(f) For frequencies in the 929–930 MHz band listed in paragraph (b) of § 90.494: A statement is required from the coordinator recommending the most appropriate frequency.

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Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–15329 Filed 6–23–99; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 54

**[CC Docket Nos. 96–45 and 97–21; FCC 99–49]**

## Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, we clarify certain portions of the Commission's funding priority rules for the schools and libraries universal service support mechanism to remove any ambiguity that may exist in the application of such rules. In this document, we also reconsider, on our own motion, the Commission's rule that prohibits the disbursement of funds during the pendency of an appeal of a decision issued by the Administrator.

**DATES:** June 24, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sharon Webber, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

### I. Introduction

1. In this Order, we clarify certain portions of the Commission's funding priority rules for the schools and libraries universal service support mechanism to remove any ambiguity that may exist in the application of such rules. Specifically, we clarify that, when a filing window is in effect, and demand exceeds total authorized support, the Administrator of the universal service support mechanisms (the Universal Service Administrative Company or USAC), shall allocate funds for discounts to schools and libraries for internal connections beginning with those applicants at the highest discount level, i.e., ninety percent, and to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage.

2. In this Order, we also reconsider, on our own motion, the Commission's rule that prohibits the disbursement of funds during the pendency of an appeal of a decision issued by the Administrator. We find that, if the appeal relates to a request for additional support by the applicant or involves a challenge by a third party to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of the appeal, those funds that have been approved by the Administrator.

### II. Rules of Funding Priority

3. In the *Fifth Reconsideration Order,* 63 FR 43088 (August 12, 1998), the Commission adopted new rules of funding priority that would apply when a filing window is in effect and demand exceeds total authorized support. In establishing these rules of priority, the Commission sought to ensure that funds are directed to the most economically disadvantaged schools and libraries and that every eligible school and library that filed within the window would receive some assistance. Consistent with these goals, the rules of priority provide that requests for telecommunications services and Internet access for all discount categories shall receive first priority for the available funding (priority one services). The remaining funds are allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix, i.e., schools and libraries eligible for a ninety percent discount. To the extent funds remain, the rules provide that the Administrator shall allocate funds to the requests for support for internal connections submitted by schools and libraries eligible for an eighty percent discount, then for a seventy percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining. The rules further provide that, if the remaining funds are not sufficient to support all funding requests within a particular discount level, the Administrator shall allocate the total amount of remaining support on a pro rata basis to that particular discount level.

4. Although the Commission's rules prioritize funding requests on the basis of broad discount categories, e.g., ninety percent or eighty percent, the Commission's rules also specifically recognize that not all discounts calculated under the schools and libraries support mechanism will fall within these broad discount categories. In the *Fourth Reconsideration Order,* 63 FR 2093 (January 13, 1998), the Commission revised the rules regarding how to calculate the appropriate discount level when schools and libraries aggregate their demand with others to create a consortium. The Commission determined, *inter alia,* that, for services that are shared by two or more schools, libraries, or consortia members, i.e., ''shared services,'' the discount level should be calculated by averaging the applicable discounts of all member schools and libraries. As a result, the discount levels for ''shared service'' requests, which typically are internal connection requests, are single discount level percentages, e.g., eighty-nine percent, eighty-eight percent, and so on.

5. While the Commission's funding priority rules do not specifically address the single discount percentage levels associated with ''shared service'' requests, the rules on ''shared services'' and the funding priority rules must be read in concert. We clarify, therefore, that, when sufficient funds are not available to fund all internal connection requests, the Administrator shall allocate funds for discounts to schools and libraries beginning with those applicants at the ninety percent discount level and, to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on. We believe that this method of allocating funds is consistent with the Commission's goal of ensuring that support for internal connections is directed first toward the most economically disadvantaged schools. We also note that allocating funds at each descending discount level will enable the Administrator to distribute funds sooner than it could if it were required to determine the pro rata amount for the entire discount category before distributing support. We add a Note to section 54.507(g)(1)(iii) to reflect the clarification made in this Order. We also clarify that, to the extent sufficient funds do not exist to fund all requests within a single discount percentage, the Administrator shall allocate the

remaining support on a pro rata basis over that single discount percentage level, as provided in section 54.505(g)(1)(iv) of the Commission's rules.

**III. Disbursement of Funding During Pendency of a Request for Review of an Administrator Decision**

6. The Commission's rules provide that, during the pendency of a request for review of a decision by the Administrator, a service provider shall not be reimbursed for the provision of discounted services under the schools and libraries or rural health care support mechanisms, or receive support under the high cost and low income support mechanism, until a final decision has been issued either by the Administrator or by the Commission. In adopting this rule, we reasoned that withholding support during the pendency of an appeal would reduce the likelihood that support is disbursed in error. We did not intend, however, to require that funds be withheld where an applicant claims on appeal that it was eligible for more support than that which was approved by the Administrator or where a third party challenges only a portion of the support approved by the Administrator. In such a case, assuming the application is not otherwise the subject of an appeal, there is no reason to withhold the disbursement of those funds that the Administrator has approved. Moreover, we believe that withholding funds under such circumstances might also have the unintended result of discouraging applicants from filing legitimate appeals. Such a result would undermine one function of our appeal procedures, which is to help ensure that the universal service support mechanisms are operating consistent with Commission rules and policies. Accordingly, we find that, where a pending appeal involves a request for additional support or a third party challenge to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of that appeal, the unchallenged portion of the approved support. Accordingly, section 54.725 of the Commission's rules is revised.

**IV. Effective Date of Rules**

7. In this Order, we revise section 54.725 of the Commission's rules to provide that, where an applicant seeks review of a decision of the Administrator on the grounds that the applicant was eligible for additional support or a third party challenges only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse the funds that it has approved. Some applicants already have filed appeals seeking additional support, but, under our current rules, they are unable to receive the support that the Administrator has approved. Receipt of support is particularly crucial with regard to internal connections in light of the Commission's requirement that applicants complete implementation of their internal connections by a date certain for this funding year. To ensure that the disbursement of support to these applicants is not further delayed, this revised rule must take effect upon publication in the **Federal Register**. We therefore find good cause to depart in the manner described above from the general requirement of 5 U.S.C. 553(d) that final rules take effect not less than thirty (30) days after their publication in the **Federal Register**. Accordingly, section 54.725 of the Commission's rules, as revised below, shall become effective upon release of this Order.

**VI. Regulatory Flexibility Analysis**

*A. Supplemental Final Regulatory Flexibility Analysis*

8. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order*, 62 FR 32862 (June 17, 1997), and the Supplemental Final Regulatory Flexibility Analyses in the *Fifth Reconsideration Order* and the *Eighth Order on Reconsideration*, 63 FR 70564 (December 21, 1998), only to the extent that changes to the Order adopted here on reconsideration require changes in the conclusions reached in the FRFA in the *Universal Service Order* and the Supplemental Final Regulatory Flexibility Analyses in the *Fifth Reconsideration Order* and *Eighth Order on Reconsideration*. This FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Notice of Proposed Rulemaking and Order Establishing the Joint Board (NPRM), prepared in connection with the Recommended Decision, which sought written public comment on the proposals in the NPRM and the Recommended Decision.

9. To the extent that any statement contained in this Supplemental Final Regulatory Flexibility Analysis is perceived as creating ambiguity with respect to our rules or statements made in sections of this Order, the rules and statements set forth in those sections shall be controlling.

1. Need for and Objectives of This Report and Order

10. The Commission is required by section 254 of the Act to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules intended, *inter alia*, to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we clarify one aspect of those rules and reconsider another aspect of those rules. First, we clarify that, when a filing window is in effect, and demand exceeds total authorized support, the Administrator shall allocate funds for discounts to schools and libraries for internal connections beginning with those applicants at the highest discount level, i.e., ninety percent, and to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage. Second, we find that, if an appeal of a decision by the Administrator relates to a request for additional support by the applicant or involves a challenge by a third party to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of the appeal, those funds that have been approved by the Administrator.

2. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA

11. In this Order, the Commission clarifies certain portions of the Commission's funding priority rules for the schools and libraries universal service support mechanism to remove any ambiguity that may exist in the application of such rules. In doing so, the Commission affirms similar guidance that was provided by the Common Carrier Bureau to the Schools and Libraries Division of USAC. In this Order, the Commission also reconsiders, on its own motion, the rule that prohibits the disbursement of funds during the pendency of an appeal from a decision of the Administrator. The Order modifies the rule to provide that, where a pending appeal involves a request for additional support or a third party challenge to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of that appeal, the funds that it has approved.

3. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Order Will Apply

12. 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. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently 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). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

13. As noted in the FRFA at paragraphs 890–925 of the *Universal Service Order*, there are a number of small entities that would be affected by the new universal service rules. The rules adopted in this Order, however, would affect primarily schools and libraries. Moreover, because the rules would allow schools and libraries to benefit more fully from the schools and libraries universal service support mechanism, would not have a significant impact on these small entities. We further describe and estimate, however, the number of small governmental jurisdictions, small businesses, and small organizations that may potentially be affected by the rules adopted in this Order.

14. The Commission specifically noted in the *Universal Service Order* that the SBA defined small elementary and secondary schools and small libraries as those with under $5 million in annual revenues. The Commission further estimated that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in the Universal Service Order. We believe that these same small entities may be affected potentially by the rules adopted in this Order.

15. In addition, the Commission noted in the *Universal Service Order* that neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term ''health care provider'' and sets forth the seven categories of health care providers eligible to receive universal service support. We estimated that there are fewer than 12,296 health care providers potentially affected by the rules in the *Universal Service Order*. We note that these small entities may potentially be affected by the rules adopted in this Order.

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

Both the clarification and modification to the Commission's rules that are set forth in this Order relate only to actions that need to be taken by the Administrator of the universal service support mechanisms. As a result, we do not anticipate any additional burdens or costs associated with these proposed rules on any entities, including on small entities.

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

16. In the FRFA to the *Universal Service Order*, the Commission described the steps taken to minimize the significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order*. As described, our current action to amend our rules will benefit schools, libraries, and rural health care providers, by ensuring that funds are allocated first to the neediest schools and libraries and that schools, libraries, and rural health care providers will be able to receive any support approved by the Administrator that is not the subject of an appeal. We believe that these amended rules fulfill the statutory mandate to enhance access to telecommunications services for schools, libraries, and rural health care providers, and fulfill the statutory principle of providing quality services at ''just, reasonable, and affordable rates,'' without imposing unnecessary burdens on schools, libraries, rural health care providers, or service providers, including small entities.

17. *Report to Congress.* The Commission will send a copy of the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

## VII. Ordering Clauses

18. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR 1.108, the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 are adopted.

19. It is furthered ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR 1.108, Part 54 of the Commission's rules, is amended.

20. It is further ordered that, if the Administrator determines that sufficient funds are available to provide support for all priority one service appeals that may be granted for the first funding year, the Administrator may allocate support immediately to such appeals.

21. It is furthered ordered that, to the extent funds remain after the Administrator has allocated support to all priority one services, and the Administrator has determined that sufficient funds are available to allocate

support to all internal connection appeals down to the seventy percent discount level, the Administrator may allocate support immediately to such internal connection appeals that may be granted.

22. It is furthered ordered that, because the Commission has found good cause, this Order and 47 CFR 54.725, as amended, is effective June 24, 1999.

23. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45, including the Supplemental Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

### Rule Changes

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

## Part 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Add a Note to paragraph (g)(1)(iii) to read as follows:

**§ 54.507 Cap.**

* * * * *

(g) * * *

**Note to paragraph (g)(l)(iii):** To the extent that there are single discount percentage levels associated with ''shared services'' under § 54.505(b)(4), the Administrator shall allocate funds for internal connections beginning at the ninety percent discount level, then for the eighty-nine percent discount, then for the eighty-eight percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining.

* * * * *

3. Revise § 54.725 to read as follows:

**§ 54.725 Universal service disbursements during pendency of a request for review and Administrator decision.**

(a) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the schools and libraries support mechanism or the rural health care support mechanism, the Administrator shall not reimburse a service provider for the provision of discounted services until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

(b) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the high cost and low income support mechanisms, the Administrator shall not disburse support to a service provider until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

[FR Doc. 99–16181 Filed 6–23–99; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 76

**[CS Docket No. 95–178; FCC 99–116]**

## Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission dismisses petitions for reconsideration of the *First Report and Order* filed by Blackstar of Ann Arbor, Inc., licensee of WBSX–TV and by Costa de Oro Television, Inc., licensee of KSTV, that ask for special treatment for certain kinds of situations during the transition from ADIs to DMAs. The Commission has found that special relief is not warranted for these stations as they have taken advantage of the market modification process. Also addressed are possible ways to ease the transition for both broadcasters and cable operators, and the viewers they serve, as the Commission moves from an ADI to a DMA-based market structure. The Commission has set forth several procedural and evidentiary mechanisms to ameliorate the impact the change in market definitions may have on cable operators and broadcasters. The principal goal of the measures taken is to reduce, to the maximum extent feasible, cable subscriber confusion, and disruption in viewing patterns, that may arise because of the change. The Commission also improves the functioning of the *ad hoc* market modification process mandated by the Communications Act. New rules have been implemented encapsulizing the evidence necessary for filing market modification petitions.

**DATES:** These rules are effective July 26, 1999. Public comments on the modified information collection requirements are due on or before July 14, 1999.

**ADDRESSES:** A copy of any comments on the modified information collection requirements should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ben Golant, Consumer Protection and Competition Division, Cable Services Bureau, at (202) 418–7111. For additional information concerning the information collection contained herein, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Order on Reconsideration and Second Report and Order, CS Docket No. 95–178, FCC 99–116 adopted May 21, 1999 and released May 26, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th St. SW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 12th St. SW, Washington, DC 20554.

### Synopsis of the Order on Reconsideration and Second Report and Order

1. The *First Report and Order and Further Notice of Proposed Rulemaking* (''*First Order*''), 61 FR 29312, in this proceeding established new television market definitions for purposes of the cable television signal carriage and retransmission consent rules. The Commission concluded that it was appropriate to change market definitions from Arbitron areas of dominant influence (''ADIs'') to Nielsen Media Research designated market areas (''DMAs'') for must-carry/retransmission consent elections. That action was necessary because the Arbitron market definition mechanism previously relied on was no longer available. However, the Commission continued to use