

We find that the 30 percent policy provides an adequate safe harbor for applicants that inadvertently request ineligible products or services, and appropriately balances applicant accountability with effective administrative review. The 30 percent policy allows the Administrator to process efficiently requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants to determine what part of the discounts requested is associated with eligible services. It also provides an incentive to applicants to eliminate ineligible services from their requests before submitting their applications, further reducing the Administrator's administrative costs. Accordingly, we add § 54.504(c)(1) to our rules as provided.

29. We decline to adopt one suggestion that would require SLD to inform an applicant that its application is about to be rejected under the 30 percent procedure and allow that applicant to provide evidence to refute SLD's determination. Applicants bear the burden of ensuring that the items requested are eligible for support under the program rules. Implementation of such a proposal would result in greater administrative costs and burden, thereby defeating the primary purpose of this policy. Moreover, the applicant still has an opportunity to refute SLD's determination by availing itself of the appeals process.

### C. Choice and Timing of Payment Method

30. *Discussion* We first conclude that we should adopt a rule requiring service providers to give applicants the choice each funding year either to pay the discounted price or to pay the full price and then receive reimbursement through the BEAR process. In addition, we find that the period for remittance of the BEAR payment should be 20 days. Accordingly, we amend § 54.514 of our rules as set forth.

31. Some commenters argued that the choice of payment method should ultimately be made by the service provider, asserting that a mandate requiring all providers to adopt billing systems capable of handling both payment methods would impose significant financial and administrative burdens, particularly on small providers. However, the vast majority of commenters that responded to the *Schools and Libraries NPRM* supported the Commission's proposal. Numerous commenters noted instances of services providers requiring applicants to use the BEAR method.

32. We find that providing applicants with the right to choose payment method is consistent with section 254. Although section 254(h)(1)(B) requires that telecommunications carriers providing discounted service be permitted to choose the method by which they receive reimbursement for the discounts that they provide to schools and libraries, *i.e.*, between receiving either a reimbursement for the discount or an off-set against their obligations to contribute to the universal service fund, the statute does not require that they be permitted to choose the method by which they provide those discounts to the school or library in the first place.

33. In addition, we find that providing applicants with the right to choose which payment method to use will help to ensure that all schools and libraries have affordable access to telecommunications and Internet access services. The Commission previously noted in the *Universal Service Order* that "requiring schools and libraries to pay in full could create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries." The comments in the present record have confirmed that many applicants cannot afford to make the upfront payments that the BEAR method requires. In light of the record before us, we conclude that the potential harm to schools and libraries from being required to make full payment upfront, if they are not prepared to, justifies giving applicants the choice of payment method.

34. As with any agreement, one way that applicants could memorialize the particular payment method chosen would be to place the agreement in the service agreement, or, where there is no written service contract, in a separate agreement. Although applicants are not required to take such action, it has been suggested that doing so would decrease the number of customer complaints and strengthen the Administrator's ability to take action for compliance failures.

35. Once an applicant has made and memorialized its choice for a funding year, the applicant may not unilaterally shift from one form of payment to the other within that funding year. Commenters argued that, in cases where the service begins before the Administrator makes its funding decision, applicants should be able to make discounted payments and then shift to BEAR payments after the funding decision is issued. We find that the administrative costs of such a procedure exceed the limited benefits to the applicant. Furthermore, service

providers are under no obligation to provide discounts or reimbursements until a funding decision is approved, and we therefore find that it would be inappropriate to require providers to offer discounted service before any funding decision is made to authorize such discounts.

36. In response to service providers that argue that such a change will result in significant administrative costs to them, we reiterate that it is consistent with section 254 to provide applicants with the right to choose their payment method. Nevertheless, we anticipate that applicants and service providers will be able to work together in order to determine which payment method is most suitable. For example, a small carrier may enter into an agreement with a school district to provide telecommunications services. Under this contract, the payments could change from month to month based on usage. If the costs of instituting a new billing system to account for the changing levels of discounted service are significant, and the service provider is going to pass on the costs of such a system to the school district, the parties may find it more appropriate to negotiate a set discounted amount to be billed each month, with a true-up bill at the end of the contract. In recognition, however, of potential changes to billing systems that some providers may need to undertake in order to allow any applicant to elect the BEAR process, this rule change concerning election of payment type will be effective for the start of Funding Year 2004.

37. We also conclude that we should 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. BEAR payments are reimbursements for services that have already been provided to and paid for by a school or library. The structure of the schools and libraries support mechanism necessitates that reimbursement must flow to the applicant through the services provider. BEAR payments are not the property of the service provider, which has been paid in full. The Administrator has received many complaints about service providers failing to remit the BEAR payments in a timely fashion or, in some cases, at all. According to the Administrator, formalizing the remittance requirement in a rule would strengthen its ability to ensure compliance. The majority of commenters found that 20 days is an appropriate period for remittance. We therefore adopt a rule requiring a provider who receives a BEAR check