

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

In the Matter of	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	

**FIRST REPORT AND ORDER**

**Adopted:** June 13, 2002

**Released:** June 13, 2002

Before the Commission: Chairman Powell approving in part, concurring in part, and issuing a statement; Commissioner Copps issuing a statement; and Commissioner Martin approving in part, dissenting in part, and issuing a statement.

**I. INTRODUCTION**

1. In this Order,<sup>1</sup> we adopt a framework for the treatment of funds collected for the schools and libraries support mechanism that have, through the normal operation of the program, not been disbursed.<sup>2</sup> In taking this action today, we balance the statutory requirements in section 254 of providing eligible schools and libraries with access to discounted telecommunications services and of ensuring that the universal service support mechanisms are specific and predictable.<sup>3</sup> This, in turn, will allow contributions to universal service to remain predictable for

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<sup>1</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 1914 (2002) (*Notice and Order*). In the *Notice and Order*, the Commission sought comment on a wide range of issues relating to the schools and libraries mechanism, including the treatment of unused funds. Other issues raised in the *Notice and Order* will be addressed in subsequent orders. For unabbreviated names of parties filing comments and reply comments, see Appendix B and C to this First Report and Order.

<sup>2</sup> In prior quarterly submissions, the Universal Service Administrative Company (USAC) estimated the portion of funds from the schools and libraries support mechanism that have gone unused in a given funding year. See, e.g., *Proposed First Quarter 2000 Universal Service Contribution Factors and Proposed Actions*, CC Docket No. 96-45, Public Notice, DA 99-2780 (rel. Dec. 10, 1999). According to USAC, this balance occurred because: 1) although USAC made funding commitments to certain schools and libraries, it received no indication that the services were or would be provided; 2) some schools and libraries used only a portion of the funds committed to them; and 3) a portion of the funds reserved for appeals would not be needed.

<sup>3</sup> See 47 U.S.C. §§ 254(h)(1)(B) and 254(d); see also 47 U.S.C. § 254(b)(5).

carriers and, ultimately, will inure to the benefit of their customers.<sup>4</sup> We are committed to ensuring that eligible schools and libraries have access to sufficient universal service support consistent with the statute and therefore adopt a rule to ensure that unused schools and libraries funds are carried forward for disbursement in subsequent funding years. At the same time, we find that the public interest is best served by our action to stabilize contributions to universal service for the immediate future, while we consider fundamental reform to the way in which universal service contributions are assessed on contributors and recovered from consumers.<sup>5</sup> As we explained in the *Contribution FNPRM*, numerous changes in the marketplace and the operation of the current assessment system have contributed to broad fluctuations in the contribution base of the universal service support mechanisms since our adoption of the current assessment methodology.<sup>6</sup> These fluctuations require us to consider reform to ensure stability of the universal service fund, which should help ensure predictability in that fund.<sup>7</sup> We conclude that our actions today strike an appropriate balance by helping to minimize and stabilize the contribution factor for the immediate future,<sup>8</sup> while maintaining an appropriate level of support for all universal service support mechanisms, including the schools and libraries program.

2. Consistent with the congressional mandate in section 254 that carriers contribute to the “specific [and] predictable” universal service support mechanisms, the Commission has endeavored to ensure that universal service contribution obligations remain predictable so that carriers anticipate their payments appropriately.<sup>9</sup> Over the past several years, however, we have witnessed increasing upward pressure on contributions caused by a variety of events, including

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<sup>4</sup> Congress codified the Commission’s historical commitment to ensuring universal service in the Telecommunications Act of 1996. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). In section 254, Congress directed the Commission to take the steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including rural and high cost areas, low-income consumers, eligible schools and libraries, and rural health care providers. See 47 U.S.C. § 254.

<sup>5</sup> See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Further Notice of Proposed Rulemaking and Report and Order, FCC 02-43, 67 FR 11268, paras. 15, 71 (rel. Feb. 26, 2002) (*Contribution FNPRM*).

<sup>6</sup> *Id.* at paras. 7-13.

<sup>7</sup> *Id.* at para. 15.

<sup>8</sup> Carriers currently contribute a percentage of interstate and international end user telecommunications revenues to universal service. This percentage is known as the “contribution factor.” The contribution factor is the ratio of total projected quarterly costs of the universal service support mechanisms to total end-user interstate and international telecommunications revenues.

<sup>9</sup> 47 U.S.C. § 254(d).

declining interstate revenues coupled with increased demand for universal service support. For example, consistent with section 254(e) of the Act, the Commission recently took steps to replace implicit subsidies in interstate access charges with explicit universal service support.<sup>10</sup> Implementation of these statutory requirements coupled with changes in the telecommunications marketplace have led to broad fluctuations in the contribution base and rising contribution obligations. For these reasons, we recently sought comment on whether and how to change the existing contribution methodology.<sup>11</sup>

3. While we are examining whether more fundamental reform of the basis for assessing universal service contributions is warranted, we believe it is important at this time to stabilize universal service contributions and maintain predictability for the universal service support mechanisms for the immediate future.<sup>12</sup> This, in turn, will allow contributions to remain predictable for carriers, and, ultimately, benefit consumers. We therefore conclude that, in order to maintain fund predictability for the immediate future, unused funds from the schools and libraries support mechanism shall, in accordance with the public interest, be applied to stabilize or reduce the amount of contributions to the universal service fund for no more than the next three quarters, which should provide us sufficient time to complete our review of the contribution methodology and implement any changes adopted in that proceeding. Specifically, we shall apply unused funds to reduce the contribution factors for the third and fourth quarters of 2002, and first quarter 2003, if necessary. We intend to complete our examination of the issues in the contribution methodology proceeding and implement appropriate rules no later than first quarter 2003. We will endeavor, however, to complete the proceeding at an earlier date. In that event, such unused funds from the schools and libraries support mechanism would be carried

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<sup>10</sup> See, e.g., *Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Service of Local Exchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) (*MAG Order*); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249, and 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et al. v. FCC*, 265 F.3d 313 (5th Cir. 2001), *cert. denied, Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 70 U.S.L.W. 3444 (U.S. Apr. 15, 2002) (*CALLS Order*). The additional funding requirements for these new mechanisms (Interstate Common Line Support and Interstate Access Support) alone are projected to be over \$1 billion in the next year. See also Federal Universal Service Support Mechanisms Fund Size Quarterly Contribution Base for the Third Quarter 2002, available at <<http://www.universalservice.org/overview/filings>> (filed May 2, 2002) (USAC Filing for Third Quarter 2002 Contribution Base).

<sup>11</sup> See *Contribution FNPRM*, paras. 7-13.

<sup>12</sup> For example, absent the action we take today, we would need to increase significantly the contribution factor for third quarter 2002. See Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2002, available at <<http://www.universalservice.org/overview/filings>> (filed May 31, 2002).

forward for use by eligible schools and libraries in subsequent funding years. Consistent with the requirement that carriers contribute to a specific and predictable universal service support mechanism, we expect any changes to the contribution methodology that are ultimately adopted to address these concerns regarding the current contribution assessment system.

4. We take this action today with careful consideration of the effect of our decision on the schools and libraries support mechanism. For the last five years, the schools and libraries support mechanism has provided discounts that have enabled millions of school children and library patrons to obtain access to modern telecommunications and information services. In fact, as of May 2002, schools and libraries have received over \$8.25 billion in funding commitments.<sup>13</sup> Although the successes of this program are impressive, we have been unable to fulfill the demands from all of the Nation's schools and libraries. For example, in order to fully fund current demand for Funding Year 5, we would have to more than double the existing \$2.25 billion funding cap on the schools and libraries mechanism.

5. In light of this high demand for discounts, we believe that, at the close of this period for the Commission to consider the reforms that should be implemented to address carriers' contribution obligations, it is appropriate to carry forward unused funds to increase disbursements to schools and libraries program in subsequent funding years. Specifically, we direct that, effective no later than second quarter 2003, any unused funds from the schools and libraries support mechanism in any given year shall, consistent with the public interest, be carried forward for disbursement in subsequent funding years of the schools and libraries support mechanism. Such action would ensure that the funds that are unused by schools and libraries from prior years, through normal operation of the program, are available to schools and libraries in future years. We intend to develop specific rules implementing this policy not later than second quarter 2003 in order to maximize the availability of these funds for schools and libraries. We also will continue to explore procedural and programmatic changes to the schools and libraries support mechanism that may help reduce the amount of funds that are not disbursed. These actions together will help us to most effectively implement the goals of section 254(h) by providing for discounts as close as possible to the level of the annual \$2.25 billion cap.

## II. BACKGROUND

### A. Contributions to Universal Service

6. In section 254 of the Act, Congress instructed the Commission to establish explicit universal service support mechanisms to help ensure the delivery of affordable telecommunications service to all Americans, including consumers in high-cost areas, low-income consumers, eligible schools and libraries, and rural health care providers.<sup>14</sup> Pursuant to

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<sup>13</sup> See Universal Service Administrative Company, Schools and Libraries Division website, <http://www.sl.universalservice.org/funding/y1/national.asp> (1998 data); <http://www.sl.universalservice.org/funding/y2/national.asp> (1999 data); <http://www.sl.universalservice.org/funding/y3/national.asp> (2000 data); <http://www.sl.universalservice.org/funding/y4/national.asp> (2001 data).

<sup>14</sup> 47 U.S.C. § 254. See also Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

section 254 of the Act, these support mechanisms are funded through contributions made by telecommunications carriers and certain providers of interstate telecommunications.<sup>15</sup> Specifically, section 254(d) requires that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>16</sup> Section 254(d) provides further that “any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”<sup>17</sup>

7. In the *Universal Service Order*, the Commission decided to assess contributions on carriers’ end-user telecommunications revenues.<sup>18</sup> The Commission did so after considering the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) and the record developed at that time.<sup>19</sup> Specifically, the Commission concluded that assessment based on end-user telecommunications revenues would be competitively neutral, easy to administer, and would eliminate some economic distortions associated with an assessment based on gross telecommunications revenues.<sup>20</sup>

8. In the *Second Order on Reconsideration*, the Commission designated the Universal Service Administrative Company (USAC) as the entity responsible, in accord with the Commission’s rules, decisions, and oversight, for administering the universal service support mechanisms, including billing contributors, collecting contributions on a quarterly basis, and disbursing universal service support funds.<sup>21</sup> The Commission directed USAC to calculate an individual contributor’s quarterly obligation by multiplying the contributor’s universal service

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<sup>15</sup> 47 U.S.C. § 254(d).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9206, at para. 844 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

<sup>19</sup> *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 87 (1996).

<sup>20</sup> *Universal Service Order*, 12 FCC Rcd at 9206-09, paras. 844-50.

<sup>21</sup> *Changes to the Board of Directors of the National Exchange Carrier Association Inc.*, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18427, para. 49 (1997) (*Second Order on Reconsideration*).

revenue base by the relevant universal service contribution factor.<sup>22</sup> The universal service revenue base is an entity's quarterly interstate and international end-user telecommunications revenues from two quarters prior to assessment.<sup>23</sup> The contribution factor is based "on the ratio of quarterly projected costs of the support mechanisms, including administrative expenses, to the applicable revenue base [total interstate and international end-user telecommunications revenues]."<sup>24</sup> The Commission further directed USAC to "adjust the contribution factors for each quarter based on quarterly demand for services and administrative costs, subject to any funding caps established in the *Universal Service Order*."<sup>25</sup>

9. Carriers currently have significant flexibility to recover their contribution obligations in any manner that is equitable and nondiscriminatory.<sup>26</sup> Most elect to recover their contributions from their customers through line-item charges. Therefore, although the contribution factor is uniform for all contributors, universal service line items to consumers vary widely among contributors.

#### **B. Unused Funds Collected for the Schools and Libraries Support Mechanism**

10. The Commission established an annual funding cap of \$2.25 billion on federal universal service support for schools and libraries in the *Universal Service Order*.<sup>27</sup> When the annual funding cap was initially adopted, the Commission did not have historical data upon which to estimate with certainty the demand for services in the initial months of the schools and libraries support mechanism. The Commission stated that "if the annual cap is not reached due to limited demand from eligible schools and libraries, the unspent funds will be available to support discounts for schools and libraries in subsequent years."<sup>28</sup> Further, the Commission also stated that unused funds will be carried forward and added to the annual cap, if demand exists.<sup>29</sup>

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<sup>22</sup> See 47 C.F.R. 54.709(a)(2). See also *Federal-State Joint Board on Universal Service Access Charge Reform*, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 96-45, Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679 (2000).

<sup>23</sup> See *Federal-State Joint Board on Universal Service*, Petition for Reconsideration filed by AT&T, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001).

<sup>24</sup> See *Second Order on Reconsideration*, 12 FCC Rcd at 18425, para. 45.

<sup>25</sup> *Id.*

<sup>26</sup> See *Universal Service Order*, 12 FCC Rcd at 9210-11, para 853.

<sup>27</sup> *Id.* at 9054, para. 529.

<sup>28</sup> *Id.*

<sup>29</sup> *Universal Service Order*, 12 FCC Rcd at 9052, para. 526.

11. Section 54.507(a) of the Commission's rules codifies the annual \$2.25 billion cap on the schools and libraries support mechanism.<sup>30</sup> Further, the rule provides that "all *funding authority* for a given funding year that is unused in that funding year shall be carried forward into subsequent funding years for use in accordance with demand."<sup>31</sup>

12. The Commission's rules and policies provide additional guidance regarding the treatment of unused funds from Funding Year 1 of the schools and libraries mechanism. In 1998, the Commission amended its funding rules and provided that unused funds that were collected but not disbursed in Funding Year 1 would be carried forward to the next funding period.<sup>32</sup> In May 1999, in the *Twelfth Order on Reconsideration*, the Commission further amended its funding rules and made clear that for Funding Year 2, the \$2.25 billion funding cap would remain undisturbed.<sup>33</sup> Therefore, unused funds that were carried forward from Funding Year 1 could not be disbursed because that would result in a disbursement in excess of the \$2.25 billion that was authorized to be collected and disbursed in Funding Year 2. The Commission amended section 54.507(a) of its rules to reflect these changes.<sup>34</sup> Subsequently, after USAC provided an estimate of unused funds from Funding Year 1, the Common Carrier Bureau directed USAC to apply a portion of that unused balance to reduce the collection requirement for the first quarter of 2000 when it released its Public Notice announcing the proposed contribution factor for the first quarter of 2000.<sup>35</sup> The Common Carrier Bureau released similar public notices for the subsequent four quarters.<sup>36</sup> In the *Notice and Order*, we confirmed that it was appropriate to reduce contributions to the universal service support mechanism in subsequent funding years with unused funds from Funding Year 1.<sup>37</sup>

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<sup>30</sup> 47 C.F.R. § 54.507(a).

<sup>31</sup> *Id.*

<sup>32</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, 14934, para. 30 (1998) (*Fifth Order on Reconsideration*).

<sup>33</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twelfth Order on Reconsideration in CC Docket No. 96-45, 64 Fed. Reg. 30440, para. 9 (1999) (*Twelfth Order on Reconsideration*).

<sup>34</sup> *See* 47 C.F.R. § 54.507(a)(1).

<sup>35</sup> *Proposed First Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 99-2780 (rel. Dec. 10, 1999).

<sup>36</sup> *See Proposed Second Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 00-517 (rel. March 7, 2000); *Proposed Third Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 00-1272 (rel. June 9, 2000); *Proposed Fourth Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 00-2065 (rel. Sept. 8, 2000); *Proposed First Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 00-2764 (rel. Dec. 8, 2000).

<sup>37</sup> *Notice and Order*, 17 FCC Rcd at 1941-1945.

13. We recently initiated a rulemaking to consider, among other things, whether we should amend our rules regarding the treatment of unused funds from the schools and libraries support mechanism.<sup>38</sup> In particular, we sought comment on two options relating to the treatment of unused funds.<sup>39</sup> First, we asked whether to modify the rule to require expressly that unused funds from the schools and libraries support mechanism should be applied to reduce the amount of contributions to the universal service fund.<sup>40</sup> Alternatively, we asked whether to modify the rule to require expressly the distribution of the unused funds in subsequent years of the schools and libraries support mechanism.<sup>41</sup>

### III. DISCUSSION

14. After consideration of the two proposals relating to the treatment of unused funds collected for the schools and libraries mechanism, we conclude that unused funds from the schools and libraries support mechanism shall, consistent with the public interest, be applied to stabilize the universal service contribution factor for a period not to exceed the next three quarters, beginning with third quarter 2002, while the Commission considers reform of the contribution system.<sup>42</sup> We direct the Wireline Competition Bureau and USAC to apply such unused funds to stabilize or reduce universal service contributions in accordance with the public interest for the third and fourth quarters of 2002, and first quarter 2003, in a manner consistent with the Commission's prior treatment of unused funds from Funding Year 1.<sup>43</sup> Thereafter, we find that any unused funds from the schools and libraries support mechanism shall be carried forward to increase disbursements to schools and libraries in subsequent years. We find that such action is consistent with section 254 and the public interest by ensuring that contributions to universal service remain predictable, without jeopardizing the sufficiency of any of the universal service support mechanisms. Accordingly, we amend section 54.507 of our rules, as provided in Appendix A.<sup>44</sup>

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<sup>38</sup> *Id.* at 1940-1941.

<sup>39</sup> *Id.*

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

<sup>41</sup> *Id.*

<sup>42</sup> *See Notice and Order.*

<sup>43</sup> *See Proposed First Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 99-2780 (rel. Dec. 10, 1999); *Proposed Second Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 00-517 (rel. March 7, 2000); *Proposed Third Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 00-1272 (rel. June 9, 2000); *Proposed Fourth Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 00-2065 (rel. Sept. 8, 2000); *Proposed First Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 00-2764 (rel. Dec. 8, 2000). *See also Notice and Order*, 17 FCC Rcd 1941-1945.

<sup>44</sup> *See Appendix A.*



15. We find that this framework will benefit contributors, and ultimately their customers, by stabilizing the contribution factor in the short term, while also maintaining an appropriate level of support for all of the universal service support mechanisms, including the schools and libraries support mechanism. When considering issues relating to funding for the schools and libraries support mechanism, we must also consider the funding requirements of the other universal service programs and their cumulative impact on contributors and consumers. We conclude that the framework adopted today reflects a careful balance between providing sufficient support for all the universal service support mechanisms and keeping contributions at a predictable level for the immediate future, while we consider the need for reform of our contribution assessment methodology.

16. Over the last four years, overall demand on the universal service fund has grown considerably, in large part as a result of implementation of the statute's requirements to ensure that support is explicit and sufficient.<sup>45</sup> In 1997, about \$1.9 billion was disbursed from the universal service fund.<sup>46</sup> We estimate that approximately \$5.5 billion will be disbursed from the universal service fund in 2002.<sup>47</sup> At the same time, the universal service revenue base has become smaller, and interstate revenues have declined for interexchange carriers.<sup>48</sup> Several factors may be responsible for the diminishing revenue base, including the migration of traditional long distance services to new technologies, bundled wireless service packages, and price competition due to Bell entry into the long distance marketplace.<sup>49</sup> Accordingly, the contribution factor and therefore carrier contribution obligations have increased,<sup>50</sup> and carriers have generally passed through much of these increases to consumers.<sup>51</sup> In light of these changes

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<sup>45</sup> 47 U.S.C. § 254(e).

<sup>46</sup> Universal Service Administrative Company, 1998 Annual Report (1999).

<sup>47</sup> We anticipate that the total program collection in the third and fourth quarters of 2002 will be similar to or greater than the total program collection in the first quarter. See *Proposed First Quarter 2002 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 21334 (2001)(*First Quarter 2002 Contribution Factor*)(1.378 billion); *Proposed Second Quarter 2002 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 02-562 (rel. Mar. 8, 2002)(*Second Quarter 2002 Contribution Factor*)(1.385 billion).

<sup>48</sup> See, e.g., AT&T Corp., S.E.C. Form 10-Q, filed May 15, 2002 (consumer services revenue declined 22.0%, or \$0.9 billion, for the first quarter of 2002 compared with the corresponding period in 2001); WorldCom Inc., S.E.C. Form 10-Q, filed May 15, 2002 (consumer revenues, which include domestic voice communications service for consumer customers, for the first quarter of 2002 decreased 11.7% over the prior year period).

<sup>49</sup> See *Contribution FNPRM*, paras. 7-13.

<sup>50</sup> Compare *Second Quarter 2002 Contribution Factor* (0.072805) with *First Quarter 2002 Contribution Factor* (0.068086) with *Proposed Fourth Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 16281 (2001) (0.069187).

<sup>51</sup> See Jonathan Cox, *Sprint Will Raise Phone Subsidy Fee; AT&T May Follow*, Bloomberg Newswire, May 31, 2002 (reporting that Sprint plans to increase its residential universal service line item from 9.9% to 11.3% and AT&T may increase its residential universal service line item from 11.5% to 12.4%).

in the market and their impact on carrier contributions and consumers, we recently sought comment on whether and how to modify the current contribution assessment methodology.<sup>52</sup> We recognized there that these changes in the marketplace, coupled with our current contribution methodology, have caused broad fluctuations in the contribution base. This, in turn, raises the issue of stability and predictability of the universal service fund. Thus, until we complete our assessment of the current contribution methodology, we believe that it is appropriate to stabilize or lower the contributions to universal service. In this way, we will be better able to ensure in the near term that the fund remains predictable for contributors and consumers.<sup>53</sup>

17. Some commenters argue that using unused funds to reduce the contribution factor would not necessarily benefit consumers by reducing the line-items on consumers' bills.<sup>54</sup> While carriers currently have the flexibility to recover from their customers the contributions to universal service, contributors may not shift more than an equitable share of their contributions to any customer or group of customers, and must provide accurate, truthful, and complete information regarding the nature of the charge.<sup>55</sup> We would therefore expect that our efforts to stabilize the contribution factor would be reflected in any charges passed through to consumers. Several large contributors to universal service indicate in their comments to the Commission that a reduction in the contribution factor would be passed on to consumers.<sup>56</sup> Therefore, we find that it is reasonable to conclude that consumers will ultimately benefit from actions that stabilize the steady growth in the contribution factor.

18. In addition, we do not agree with commenters that suggest that our actions in the short term would contravene the intent of the schools and libraries support mechanism.<sup>57</sup> Indeed,

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<sup>52</sup> See *Contribution FNPRM* at paras. 7-13.

<sup>53</sup> See, e.g., WorldCom comments at 14-15 ("WorldCom estimates that these proposals would increase universal service funding requirements from the current size of \$5.5 billion to \$8 billion.") Applying unused funds from the schools and libraries support mechanism to reduce the contribution factor would make the fund more predictable for contributors and consumers by stabilizing or reducing contributions.

<sup>54</sup> See, e.g., Boston Public Schools and Boston Public Library Comments at 9 ("The BPS and BPL felt that history would suggest that funds returned to carriers are unlikely to get returned to consumers."); Intelenet, Indiana Department of Education, and Indiana State Library Comments at 13; Wisconsin comments at 3.

<sup>55</sup> *Universal Service Order*, 12 FCC Red at 9199, para 829, 9211, para. 855.

<sup>56</sup> See, e.g., AT&T Comments at 2 ("...application of these unused funds to reduce the factor would avoid carriers having to increase their USF line-item recovery rate against customers."); BellSouth and SBC Comments at 37 ("Any reduction in contributions would, of course, be reflected in lower universal service related charges to end users."); Sprint Comments at 17 (Refunding unused SLD funds to contributing carriers, or offsetting next-year funding requirements, would enable contributing carriers to lower the USF surcharges assessed on their customers.")

<sup>57</sup> See, e.g., Edison Schools Comments at 2; Integrity Comments at 4 ("The program does not seem to be ambiguous to us but instead seems to be very clear that the intent is to use all of these funds to provide network services to our schools and libraries."); NEA Comments at 31 ("By continuing to provide credits to contributing providers, the Commission is...thwarting the purpose of the E-Rate program").

as of May 2002, schools and libraries have received over \$8.25 billion in funding commitments.<sup>58</sup> Our action to utilize unused funds for a period not longer than the next three quarters does not alter the \$2.25 billion cap in any way, and such funds will continue to be made available annually to schools and libraries in a manner that is consistent with section 254 of the Act.

19. Although we believe our actions strike an appropriate balance today, Commission action in the contribution methodology proceeding will need to address concerns regarding fund predictability. We intend to take action in the contribution methodology proceeding and implement any changes adopted in that proceeding no later than April 1, 2003. Thus, once this window for action closes, we conclude it will serve the public interest to carry forward unused funds from the schools and libraries support mechanism for use by eligible schools and libraries in subsequent funding years.

20. We recognize that the current demand for discounts in Funding Year 5 significantly exceeds the \$2.25 billion funding cap.<sup>59</sup> In fact, in order to fully fund current demand for Funding Year 5, we would have to more than double the existing cap on the schools and libraries mechanism. In light of this high demand for discounts and based on the record, we believe that, not later than second quarter of 2003, unused schools and libraries funds should be carried forward to increase disbursements to schools and libraries program in subsequent years.<sup>60</sup>

21. Furthermore, because unused funds remain, as a result of normal program operation and, at least partially, for reasons out of applicants' control, we conclude that it will be appropriate in the future to carry forward unused funds from the schools and libraries mechanism for use in subsequent years. To that end, in conjunction with seeking comment as to the treatment of unused funds in the *Notice and Order*, we also sought comment on why applicants and providers may fail to fully use committed funds and whether other operational changes could be made to reduce the amount of unused funds.<sup>61</sup> We are considering the record and the types of program changes that may decrease the amount of unused funds from the schools and libraries support program in the future. In addition, we note that USAC recently developed, in coordination with the Commission staff, new procedures for service provider changes that increase the amount of funds disbursed each year and a new Form 500 that allows applicants to

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<sup>58</sup> See *supra* note 9.

<sup>59</sup> USAC notified the Wireline Competition Bureau (formerly the Common Carrier Bureau) that estimated demand for Funding Year 5 (July 1, 2002 to June 30, 2003) is \$5.736 billion. See Letter from George McDonald, President, Universal Service Administrative Company, Schools and Libraries Division, to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, dated February 28, 2002.

<sup>60</sup> See, e.g., American Library Association Comments at 32 ("Clearly, the demand for these funds exists."); Colorado Department of Education Comments at 11; Council of Chief State School Officers Comments at 63 ("Since demand consistently outstrips available funding, it is not appropriate to offset collections with unspent E-Rate funds to the telecommunications carriers."); Maine Public Utilities Commission Comments at 6; York County Library and Martin Library System Comments at 15.

<sup>61</sup> *Notice and Order*, 17 FCC Rcd at 1939-1940.

reduce or cancel funding commitments so that those funds can be made available to applicants during the same funding year.<sup>62</sup> This action, in combination with our decision to carry forward unused funds in the schools and libraries support mechanism in the future, will help us to ensure that schools and libraries make maximum use of the funding available under \$2.25 billion annual cap.<sup>63</sup>

#### IV. EFFECTIVE DATE OF THE RULES

22. We revise section 54.507(a) of the Commission's rules to provide that unused funds from the schools and libraries support mechanism may be applied to stabilize the amount of such contributions to the universal service fund for no more than the next three quarters, beginning third quarter 2002. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the Federal Register. The final rules must take effect prior to 30 days after their publication in the Federal Register in order for the Wireline Competition Bureau to announce the contribution factor for third quarter 2002. Such action will serve the public interest because the final rules allow for stabilization in the contribution factor.<sup>64</sup> Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the Federal Register.<sup>65</sup>

#### V. PROCEDURAL MATTERS

##### A. Paperwork Reduction Act Analysis

23. This Report and Order does not contain any new or modified information collection(s) subject to the PRA of 1995, Public Law 104-13.

##### B. Final Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>66</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making and Order (*Notice and Order*).<sup>67</sup> The Commission sought written public comment on the

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<sup>62</sup> See Schools and Libraries Universal Service, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form, OMB 3060-0853 (April 2000) (Form 500).

<sup>63</sup> See *Notice and Order*, 17 FCC Rcd at 1940. We note that our decision to carry forward unused funds from the schools and libraries support mechanism from prior funding years, in conjunction with our maintenance of the existing \$2.25 billion cap, could result in disbursements in excess of \$2.25 billion in a given year.

<sup>64</sup> See 5 U.S.C. § 553(d).

<sup>65</sup> *Id.*

<sup>66</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

<sup>67</sup> *Notice and Order*, 17 FCC Rcd at 1946.

proposals in the *Notice and Order*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>68</sup>

### **1. Need for, and Objectives of, the First Report and Order**

25. The Commission recently initiated a review of our rules governing the schools and libraries universal service support mechanism.<sup>69</sup> Among other things,<sup>70</sup> the Commission sought comment on whether it should amend its rules regarding the treatment of unused funds from the schools and libraries mechanism.<sup>71</sup> In this Order, we revise section 54.507(a) of the Commission's rules to provide that unused funds from the schools and libraries support mechanism may be applied to stabilize the amount of contributions to the universal service fund for no more than the next three quarters, beginning with the third quarter 2002. Thereafter, unused funds from the schools and libraries mechanism shall be carried forward for use in subsequent funding years of the schools and libraries program. Our actions today strike an appropriate balance by helping to minimize and stabilize the contribution factor for the immediate future, while maintaining support for the schools and libraries program.

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

26. There were no comments filed that specifically addressed the rules and policies presented in the IRFA.

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

27. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted herein.<sup>72</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>73</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>74</sup> A "small business concern" is one which: (1) is independently

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<sup>68</sup> See 5 U.S.C. § 604.

<sup>69</sup> See *Notice and Order*.

<sup>70</sup> See *supra* note 1.

<sup>71</sup> *Notice and Order*, 17 FCC Rcd at 1940-1941.

<sup>72</sup> 5 U.S.C. § 603(a)(3).

<sup>73</sup> 5 U.S.C. § 601(6).

<sup>74</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an (continued...)"

owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>75</sup> A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>76</sup>

28. Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>77</sup> The term “small governmental jurisdiction” is defined as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>78</sup> As of 1997, there were approximately 87,453 government jurisdictions in the United States.<sup>79</sup> This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small government jurisdictions must be 75,955 or fewer. Many such small government jurisdictions contain and administer programs and funds for schools and libraries. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services, including telecommunications service providers, Internet Service Providers (ISPs) and vendors of internal connections.<sup>80</sup>

#### **a. Schools and Libraries**

29. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”<sup>81</sup> A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.<sup>82</sup> For-profit schools and libraries, and  
(Continued from previous page) \_\_\_\_\_  
agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>75</sup> 15 U.S.C. § 632.

<sup>76</sup> 5 U.S.C. § 601(4).

<sup>77</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>78</sup> 5 U.S.C. § 601(5).

<sup>79</sup> 1995 Census of Governments, U.S. Census Bureau, United States Department of Commerce, Statistical Abstract of the United States (2000).

<sup>80</sup> 47 C.F.R. §§ 54.502, 54.503, 54.517(b).

<sup>81</sup> 47 C.F.R. § 54.500(b).

<sup>82</sup> 47 C.F.R. § 54.500(j).

schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.<sup>83</sup> Certain other statutory definitions apply as well.<sup>84</sup> The SBA has defined as small entities elementary and secondary schools and libraries having \$6 million or less in annual receipts.<sup>85</sup> In funding year 2 (July 1, 1999 to June 30, 2000) approximately 83,700 schools and 9,000 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's definition, we estimate that fewer than 83,700 schools and 9,000 libraries would be affected annually by the rules adopted in this Order, under current operation of the program.<sup>86</sup>

#### **b. Telecommunications Service Providers**

30. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>87</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>88</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

31. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for wired telecommunications carriers.<sup>89</sup> This provides that a wired

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<sup>83</sup> 47 C.F.R. § 54.501.

<sup>84</sup> *See id.*

<sup>85</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) Codes 611110, 514120.

<sup>86</sup> The number of small entities affected by these rules may also be affected by a determination of which entities may make the required certification, which is an issue on which this Notice seeks comment, see ¶ 8. For example, if a school district may certify on behalf of all of its schools, that district may well have annual receipts in excess of \$5 million and therefore would not be a small entity under SBA's definition, whereas an individual school in that district might be a small entity with annual receipts of less than \$5 million, and thus would be affected by these rules.

<sup>87</sup> 15 U.S.C. § 632.

<sup>88</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to take into account the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

<sup>89</sup> 13 C.F.R. § 121.201, NAICS Code 513310.

telecommunications carrier is a small entity if it employs no more than 1,500 employees.<sup>90</sup> According to our most recent data report, 1,335 carriers classified themselves as incumbent local exchange carriers.<sup>91</sup> We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of local exchange carriers that would qualify as small business concerns under the SBA's definition. Of the 1,335 incumbent carriers, 13 entities are price cap carriers that are not subject to these rules.<sup>92</sup> Consequently, we estimate that fewer than 1,322 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected by the decisions adopted in this Order.

32. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.<sup>93</sup> This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.<sup>94</sup> According to the most recent Trends Report, 204 companies reported that they were engaged in the provision of interexchange services.<sup>95</sup> As some of these carriers have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 204 small entity IXCs that may be affected by the decisions adopted in this Order.

33. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.<sup>96</sup> This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.<sup>97</sup> According to our most recent data, there

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<sup>90</sup> *Id.*

<sup>91</sup> See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 5.3 (August 2001) (*Telephone Trends Report*).

<sup>92</sup> *Id.*

<sup>93</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) Code 513310.

<sup>94</sup> *Id.*

<sup>95</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 5.3 (August 2001) (*Telephone Trends Report*).

<sup>96</sup> 13 C.F.R. § 121.201, NAICS Code 513310.

<sup>97</sup> *Id.*



are 349 CAPs.<sup>98</sup> We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 349 small entity CAPs that that may be affected by the decisions adopted in this Order.

34. *Cellular and Wireless Telephony.* Neither the Commission nor the SBA has developed a definition of small entities specifically for wireless telephony. The closest definition is the SBA definition for cellular and other wireless telecommunications or paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.<sup>99</sup> According to the Commission's most recent Telephone Trends Report data, 1,495 companies reported that they were engaged in the provision of wireless service.<sup>100</sup> Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 989 or fewer small wireless service providers that may be affected by the decisions adopted in this Order.

35. *Other Wireless Services.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to wireless services other than wireless telephony.<sup>101</sup> The closest applicable definition under the SBA rules is again that of cellular and other wireless telecommunications, under which a service provider is a small entity if it employs no more than 1,500 employees.<sup>102</sup> According to the most recent Trends Report, 477 providers classified themselves as paging services, wireless data carriers or other mobile service providers.<sup>103</sup> We do not have data specifying the number of these carriers that are not

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<sup>98</sup> See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 5.3 (August 2001) (*Telephone Trends Report*). The category for CAPs also includes competitive local exchange carriers (CLECs).

<sup>99</sup> 13 C.F.R. § 121.210, NAICS Code 513322.

<sup>100</sup> *Telephone Trends Report*, Table 5.3.

<sup>101</sup> The Commission has adopted a number of service-specific definitions of small businesses for various categories of wireless service, principally in the context of the Commission's rules governing spectrum auctions. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, FCC 01-196, Attachment A, paras. 31-54 (rel. July 2, 2001). For purposes of administering the schools and libraries universal service program, however, we find that it is appropriate to address the various non-telephony wireless services as a group.

<sup>102</sup> 13 C.F.R. § 121.201, NAICS Code 513322.

<sup>103</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (Dec. 2000), <[http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/IAD/trend200.pdf](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend200.pdf)>.

independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 477 wireless service providers that that may be affected by the decisions adopted in this Order.

### c. Internet Service Providers

36. Under the new NAICS codes, SBA has developed a small business size standard for "On-line Information Services," NAICS Code 514191.<sup>104</sup> According to SBA regulations, a small business under this category is one having annual receipts of \$21 million or less.<sup>105</sup> According to SBA's most recent data, there are a total of 2,829 firms with annual receipts of \$9,999,999 or less, and an additional 111 firms with annual receipts of \$10,000,000 or more.<sup>106</sup> Thus, the number of On-line Information Services firms that are small under the SBA's \$21 million size standard is between 2,829 and 2,940. Further, some of these Internet Service Providers (ISPs) might not be independently owned and operated. Consequently, we estimate that there are fewer than 2,940 small entity ISPs that may be affected by the decisions and rules of the present action.

### d. Vendors of Internal Connections

37. The Commission has not developed a definition of small entities applicable to the manufacturers of internal network connections. The most applicable definitions of these kinds of small entities are the definitions under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment" (RTB) and "Other Communications Equipment."<sup>107</sup> According to the SBA's regulations, manufacturers of RTB or other communications equipment must have 750 or fewer employees in order to qualify as a small business.<sup>108</sup> The most recent available Census Bureau data indicates that there are 1,187 companies with fewer than 1,000 employees in the United States that manufacture radio and television broadcasting and communications equipment, and 271 companies with less than 1,000 employees that manufacture other communications equipment.<sup>109</sup> Some of these manufacturers

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<sup>104</sup> 13 C.F.R. § 121.201, NAICS Code 514191.

<sup>105</sup> *Id.*

<sup>106</sup> *1997 Economic Census*, at 18.

<sup>107</sup> 13 C.F.R. § 121.201, NAICS Code 334220, 334290.

<sup>108</sup> *Id.*

<sup>109</sup> 1997 Economic Census, Manufacturing, Industry Series, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Document No. E97M-3342B (August 1999), at 14; 1997 Economic Census, Manufacturing, Industry Series, Other Communications Equipment Manufacturing, Document No. EC97M-3342C (September 1999), at 14 (both available at <http://www.census.gov/prod/www/abs/97ecmani.html>).

might not be independently owned and operated. Consequently, we estimate that there are fewer than 1,458 small entity internal connections manufacturers that may be affected by the decisions in this Order.

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

38. There are no additional reporting or other new compliance requirements relating directly to the decisions in this Order. Additional reporting or compliance requirements relating to the implementation of the carryover of unused funds from the schools and libraries mechanism will be addressed at the time such implementation procedures are adopted.

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

39. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others: “(1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>110</sup>

40. In each funding year of the schools and libraries mechanism, a portion of the \$2.25 billion available under the program cap has gone unused, largely because some applicants do not fully use the funds committed to them in the same funding year. In this Order, we revise section 54.507(a) of the Commission’s rules to provide that unused funds from the schools and libraries support mechanism may be applied to stabilize the amount of such contributions by carriers to the universal service fund for no more than the next three quarters, beginning with third quarter 2002. We believe that applying unused funds from the schools and libraries mechanism to stabilize or reduce contributions has the same impact on both small and large entities. In addition, we believe that the action that we take today will be beneficial for both large and small entities that contribute to the universal service fund by stabilizing or reducing contribution requirements. Furthermore, we believe that the carryover of unused funds from the schools and libraries mechanism will be beneficial to both small and large entities by providing additional funds that may be committed to schools and libraries pursuant to the schools and libraries support mechanism. There are no reporting or other compliance requirements resulting from our action, and no possible exemptions that might assist small entities.

41. **Report to Congress:** The Commission will send a copy of the First Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the First Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small

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<sup>110</sup> 5 U.S.C. § 603(c)(1)-(4).

Business Administration. A copy of the First Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>111</sup>

## VI. ORDERING CLAUSES

42. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, 303(r), this First Report and Order in CC Docket No. 02-6 IS ADOPTED.

43. IT IS FURTHER ORDERED, pursuant to section 553(d) of Administrative Procedure Act, 5 U.S.C. § 553 (d), that THIS ORDER IS EFFECTIVE UPON PUBLICATION IN THE FEDERAL REGISTER.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>111</sup> See 5 U.S.C. § 604(b).

**APPENDIX A****FINAL RULE**

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

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

1. Section 54.507 is amended by revising paragraph (a) and deleting paragraphs (a)(1) and (a)(2) to read as follows:

§ 54.507 Cap.

(a) *Amount of the annual cap.* The annual funding cap on federal universal service support for schools and libraries shall be \$2.25 billion per funding year. All funding authority for a given funding year that is unused in that funding year shall be carried forward into subsequent funding years for use in accordance with demand. All funds collected that are unused shall be applied to stabilize universal service contributions in accordance with the public interest and consistent with § 54.709(b) for no more than three quarters, beginning with third quarter 2002. Beginning no later than second quarter 2003, all funds collected that are unused shall be carried forward into subsequent funding years for use in the schools and libraries support mechanism in accordance with the public interest and notwithstanding the annual cap.

\*\*\*\* *Delete (a)(1)*

\*\*\*\* *Delete (a)(2)*

**APPENDIX B****List of Parties Filing Comments  
CC Docket No. 02-6**

<b><u>Committer</u></b>	<b><u>Abbreviation</u></b>
Access Living of Metropolitan Chicago	AL
Alaska State of	Alaska
Alaska Telephone Association, The	ATA
American Association of School Administrators	AASA
American Library Association	ALA
The State of Arkansas E-rate Workgroup	AEWG
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	AWS
Avella Area School District	Avella
Bakersfield School District	Bakersfield
BellSouth and SBC Comm., Inc.	BellSouth/SBC
Benton Foundation	Benton
Cabrini College	Cabrini
California Department of Education, The	CDE
Carnegie Library of Pittsburgh	
Cellular Telecommunications & Internet Association	CTIA
Central Susquehanna Intermediate Unit	
City of Boston	
Cleveland Municipal School District	Cleveland
Coalition for E-Rate Reform	Coalition
Colorado Department of Education	Colorado
Community Technology Centers' Network	CTCNet
Council of Chief State School Officers	CCSSO
Council of the Great City Schools, The	The Council
Delaware Center for Educational Technology	DCET
Dell Computer Corporation	Dell
Echalk LLC	eChalk
Edison Schools, Inc.	Edison
Education and Library Networks Coalition	EdLINC
E-Rate Elite Services, Inc.	E-Rate Elite
Excaliber Internet Corp.	Excaliber
Florida State of Dept. of Ed.	Florida
Florida Division of Library and Information Services	
Florida Public Service Commission	Florida PSC
Funds For Learning, LLC	
General Communications, Inc.	GCI
Harvey ESD	Harney

Harris, Jim	Harris
Hawaii State Public Library	Hawaii
Illinois State Board of Education	ISBE
Inclusive Technologies	Inclusive
Information Institute	
Information Renaissance	Info Ren
Integrity Networking Systems, Inc.	Integrity
Intelenet Commission, Indiana Department of Education and Indiana State Library	Intelenet
Iowa Communications Network	
Iowa Department of Education	
Kellogg Consulting, LLC	Kellogg
Kentucky Department of Education	
Kentucky Department for Libraries and Archives	
Kila School District #20	
Lebanon School District	
Los Angeles Unified School District	
Madison School District	
Maine Public Utilities Commission	MPUC
Marian High School	
Memphis City Schools	
Michigan Information Network, The	MIN
Merit Network, Inc.	
Missouri Research and Education Network	MOREnet
Missouri Office of the Public Counsel	MOPC
Montana Independent Telecommunications Systems	MTIS
Nassau-Suffolk School Boards Association	N-SSBA
National Council on Disability	NCD
National Education Association, the International Society for Technology in Education and The Consortium for School Networking	NEA, ISTE and COSN
New York City Board of Education, The	NYCBOE
New York Public Library, The	NYPL
New York State Education Department, The	
New Jersey Library Association, The	
Nextel Communications, Inc.	Nextel
North Attleborough Public Schools	
North of Boston Library Exchange	NOBLE
North Carolina Department of Cultural Resources	
Office of Information Technology Services of North Carolina, The	ITS
Pennsylvania Department of Education	
Philadelphia School District	
Quaker Valley School District	
Queens Borough Public Library	

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Richardson Associates Electronics	
Rural School and Community Trust	
Scanton Public Library	
Lackawanna County Library System	
Seattle Public Library	
Shirley Bauer	
Software & Information Industry Association	SIIA
Spectrum Communications Cabling Services, Inc.	Spectrum
Sprint Corporation	Sprint
St. Louis Public Library	
Southwest Virginia Education and Training Network	SVETB
TAMSCO Telecommunications Division	TAMSCO
Tel/Logic Inc.	
Telecommunications for the Deaf, Inc.	TDI
Three Rivers	RLSS
Trillion's Digital Communications, Inc.	Trillion
Universal Service Administrative Company	USAC
Verizon Telephone Companies	Verizon
Warwick Communications, Inc.	Warwick
Weisiger, Greg	Weisiger
Western Wireless Corp.	Western Wireless
West Virginia Department of Education	WVDE
Wisconsin Department of Public Instruction, The	WDPI
WiscNet	
WorldCom, Inc.	WorldCom
York County Library System	
Martin Library Association	



APPENDIX C**List of Parties Filing Reply Comments  
CC Docket No. 02-6**

<u>Commenter</u>	<u>Abbreviation</u>
Alaska Department of Education and Early Development, State of	EED
American Association of School Administrators	AASA
American Library Association	ALA
Arkansas E-rate Workgroup, State of	AEWG
AT&T Wireless Services, Inc.	AWS
Council of Chief State School Officers	CCSSO
Cox Communications, Inc.	COX
Dell Computer Corporation	Dell
Education and Library Networks Coalition	EdLiNC
Florida Public Service Commission	FPSC
Funds For Learning, LLC	
Information Technology Industry Council	ITI
Iowa, State Library	
Merit Network, Inc.	Merit
National Association of State Telecommunications Directors	NASTD
National Education Association, The International Society for Technology in Education, and the Consortium for School Networking	NEA, ISTE and COSN
New York State Education Department	New York
Nextel Communications, Inc.	Nextel
Qwest Communications International Inc.	Qwest
Siemens Enterprise Networks	Siemens
Sprint Corporation	Sprint
Verizon	Verizon
Weisiger, Greg	
WorldCom, Inc.	WorldCom

**SEPARATE STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL  
APPROVING IN PART AND CONCURRING IN PART**

*Re: Schools and Libraries Universal Service Support Mechanism, First Report and Order,  
CC Docket No. 02-6*

I wholeheartedly support the Commission's decision to use monies that were left unclaimed by successful applicants of the Schools and Libraries program to stabilize the universal service contribution factor through the first quarter of 2003. All of our universal service programs serve important statutory goals, and I remain as committed as ever to achieving those goals. We must always recognize, however, that the cost of these programs is ultimately borne by American consumers. Accordingly, as the *Order* explains in detail, we must balance the needs of funding these programs against the real burden that our contribution requirements could impose on consumers if we do not manage those requirements carefully.

Lasting minimization of the impact on consumers will require long term universal service contribution reform. The Commission remains committed to moving forward with such reform as quickly as possible. But reform cannot be rushed; it requires thorough assessment of the legal, economic and technical options and careful coordination with related proceedings. Further, reform requires time for a healthy dialogue with state utility commissions, as two of my colleagues have insisted. In that regard, for the last few months, the Commission and our state commission colleagues have been planning a public forum to discuss long term reform, which will take place on June 21, 2002.

That said, I would have preferred to leave open the question whether we would, after the first quarter of 2003, use unclaimed funds to reduce future contributions. In particular, I think it would have been more prudent to answer that question with fuller knowledge of how contribution reform will play out and with a clearer sense of the degree to which such reform actually does improve fund stability. Thus, I concur only as to that small aspect of this *Order*. I consider this concern slight, however, juxtaposed to the beneficial compromise that I have been able to reach with my colleagues, under unavoidably tight time constraints, to prevent unnecessary disruption to carriers, consumers and the integrity of our universal service programs.

**SEPARATE STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Schools and Libraries Universal Service Support Mechanism, First Report and Order,  
CC Docket No. 02-6*

The action we take today benefits our children and communities because it eliminates all ambiguity and ensures that, at an imminent date certain, all unused E-Rate funds will be available to connect our schools and libraries to the Internet. This is something I have wanted to see happen since I arrived at the Commission one year ago. My interpretation has always been that our rules were already clear that unspent funds could be moved into the following year's program. Today's action removes any doubts that may previously have existed.

Although the Commission has given itself until the first quarter of 2003, I see no reason why we cannot complete our work and implement any new rules by the end of this year. I am pleased that the item now expresses hope for earlier action. Our children, our communities, and our country deserve no less.

In the current fifth year of the E-Rate program, schools and libraries have requested more than double the available funds to help bring information age tools to communities across our country. All funds are not disbursed, however -- for a variety of administrative reasons or because individual schools and libraries do not fully use the money committed to them. Our action today ensures that E-Rate funds will stay in the E-Rate program and that one year's undisbursed funds will be disbursed, in their entirety, for their intended purpose of connecting America's schools and libraries.

This Order also benefits consumers by ensuring that they will not be asked to foot what could have been significantly increased universal service contribution levels at the exact same time that they will face increases to the subscriber line charges on their bills. By stabilizing the universal service fund, this Order opens a window of opportunity to consider the future method for assessing contributions to universal service. The benefits of this Order will only be fully realized, however, if we take advantage of this opportunity to complete the full proceeding. If we waste this chance, consumers will rightfully be angry when they face higher bills. And those who receive universal service support -- including those living in rural areas, those with low incomes, and schools, libraries and rural health care providers -- will rightfully be angry that we have failed to ensure a specific, predictable and sufficient universal service mechanism that is sustainable into the future. So we have our work cut out for us, but we also have the opportunity to put universal service on a sounder footing. It's an opportunity we dare not lose.

**SEPARATE STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN  
APPROVING IN PART AND DISSENTING IN PART**

*Re: Schools and Libraries Universal Service Support Mechanism, First Report and Order,  
CC Docket No. 02-6*

At the outset, I want to reaffirm my support for the universal service program and the critical function it serves to ensure access for consumers in rural and high cost areas, and promote access to advance services for schools, libraries, and health care service providers in rural areas.

I am pleased that the Commission has clarified that effective no later than second quarter 2003 any unused funds from the schools and libraries support mechanism in any given year will be carried forward for disbursement in subsequent funding years. The schools and libraries program has been instrumental in facilitating access to advanced services. Today's action will help us ensure that schools and libraries will be able to use the funding available under the existing \$2.25 billion annual cap.

I am also pleased that the Commission is moving forward today to take action to stabilize the universal service contribution factor for consumers. I agree with the majority's decision to blunt the impact of spikes in the universal service contribution factor. I have concerns, however, regarding the methodology used to achieve this result. I would have taken a different path to achieve relief for consumers while providing greater market certainty and ensuring that we achieve our mutual goal of protecting the continuing health and sustainability of the universal service fund.

Some of the systemic problems of our universal service contribution methodology are not new. Back in April 2001, the Commission outlined these issues and sought comment on various potential solutions. For example, the Commission acknowledged the inequities in the universal service contribution system of declining revenues for certain wireline interexchange carriers, as well as the potential impact that the growth in the wireless telecommunications sector may be having on the fund.

At that time, the Commission adopted a Notice of Proposed Rulemaking that acknowledged the inequities of the current system and sought comment on specific proposals to address comprehensive reform of the universal service contribution system. Eight months later, with no permanent relief in sight, AT&T presented this Commission with a request to help level the playing field on contributions to the universal service fund made by its over 50 million long distance customers. For example, AT&T customers now face a monthly federal universal service fund surcharge that stands at over 11%, while customers of new entrant long-distance providers pay at or below the FCC contribution rate set within the 7% range. I supported taking

action on their petition at that time and today.<sup>112</sup>

*I support the Commission's efforts to address the long-term issues created by a converging and competitive marketplace. I look forward to working with my colleagues to establish an equitable and nondiscriminatory contribution system that provides for specific, predictable and sufficient funding to preserve and advance universal service.*

*At its heart, today's decision takes unused money from the schools and libraries program to stem the growth of the contribution factor while the Commission grapples with long term solutions.*

I would have preferred to put in place medium term remedies to address some of these contribution methodology issues (e.g., declining revenues and the potential impact that growth of the wireless telecommunications sector has on the fund). While we continue to address the long term issues, I believe we should address the various inequities that require certain service providers and their customers to bear a disproportionate share of funding the universal service system. Especially since demand for the school and libraries program has always exceeded the cap, I believe we should have taken these steps first before taking any unused monies.

I believe it is incumbent upon us to have taken steps immediately available that could both minimize the impact of any increase on consumers and address potential inequities in our current system prior to taking some of today's actions.

Accordingly, I approve in part and dissent in part from the order.

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<sup>112</sup> See Separate Statement of Commissioner Kevin J. Martin, Federal-State Joint Board on Universal Service: CC Docket No. 96-45 (rel. June 13, 2002).