

NPRM), 67 FR 7327, February 19, 2002, on ways to streamline the operation of the schools and libraries support mechanism, in order to ensure that the benefits of this universal service support mechanism for schools and libraries are distributed in a manner that is fair and equitable and improve our oversight over this program to ensure that the goals of section 254 are met without waste, fraud, and abuse.

3. In response to the *Schools and Libraries NPRM*, the Commission received a tremendous outpouring of ideas and suggestions relating to the operation of the schools and libraries mechanism. In this Second Report and Order (Order), we adopt a number of rules to streamline program operation and promote the Commission's goal of reducing the likelihood of fraud, waste, and abuse. First, we modify certain rules regarding eligible services. In particular, we clarify the statutory term "educational purposes." We clarify that our rules prohibit the funding of discounts for duplicative services. We also clarify our rules to ensure that wireless services are eligible to the same extent wireline services are eligible. We modify our rules to make voice mail eligible for discounts. Second, we direct the Universal Service Administrative Company (USAC or Administrator) to develop a pilot program testing an online list of internal connections equipment that is automatically eligible for discounts, provided the uses are eligible and all other funding requirements are satisfied. Third, we codify the "30 percent" policy, which is a processing benchmark currently used by the Administrator when reviewing requests that include both ineligible and eligible services.

4. With regard to post commitment program administration, we adopt a rule requiring service providers to give applicants the choice each funding year whether to pay the discounted price or pay the full price and then receive reimbursement through the Billed Entity Applicant Reimbursement (BEAR) process, and adopt a rule expressly requiring service providers to remit BEAR payments to the applicant within 20 days after receipt of such payments from the Administrator.

5. With regard to appeals, we permanently extend the time limit for filing an initial appeal with the Schools and Libraries Division (SLD) and the Commission from 30 to 60 days and conclude that all appeals should be treated as filed on the date that they are postmarked. We also conclude that all successful appeals should be funded to the extent that they would have been funded had the discounts been awarded

through the normal funding process. We also make a minor procedural change to our rules relating to filing appeals in this docket.

6. As part of our ongoing efforts to limit waste, fraud, and abuse, we adopt rules to prevent bad actors from receiving benefits associated with the schools and libraries mechanism. In particular, we conclude that anyone convicted of a criminal violation or found civilly liable for actions relating to this program shall be debarred from participation for three years, absent extraordinary circumstances. Also, we decline at this time to adopt further measures to reduce unused funds, in light of our prior actions to streamline the program and increase the efficiency of fund use. We make conforming rule changes in accord with the No Child Left Behind Act of 2002, and we remove certain obsolete sections of our rules.

II. Second Report and Order

A. Eligible Services

7. *Educational Purpose.* We find it appropriate to clarify the scope of the requirement that services be used for an educational purpose. Accordingly, we amend § 54.500 of our rules to clarify the meaning of educational purposes. Pursuant to this requirement, the Administrator has denied requests for services to be used by support staff not involved in instructional activities. We reiterate our recognition that the technology needs of participants in the schools and libraries program are complex and unique to each participant. We find that, in the case of schools, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as educational purposes under this program. To guide applicants in preparing their applications and to streamline the Administrator's review of applications, we further establish a presumption that activities that occur in a library or classroom or on library or school property are integral, immediate, and proximate to the education of students or the provision of library services to library patrons.

8. This clarification, however, is not intended to allow the general public to use services and facilities obtained through this support mechanism for non-educational purposes. In the *Alaska Order*, the Commission granted the State of Alaska a limited waiver of § 54.504(b)(2)(ii) of the Commission's rules, allowing members of rural remote communities in Alaska that lack local or

toll-free dial-up access to the Internet to use excess service obtained through the support mechanism, when the services are not in use by the schools and libraries. The clarification we adopt today does not affect the terms of Alaska's waiver or allow schools or libraries outside the scope of that waiver to provide services to the general public in that manner.

9. Under this standard, reasonable requests for any supported service—over any technology platform—to be used by any school or library staff while in a library, classroom, or on school or library property, shall be eligible for discounts. Moreover, we conclude that in certain limited instances, the use of telecommunications services offsite would also be integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, would be considered to be an educational purpose. By adopting this standard, we provide to schools and libraries and the state and local authorities that govern them a more definitive interpretation of educational purposes, in order to assist them in pursuing their programmatic objectives.

10. We find that our clarification is consistent with statutory mandates that the purpose for which support is provided be for educational purposes in a place of instruction. Moreover, this clarification benefits applicants because it simplifies the application process by making the approval of discounted services more predictable, without sacrificing flexibility, thus furthering our streamlining goals. Because of the difficulties inherent in implementing changes in eligibility in the middle of a funding cycle, services will be available under this clarification beginning with the start of the next funding year (Funding Year 2004), on July 1, 2004.

11. We believe that this interpretation of educational purpose should not result in an increase in waste, fraud, or abuse. First, as the presumption set forth demonstrates, discounts will only be awarded to support activities that have a defined nexus to education, or, in the case of libraries, to the delivery of library services to library patrons. Thus, for instance, using a school's or a library's discounted telecommunications services to support a private enterprise or a political campaign will continue to be a violation of the Act and our rules. In addition, because our rules require schools and libraries to pay a percentage of the cost of services, schools and libraries are unlikely to request services that are not economical. This is particularly true in an environment where many