We also seek comment on whether we should adopt a rule that would prohibit an entity that seeks to become a service provider from providing any form of technology planning or procurement management assistance to applicants. Under such a rule, any entity that provides management support services, technical assistance, consulting services, assistance in technical evaluations, or systems engineering services to a particular recipient would be barred from competing for the contracts for eligible services with that recipient.

35. *Distribution of Support Payments.* We seek comment on whether the Commission should amend its rules to codify certain existing administrative procedures related to the payment of support for discounted services. There are two methods by which support for discounts is distributed. One method is for the service provider to submit an invoice to the Administrator, seeking payment for the discounted portion of the supported service using FCC Form 474. The other method is for the recipient of the discounted services to pay the service provider and then seek reimbursement from the Administrator using FCC Form 473. Under either method, the Administrator requires that a completed Service Provider Annual Certification (or FCC Form 473) must be filed in order for payment to be made. We seek comment on whether this procedure should be codified in the Commission's rules. We also seek comment on whether the Commission should codify rules regarding the establishment of deadlines for service providers to file invoices with the Administrator. The timely receipt and payment of invoices is extremely important to the administration of the program in accordance with the Commission's rules. Accordingly, we seek comment on whether to codify the Administrator's existing policy not to provide support for untimely filed invoices.

36. USAC provides an extension of the deadline to file invoices under certain conditions. Under current USAC procedures, these circumstances include: authorized service provider changes; authorized service substitutions; no timely notice to USAC (e.g., the service providers' Form 486 Notification Letter is returned to USAC as undeliverable); USAC errors that result in a late invoice; USAC delays in data entering a form that ultimately result in a late invoice; documentation

requirements that necessitate third party contact or certification; natural or man-made disasters that prevent timely filing of invoices; good Samaritan BEARs; and circumstances beyond the service providers control. We seek comment on whether to codify the described procedures providing for an extension of the deadline to file invoices.

37. *Technology Plans.* We seek comment on whether the Commission should revise its rules regarding technology plans. To ensure applicants make a *bona fide* request for services, the Commission requires applicants to undertake a technology assessment before making a request for services. Section 54.504(b)(2)(vii) states that in its FCC Form 470 the applicant must certify that it has a technology plan that has been certified by its state, the Administrator, or an independent entity approved by the Commission. The instructions for FCC Form 470 permit applicants to certify that their technology plan will be approved by the relevant body no later than the time when service commences. The Commission adopted specific requirements for information that must be included in the FCC Form 470, but did not adopt specific rules addressing what should be included in a technology plan. In the *Universal Service Order*, however, the Commission set forth what applicants should address in their technology plans, which USAC implemented in its guidelines for technology plans. We seek comment on whether we should codify USAC's current guidelines regarding technology plans. Should we require that, as part of the technology plan process, applicants analyze the cost of leasing versus purchasing E-rate eligible products and services? Should we require the applicant to consider the most cost-effective way to meet its educational objectives? In addition, we seek comment on whether the Commission's technology planning requirements should be amended to be made more consistent with the technology planning goals and requirements of the U.S. Department of Education and the U.S. Institute for Museum and Library Services. We also seek comment on whether the Commission's technology planning requirements could be strengthened through additional or different qualifications for entities, including states, which approve technology plans.

38. *Prevention of Unauthorized Applications by Subunits.* We seek comment on whether the Commission should adopt rules to prevent subunits, such as individual schools or library branches, from filing applications

without the authorization of the central authorities over those subunits, such as school districts and library systems. We also seek comment on how such restrictions should be implemented, if adopted. For example, should an applicant be required to certify that it has the appropriate authorization from its central authority, or should a central authority be permitted to request the Administrator to reject any application filed by one of its subunits?

39. *Use of Surveys to Determine School Lunch Eligibility.* The Universal Service Order stated that a school may use federally-approved alternative mechanisms which rely on actual counts of low-income children to determine the level of poverty for purposes of the schools and libraries universal service discount mechanism. USAC implemented this provision by permitting schools to collect this information from surveys. Currently, USAC procedures require a response rate of at least 50 percent to ensure a statistically valid sample to project the percentage of eligibility for all students in the school. We seek comment on whether to codify this procedure, and if so, should we alter the required response rate? Is a 50 percent response rate higher than necessary to ensure a statistically valid sample? We seek to streamline program administration in this area while protecting against any potential abuse. Should the required response rate depend on the size of the population being surveyed?

#### H. Miscellaneous

40. *Determining Whether Rates Are Affordable.* We seek comment generally on how we can ensure that we continue to meet the requirements of section 254 in an efficient and equitable manner. Congress mandated that schools and libraries across the United States have access to advanced telecommunications and information services at affordable rates. As the expert agency charged with this critical task, we believe it important to consider periodically how we should determine what funding is necessary to ensure access at "affordable" rates. Give the myriad of service offerings in today's marketplace, how can we measure our progress in ensuring "affordable" access?

41. *Priority for Applicants that Have Not Achieved Connectivity.* We note that, in 1996, prior to implementation of the E-rate program, 14 percent of public school instructional rooms (*i.e.*, classrooms) were connected to the Internet. According to the most recently available data, in 2002, 92 percent of public school classrooms were connected to the Internet. While

considerable progress has been made in achieving the congressional goal of enhancing access of school classrooms and libraries to advanced telecommunications and information services, we are concerned that our rules as currently structured may preclude full attainment of that goal. As noted, a number of commenters in this proceeding have suggested that altering the discount rate would be an effective way to increase the availability of funds for eligible applicants outside the highest discount band. We seek comment on whether other measures should be adopted to further the objectives set forth in section 254(h)(2)(A). In particular, we seek comment on whether we should provide priority for internal connections to those applicants that have not yet achieved Internet connectivity in their classrooms or libraries. If we were to adopt such a proposal, should the priority for funding be targeted to those entities where 50 percent or more of students are eligible for the school lunch program? Under such a proposal, any entity in an area where 50 percent or more of students are eligible for free school lunch that certifies it has not yet implemented internal connections to achieve Internet connectivity in any classrooms or in the library would receive funding for internal connections in advance of all applicants seeking funding for internal connections that certify that they have implemented internal connections to achieve Internet connectivity in multiple classrooms or locations. Are there other rule changes that would ensure that all entities are able to provide access to the Internet from individual classrooms or the library?

### III. Procedural Matters

#### A. Initial Paperwork Reduction Act of 1995 Analysis

42. This Second Further Notice of Proposed Rulemaking (*Second FNPRM*) contains either a proposed or modified information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Second FNPRM*, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. Public and agency comments are due at the same time as other comments on this *Second FNPRM*; OMB comments are due April 12, 2004. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission,

including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

#### B. Initial Regulatory Flexibility Analysis

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

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

44. In the *Second FNPRM*, we seek comment on whether the current discount matrix provides sufficient incentives for schools and libraries to limit funding requests to services that can be efficiently used and whether modifying the discount matrix would make funds available to a greater number of schools and libraries. Further, we ask whether the Commission should adopt rules adjusting the discount matrix for certain supported services. To the extent that commenters support creating a separate discount matrix for priority two services, we seek comment on the structure and implementation issues associated with a new discount matrix. In light of the limitations placed on applications for internal connection discounts, which are Priority Two services, we seek comment on measures to deter the mischaracterization of internal connections as Priority One services.

45. In addition, we seek comment on whether the current process for applying for discounted services sufficiently addresses the Commission's goals of minimizing waste, fraud, and abuse in the program, while encouraging the benefits of competition as set out in the *Universal Service Order*. In that regard, we solicit comment on the current competitive

bidding process and the efficiency and effectiveness of using Form 470 and requested comment regarding any means by which the Commission could ensure that applicants select cost-effective services. Also, we seek further comment whether the Commission, as a condition of support, should require that each service provider certify that the prices in its bid have been independently developed. Further, we request comment on whether the Commission's rules should specifically require that records related to the competitive bidding process for services be maintained by both the recipient and service provider for a period of five years.

46. Next, we seek comment on modifications to the definition of "rural area" for the schools and libraries mechanism and ask whether it would be necessary or desirable to use the same definition of "rural" for both the schools and libraries program and rural health care program. Similarly, we seek comment whether the definition of Internet access in the schools context should be changed to mirror the definition of Internet access recently adopted in the *Rural Health Care Order*.

47. In light of the restrictions imposed on receiving discounts for internal connections, we seek comment asking whether any measures should be taken to evaluate service provider charges for capital investments for wide area networks, a Priority One service. In that regard, we seek comment whether expenditures that subsidize infrastructure investment, either on-premises or off-premises, may properly be viewed as Priority One services. We also seek comment on funding for unlit (dark) fiber under the E-rate program. In addition, we ask whether we should adopt specific recovery rules for funds—entire or partial commitments—that are disbursed in violation of the statute or programmatic rules or procedures. In that connection, we seek comment regarding measures to prevent waste, fraud, and abuse associated with improper disbursement of E-rate funds.

48. We seek comment on various measures to abate waste, fraud and abuse in the schools and libraries universal service mechanism, including whether a rule should be adopted requiring that all records related to the receipt of or delivery of discounted services be maintained by beneficiaries and service providers for a period of five years after the completion of the discounted services. In addition, we solicit comment whether rules defining "cost-effective" service should be adopted. Also, we seek comment whether applicants should be required

to identify any consultants or other outside experts, whether paid or unpaid, that aid in the preparation of the applicant's technology plan or in the applicant's procurement process. In addition, we solicit comment on the adoption of a rule requiring the filing of a Service Provider Annual Certification (or FCC Form 473) with the Administrator for remittance of payment. We also seek comment as to whether the Commission should codify rules establishing deadlines for service providers to file invoices with the Administrator and whether the Administrator's existing policy to deny support for untimely filed invoices, except in limited circumstances, should be codified. In an effort to further reduce waste, fraud and abuse in the E-rate program, we request comment whether current guidelines from the *Universal Service Order* and USAC regarding the content of the applicants' technology plans should be adopted as Commission rules. We also ask for comments whether the Commission's technology planning goals should be consistent with the requirements of the U.S. Department of Education and the U.S. Institute for Museum and Library Services. In addition, we seek comment whether the Commission should adopt rules to prevent individual schools and libraries from submitting applications without coordination with or authorization from the central authorities, namely school districts and library systems. We solicit comment on whether USAC's policy of accepting surveys to determine National School Lunch eligibility should be codified.

49. Finally, we seek comment whether our rules should be modified to ensure a funding priority for applicants that have not yet achieved internet connectivity in their classrooms or libraries. We also seek comment generally on whether any rules should be adopted to ensure affordable rates for eligible services and ensure access to eligible services.

## 2. Legal Basis

50. The legal basis for the *Second FNPRM* is contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and § 1.411 of the Commission's rules.

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

51. We have described in detail in the Final Regulatory Flexibility Analysis in the companion Order in this proceeding, the categories of entities that may be directly affected by our

proposals. For this Initial Regulatory Flexibility Analysis, we hereby incorporate those entity descriptions by reference.

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

52. With one exception, the specific proposals under consideration in this *Second FNPRM* would not, if adopted, result in additional recordkeeping requirements for small businesses. With regard to the one exception, we propose adoption of a rule that requires each entity receiving supported services to keep all records related to the receipt of or delivery of discounted services for a period of five years after implementation of the discounted services. This proposal includes additional recordkeeping because the current Commission rule requires each entity receiving supported services to keep records related to receipt of discounted services similar to those that the entity maintains for other purchases and does not specify the time period for which such records must be maintained. Thus, the revised rule means that the records need not be kept beyond the five year period.

53. We have sought comments regarding the other proposed rules; however, new recordkeeping requirements are not involved.

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

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

55. In the *Second FNPRM*, we seek comment regarding the adoption of rules requiring addition recordkeeping for each entity receiving discounted services. Moreover, we seek comments asking for identification of any recordkeeping measures that would improve the Commission's ability to enforce its rules governing waste, fraud, and abuse in the schools and libraries program. In that regard, we note the findings by recent beneficiary audits



conducted by KPMG, which indicate that better documentation would improve the ability to audit beneficiaries. Since abatement of waste, fraud, and abuse in the schools and libraries program is the objective, excluding small entities from such a requirement would contravene that objective and present a loophole that could damage the integrity of the program. Decreasing the likelihood of waste, fraud, and abuse preserves program funding for discounts to all eligible schools and libraries. We invite comment on this recordkeeping requirement and ask that those parties who object to the proposed requirement offer an alternative and explain the merits of their alternative.

#### 6. Federal Rules that may Duplicate, Overlap, or Conflict With the Proposed Rules

56. None.

#### C. Comment Filing Procedures

57. We invite comment on the issues and questions set forth in the *Second FNPRM* and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before March 11, 2004, and reply comments on or before April 12, 2004. All filings should refer to CC Docket No. 02-6. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

58. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form ." A sample form and directions will be sent in reply.

59. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding,

commenters must submit two additional copies for each additional docket or rulemaking number.

60. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

61. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.

—All hand deliveries must be held together with rubber bands or fasteners.

—Any envelopes must be disposed of before entering the building.

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

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

—All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

62. Parties filing electronic media should be advised that the Commission released a public notice on August 22, 2003 providing new guidance for mailing electronic media. In brief, electronic media should NOT be sent through USPS because of the radiation process USPS mail must undergo to complete delivery. Hand or messenger delivered electronic media for the Commission's Secretary should be addressed for delivery to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, and other messenger-delivered electronic media should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743.

63. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B540, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only"

mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, CC Docket No. 02-6), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Natek, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

64. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex, International Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. In addition, the full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

65. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the FNPRM in order to facilitate our internal review process.

#### D. Further Information

66. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This

Second FNPRM can also be downloaded in Microsoft Word and ASCII formats at [http://www.fcc.gov/wcb/universal\\_service/schoolsandlibs.html](http://www.fcc.gov/wcb/universal_service/schoolsandlibs.html).

67. For further information, contact Kathy Tofigh at (202) 418-1553, Karen Franklin at (202) 418-7706, or Jennifer Schneider at (202) 418-0425 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

#### IV. Ordering Clauses

68. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, this Second Further Notice of Proposed Rulemaking is adopted.

69. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene Dortch,**  
Secretary.

[FR Doc. 04-2734 Filed 2-9-04; 8:45 am]

BILLING CODE 6712-01-U

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 04-144, MB Docket No. 04-16, RM-10840]

#### Digital Television Broadcast Service; Roswell, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Eastern New Mexico University proposing the allotment and the reservation of DTV channel 31 for noncommercial educational use at Roswell, New Mexico. DTV Channel \*31 can be allotted to Roswell at reference coordinates 33-19-56 N. and 104-48-17 W. Since the community of Roswell is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment.

**DATES:** Comments must be filed on or before March 22, 2004, and reply comments on or before April 4, 2004.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceedings involving petitions for rule making (*except in broadcast allotment proceedings*). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04-16, adopted January 22, 2004, and released January 30, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex*

*parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under New Mexico is amended by adding DTV channel \*31 at Roswell.

Federal Communications Commission.

**Barbara A. Kreisman,**

Chief, Video Division, Media Bureau.

[FR Doc. 04-2835 Filed 2-9-04; 8:45 am]

BILLING CODE 6712-01-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 04-94, MB Docket No. 04-11, RM-10841]

#### Digital Television Broadcast Service; Colby, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Smoky Hills Public Television Corporation, proposing the allotment of DTV channel 19 to Colby, as an educational channel. DTV Channel \*19 can be allotted to Colby, Kansas, at reference coordinates 39-23-45 N. and 101-03-37 W in compliance with §§ 73.625(a) and 73.623(d) of the Commission's Rules.

**DATES:** Comments must be filed on or before March 15, 2004, and reply comments on or before March 30, 2004.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See *Electronic Filing of Documents in Rule*