

Calendar No. 262

106TH Congress }
1st Session }

SENATE

{ REPORT
106-141

CHILDREN'S INTERNET PROTECTION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 97



AUGUST 5, 1999.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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(II)

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CHILDREN'S INTERNET PROTECTION ACT

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Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 97]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 97) "A bill to require the installation and use by schools and libraries of a technology for filtering or blocking material on the Internet on computers with Internet access to be eligible to receive or retain universal service assistance", having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the bill is to protect America's children from exposure to obscene material, child pornography, or other material deemed inappropriate for minors while accessing the Internet from a school or library receiving Federal Universal Service assistance for provisions of Internet access, Internet service, or internal connection.

BACKGROUND AND NEEDS

THE INTERNET AND UNIVERSAL SERVICE

The Internet is an international, cooperative computer network that links many types of users, such as governments, schools, libraries, corporations, hospitals and individuals. Information and communications are exchanged via the Internet through various means, including E-mail, Usenet news groups, chat rooms, and the web sites on the World Wide Web (the Web).

There has been a dramatic expansion in Internet connections over the last several years, with more than a 13-fold increase in the Internet host computer count between 1994 and 1998. The Internet connects more than 29 million host computers in more than 250 countries. Currently, the Internet is growing at a rate of approximately 40 percent to 50 percent annually. Some estimates of the number of U.S. Internet users are as high as 62 million. More than half of the computers connected to the Internet reside in the United States. UUnet, an Internet access provider, estimates that Internet traffic is doubling every four days.

Section 254 of the Telecommunications Act of 1996 added a new subsidy to the traditional Universal Service program, commonly referred to as the Schools and Libraries Discount, or E-rate. As implemented by the Federal Communications Commission (the Commission), the E-rate is a \$2.25 billion annual subsidy aimed at connecting schools and libraries to the Internet. The subsidy is funded through charges on individual consumers' phone bills.

There are approximately 86,000 public schools in the United States.¹ From 1997 to 1998, the percentage of public classrooms connected to the Internet nearly doubled, from 27 percent to 51 percent. During that same time, the percentage of public schools connected to the Internet rose from 78 percent to 89 percent.² At the conclusion of the first program year of the E-rate, the Schools and Libraries Corporation (SLC), responsible for administration of the E-rate subsidy program, had processed 30,120 applications and funded 25,785.

SEXUALLY EXPLICIT MATERIAL ON-LINE

Though the Internet represents tremendous potential in bringing previously unimaginable education and information opportunities to our nation's children, there are very real risks associated with the use of the Internet. Pornography, including obscene material, child pornography, and indecent material is available on the Internet. This material may be accessed directly and intentionally, or may turn up as the unintended product of a general Internet search. Though, due to the amorphous nature of the Internet, it is difficult to establish precisely the amount of pornography available on the Internet, according to the National Journal, there are "at least 30,000 pornographic Web sites."³ This number does not include Usenet news groups, and pornographic spam. Further, the aggressive tactics of commercial pornographers on the Internet expose children to random, and unintended exposure to sexually explicit material.

The vast majority of Internet users utilize Internet browsers, such as Netscape Navigator and Microsoft Explorer, to navigate the Internet. There are two basic methods to conducting Internet searches. The first is to type in a specific site address, which will take the user directly to that location. The second, more general approach, is to type in general keywords which will result in a list of "hits," or sites containing combinations of the keywords.

¹ QED 1997-98 Education Market Guide.

² Department of Education, National Center for Education Statistics.

³ National Journal, "The Web's Pornucopia," January 9, 1999.

Search engines, such as Yahoo, Alta Vista, and Lycos contain databases that store web site addresses. Users type in keyword commands into search engines that scan the database in search of web site addresses that include these terms. It is during these keyword searches that children are at the greatest risk of exposure to harmful material. Because search engines possess no artificial intelligence, they will retrieve any site that includes the key words. Due to the aggressive tactics of commercial pornographers, children are at risk of random exposure to sexually explicit material through these types of keyword searches. "Web surfers looking for porn typically tap into such search services and use keywords like 'sex' and 'XXX'. But so many on-line sex shops now display those words that their presence won't make a site stand out in a list resulting from a user's query. To get noticed, pornographers increasingly try to trick search engines into giving them top billing—sometimes called spoofing."⁴ For example, search terms such as "water baby," a popular child's doll, and "home schooling" will produce commercial Web sites displaying graphic, sexually explicit material.

EXPOSURE TO SEXUALLY EXPLICIT MATERIAL IS HARMFUL TO CHILDREN

Natural sexual development occurs gradually, throughout childhood. Exposure of children to pornography distorts this natural development by shaping sexual perspective through premature exposure to sexual information and imagery. "The result is a set of distorted beliefs about human sexuality. These shared distorted beliefs include: pathological behavior is normal, is common, hurts no one, and is socially acceptable, the female body is for male entertainment, sex is not about intimacy and sex is the basis of self-esteem."⁵ "Many people—including children and adolescents—learn about sex through pornography; it shapes their beliefs, attitudes, and expectations * * *. The prevalence of violent, abusive, and degrading pornography can induce beliefs that practices are not only common, but acceptable."⁶

The Internet presents a unique threat to normal sexual development in children by playing upon common elements that contribute generally to antisocial behavior in children. "Research indicates that there are three factors that produce the best environment to stimulate antisocial behavior in children; it is the combination of anonymity, role models of behavior and arousal. Internet Web sites possess exactly those three factors."⁷

CHILD PORNOGRAPHY AND PEDOPHILES ON-LINE

The threat to children posed by unrestricted Internet access is not limited to exposure to simple pornography. There are increasing incidents of pedophiles utilizing the Internet to lure and seduce children into illegal and abusive sexual activity. In many cases,

⁴Fortune, "The Erotic Allure of Home Schooling," September 8, 1997.

⁵Testimony, Mary Anne Layden Ph.D., Director of Education, Center for Cognitive Therapy, University of Pennsylvania, Committee on Commerce, Science, and Transportation, March 4, 1999.

⁶Neil Postman, *The Disappearance of Childhood*.

⁷Testimony, Mary Anne Layden Ph.D., Director of Education, Center for Cognitive Therapy, University of Pennsylvania, Committee on Commerce, Science, and Transportation, Hearing on Internet Filtering, March 4, 1999.

such activity is the product of individuals, taking advantage of the anonymity provided by the Internet to stalk children through chatrooms, and by E-mail. However, an increasingly disturbing trend is that of highly organized, and technologically sophisticated groups of pedophiles who utilize advanced technology to trade in child pornography, and to sexually exploit and abuse children.

In 1996, the San Francisco Chronicle reported on police efforts to break up an international ring of pedophiles operating through an on-line chatroom known as the "Orchid Club." This case underscores both the technological sophistication of such activities, and the unique challenge of protecting children who may explore a global communications medium. "The case appears to be the first incident where pornography on the Internet has been linked to an incident of child molestation that was transmitted on-line. Prosecutors said members produced and traded child pornography involving victims as young as five years old, swapped stories of having sex with minors and in one instance chatted online while two suspects molested a 10-year-old girl."⁸ Sixteen men were indicted, including individuals from across the United States, Australia, Canada, and Finland.

Tragically, the "Orchid Club" arrests only served notice of an emerging trend. In 1998, the U.S. Customs Service, in coordination with law enforcement officials from 13 other countries, conducted a raid on the "Wonderland Club." In order to "join" the Wonderland Club, prospective members had to provide 10,000 images of child pornography, which were then digitally cross-referenced against the club's data base of more than 500,000 images of children to ensure their originality. "The images depict everything from sexual abuse to the actual rape of children—some as young as 18 months. Some club members in the U.S., Canada, Europe and Australia * * * owned production facilities and transmitted live child-sex shows over the Web. Club members directed the sex acts by sending instruction to the producers via Wondernet chat rooms. 'They had standards,' said a law enforcement official involved in the case. 'The only thing they banned was [sic] snuff pictures, the actual killing of somebody'."⁹

THE INTERNET AS A TOOL FOR SPREADING HATE, ILLICIT DRUG USE INFORMATION, AND BOMB-MAKING INFORMATION

Increasingly, the Internet is being used as a tool for disseminating information and propaganda promoting racism, anti-Semitism, extremism, and how-to manuals on everything from drugs to bombs.

Rapid Internet growth has provided an opportunity for those promoting hate to reach a much broader audience. Our nation's youth, who are literally growing up in a digital age, are uniquely susceptible to these messages of hate. Through Internet access at home, school, and in public libraries, children can now be exposed to extremely hateful and dangerous information, and material that previous generations would likely not have encountered in their entire lifetime. "They (hate groups) peddle hatred to children, with bright-

⁸San Francisco Chronicle, "Child Porn Ring on Internet," July 17, 1996.

⁹Time, "Main Street Monsters," September 14, 1998.

ly colored Web pages featuring a coloring book of white supremacist symbols and a crossword puzzle full of racist clues.”¹⁰

Those who would promote division and hatred have always utilized media propaganda as a means for spreading their toxic message. Magazines, pamphlets, movies, music and other means have been their traditional tools. However, with the advent of the World Wide Web, and digital convergence, these organizations are able to deliver a multimedia hate message through every computer, and potentially into the minds of every child with a computer and a mouse. Images of burning crosses, Neo-Nazi propaganda, every imaginable message of division and hatred are just one click away from our children. “Many sites operated by neo-nazis, skinheads, Klu Klux Klan members and followers of radical religious sects are growing more sophisticated, offering inviting Web environments that are designed to be attractive to children and young adults.”¹¹

The software filtering industry estimates that, of the 40,000 to 60,000 new Web pages found each week, about 180 are hate or discrimination pages, 2,500 to 7,500 are adult sites, 400 are dedicated to violence, 1,250 are dedicated to weapons, and 50 are murder-suicide sites.¹²

Instruction manuals on bomb-making, weapons purchases, drug making and purchasing, are generally available on the Internet. With simple word searches using “marijuana,” kids can access web sites instructing them on how to cultivate, buy, and consume the drug.¹³ Similar searches on bomb-making produce the same result. “The Bureau of Alcohol, Tobacco, and Firearms recently ran a simple Internet query for the term “pipe bomb,” using several commonly used search engines. This query produced nearly three million “hits” of Web sites containing information on pipe bombs.”¹⁴ As with hate speech, the Internet represents an unprecedented opportunity for the distribution of literature and information regarding illegal drug activity, bomb-making, and terrorism. Literature such as the “Terrorist’s Handbook” is easily available on-line, and provides readers with instruction on everything from how to build guns and bombs, to lists of suppliers for the chemicals, and other ingredients necessary to construct such devices.¹⁵ Another Web site offers the “School Stopper’s Textbook,” touted as “A Guide to Disruptive Revolutionary Tactics for High-Schoolers.”

BLOCKING AND FILTERING TECHNOLOGY

Software companies have created technology applications that seek to protect children from exposure to inappropriate material that is disseminated and available on the Internet. Such technology has existed for several years. There are two basic categories of such technology, blocking and filtering. “There are now close to ninety

¹⁰ New York Times, “Hate Groups Seeking Broader Reach,” July 17, 1999.

¹¹ Post Intelligencer, “Nazism on the Internet,” March 18, 1999.

¹² New York Law Journal, “Extreme Speech on the Internet,” June 9, 1999.

¹³ Examples: (www.redshift.com/arnes/growl.html), (www.peretto.com/index.html).

¹⁴ Testimony, Special Agent Mark James, Bureau of Alcohol, Tobacco, and Firearms, Senate Committee on Commerce, Science, and Transportation, Hearing on Internet Filtering, May 20, 1999.

¹⁵ Example: (<http://come.to/anarchy/>).

different solutions from which parents and educators can choose to address just about every different need and value system.”¹⁶

Blocking software prevents access to Web sites or E-mail addresses preprogrammed into the software. These products include N2H2, Cyber Patrol, Cyber Sitter, Net Nanny, X-Stop, Net Shepherd, and others. Parents, teachers, or librarians can add or remove sites from the program. Further, the manufacturers regularly update the blocking lists, adding new sites, and removing ones that are no longer in operation.

Filtering software screens sites based on keywords and rating systems. Like blocking software, filtering programs can be modified by the user, allowing them to add and remove keywords to be filtered.

The strengths of these various systems have been questioned. Some have criticized blocking software because it only filters predetermined sites. Due to the sheer size of the Internet, and the pace at which it changes, some have argued that it is impossible to keep blocking lists current and comprehensive. Others have argued that filtering systems are too arbitrary, that filtering by keyword may result in blocking both harmful sites and useful sites. “A general perception exists that Internet filtering is seriously flawed and in many situations unusable. It is also perceived that schools and libraries don’t want filtering. These notions are “based largely on problems associated with earlier versions of client-based software that are admittedly crude and ineffective. Though some poor filtering products still exist, filtering has gone through an extensive evolution and is not only good at protecting children but also well-received and in high demand.”¹⁷

Libraries and schools making a good faith use of blocking or filtering software to protect children or to avoid illegal materials for adults would be protected from civil liability by the “Good Samaritan” immunity, provided by Federal law. See 47 U.S.C. 230(e)(2). Such blocking or filtering software could also provide a criminal defense against the knowing transmission of illegal pornography inadvertently or deliberately accessed.

The Committee wishes to reinforce that it does not believe that the use of blocking and filtering technologies is in any way a substitute for aggressive and responsible oversight by teachers and librarians. Such technologies are intended to be a supplement to, not a replacement for, teacher and librarian efforts to protect children while on-line. Further, the Committee views such technologies as learning resources. For example, the use of such technologies in conjunction with ethical use policies designed to teach children responsibility and accountability provides both the assurance that children will be protected from illegal and harmful material while providing the opportunity to teach responsibility and accountability in a safe environment.

¹⁶Testimony, Gordon Ross, President and CEO of Net Nanny Software, International, Inc., Senate Committee on Commerce, Science, and Transportation, Hearing on Internet Filtering, March 4, 1999.

¹⁷Testimony, Peter Nickerson, CEO and President of N2H2, Inc., Senate Committee on Commerce, Science, and Transportation, Hearing on Internet Filtering, May 20, 1999.

FIRST AMENDMENT ISSUES: THE GOVERNMENT HAS A COMPELLING
INTEREST IN PROTECTING CHILDREN

The Supreme Court has repeatedly reaffirmed the compelling interest of the government in protecting children from exposure to sexually explicit material.¹⁸ As stated by the Court: “It is evident beyond the need for elaboration that the State’s interest in safeguarding the physical and psychological well-being of a minor is compelling.”¹⁹ A school or library, by accepting Federal dollars through the Universal Service fund, becomes a partner with the Federal government in pursuing this compelling interest. The Supreme Court has made clear that schools have the authority to remove inappropriate books from school libraries.²⁰ The Internet is simply another method for making information available in a school or library. It is no more than a technological extension of the book stack. As such, the same principles affirmed by the Court in *Bethel* apply to restricting children’s access to material, over the Internet, in a school.

Opponents of S. 97 point to a Federal district court decision in *Mainstream Loudoun v. Bd. Of Trustees of Loudoun County Library*, 24 F. Supp.2d 552 (E.D.Va. 1998), in which that library’s use of Internet filtering software was declared unconstitutional. However, there are distinct differences between the requirements under S. 97, and the *Mainstream Loudoun* case. A major distinction in S. 97 is that this bill is an incentive subsidy and not a police power statute that is binding on the public. Another critical distinction is that filters were used on all computers in the *Loudoun* case (both computers used by adults and by children), where as, under S. 97, blocking or filtering is required only while a computer is in use by a minor. Further, under S. 97, content which is specifically required to be blocked, child pornography and obscene material, enjoys no protection under the First Amendment.²¹ On the other hand, in the *Loudoun* case, the libraries were required to block material that was “harmful to minors,” speech that is not traditionally considered to lie outside of First Amendment protection. “It must also be noted that the Loudoun court did hold that minimizing access to illegal pornography and avoidance of creation of a sexually hostile environment are compelling interests. The court went on to

¹⁸*Ginsberg v. New York*, 390 U.S. 629, 636–43 (1968); *FCC v. Pacifica Foundation*, 438 U.S. 726, 748–50 (1978); *New York v. Ferber*, 458 U.S. 747, 757 (1982); *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126–28 (1989); *Denver Area Ed. Tel. Consortium v. FCC*, 116 S. Ct. 2374, 2391 (1996); *Reno v. ACLU*, 117 S. Ct. 2329 (1997).

¹⁹*Ferber* at 757.

²⁰*Bethel School District. No. 403 v. Fraser*, 478 U.S. 675, 684 (1986): “This Court’s First Amendment jurisprudence has acknowledged limitations on the otherwise absolute interest of the speaker in reaching unlimited audience where the speech is sexually explicit and the audience may include children. In *Ginsberg v. New York*, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968), this Court upheld a New York Statute banning the sale of sexually oriented material to minors, even though the material in question was entitled to First Amendment protection with respect to adults. And in addressing the question whether the First Amendment places any limit on the authority of public schools to remove books from a public school library, all Members of the Court, otherwise sharply divided, acknowledged that the school board has the authority to remove books that are vulgar. *Board of Education v. Pico*, 457 U.S. 853, 871–872, 102 S.Ct. 2799, 2814–2815, 73 L.Ed.2d 435 (1982)(plurality opinion); *id.*, at 879–881, 102 S.Ct., at 2814–2815 (BLACKMUN, J., concurring in part and in judgment); *id.*, at 918–920, 102 S.Ct., at 2834–2835 (REHNQUIST, J., dissenting). These cases recognize the obvious concern on the part of parents, and school authorities acting in loco parentis, to protect children—especially in a captive audience—from exposure to sexually explicit, indecent, or lewd speech.”

²¹*New York v. Ferber*, 458 U.S. 474, 481 (1982), *Miller v. California*, 414 U.S. 15, 24–25, 27 (1973).

hold that, although the challenged policy was over inclusive because it restricted adult Internet access, it would be possible to create a policy which would protect children. Id. at 567.”²²

In addition, in addressing these issues, a court is also likely to look to related, non-Internet situations that have arisen in the past. These precedents include decisions regarding the selection or removal of books in schools or libraries, and the selection of content for publication in school-sponsored student newspapers. The Supreme Court has ruled that schools are non-public forums that are outside the general marketplace of expression. Accordingly, school boards have significant discretion to restrict content and expression within that environment.²³ Under this doctrine, school officials only violate the First Amendment when they limit access to materials “for the purpose of restricting access to the political ideas or social perspectives discussed in them, when that action is motivated simply by the official’s disapproval of the ideas involved.”²⁴

In situations where a school has restricted access to certain material, courts tend to consider whether the school’s decision bore a reasonable relationship to a legitimate pedagogical concern.²⁵ For example, a school district’s decision that students exposed to violence, nudity, or “hard” language is a view-point neutral “legitimate pedagogical concern.”²⁶

At its core, S. 97 is a spending bill, amending section 254(h) of the Communications Act of 1934 to require, as a contingency for receipt of a Federal subsidy, certain measures to restrict children’s access to child pornography, obscene material, and, upon election, other harmful material via school and library computers. Local officials are granted the authority to determine what technology is used to achieve this end, and policies for determining how such technology is used. The precedent for conditioning receipt of Federal assistance is consistent with the Court’s opinion in *Rust v. Sullivan*, 500 U.S. 173 (1991), and *National Endowment for the Arts v. Finley*, 524 U.S. 569 (1998). In sum, the Committee is confident that the approach of S. 97 to schools would survive any constitutional challenge brought in Federal court.

With respect to the legislation’s approach to libraries, the Committee notes again that regulations designed to protect minors are historically given greater latitude for the purposes of First Amendment review. Moreover, a library does not constitute a traditional public forum. Libraries place many restrictions on what patrons may do while on the premises. The simplest, and most powerful example of this are the strict rules implemented by libraries to maintain quiet, and an atmosphere for reading and study. Patrons are not permitted to give speeches, make public statements, sing, speak loudly. Further, patrons at a library do not have the right to make editorial decisions regarding the availability of certain material. It is the exclusive authority of the library to make affirmative decisions regarding what books, magazines, or other material is placed on library shelves, or otherwise made available to pa-

²²Testimony, Jay Sekulow Esq., The American Center for Law and Justice, Senate Committee on Commerce, Science, and Transportation, Hearing on Internet Filtering, March 4, 1999.

²³*Hazelwood School District v. Kuhlmeier*, 482 U.S. 260, 273 (1988).

²⁴*Board of Education v. Pico*, 457 U.S. 853, 879–80 (1982).

²⁵*Hazelwood v. Kuhlmeier*.

²⁶*Borger v. Bisciglia*, 888 F. Supp. 97 (E.D. Wis. 1995).

trons. Libraries impose many restrictions on the use of their systems which demonstrate that the content of the library's offerings are not determined by the general public. Additionally, an open forum by government designation becomes open because it allows the general public into its facility for First Amendment activities. Like in the *National Endowment for the Arts v. Finley*, 524 U.S. 569 (1998) decision, the government purchase of books (like buying art) does not create a public forum.

A review of the nature of libraries and schools, and the purposes that lie behind their provision of Internet access, leads to the conclusion that a public library or school is not a public forum. This conclusion is amply supported by Supreme Court Precedent. In *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 267 (1988), the Supreme Court stated that "schools do not possess all the attributes of streets, parks, and other traditional public forums that time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Id.* (Quoting *Hogue v. CIO*, 307 U.S. 496, 515 (1939)). Likewise, a library's purpose is to make available books, to lend research tools, and supplemental educational opportunities to its citizens. It is "a place dedicated to quiet, to knowledge, and to beauty." *Brown v. Louisiana*, 383 U.S. 131, 142 (1966). Accordingly, it is the Committee's considered judgment that the legislation's approach to libraries is constitutional.

LEGISLATIVE HISTORY

During the 105th Congress, on February 9, 1998, Senator McCain introduced the original version of this legislation. The original bill number was S. 1619. This bill, S. 1619, was co-sponsored by Senators Coats, Hollings, Murray, Stevens, Inouye, Hutchison, Kohl, Bond, and Abraham. The Committee held hearings on the legislation on February 10, 1998. On March 12, 1998, in open executive session the Committee ordered the bill to be reported favorably without amendment. On June 25, 1998, the bill was reported to the Senate by Senator McCain without amendment, with written report No. 105-226.

In the 106th Congress, Senator McCain, along with Senator Hollings, introduced S. 97, which was similar to S. 1619, the bill introduced in the 105th Congress. The bill was cosponsored by Senators Burns, Abraham, Stevens, Hutchison, Bond, and Helms. The Committee conducted hearings on S. 97 on March 4, 1999, and again on May 20, 1999. On June 23, 1999 in open executive session the Committee ordered the bill to be reported favorably with an amendment in the nature of a substitute.

SUMMARY OF MAJOR PROVISIONS

This legislation establishes that any school or library currently using, or requesting universal service funds, provide certification to the FCC that filtering or blocking technology is deployed on computers when in use by children, and that such school or library has in place a policy to prevent access by minors to child pornography and obscene material. In addition, the legislation provides that schools and libraries may also identify additional material deemed

inappropriate for minors and may utilize selected technology to block or filter said material. Schools and libraries failing to certify such, or found to be in violation of such certification, are disqualified from receipt of a universal service subsidy, and are required to repay the balance of such subsidy for the period of time they were operating under certification and in non-compliance. The FCC is expressly prohibited from content regulation, or from considering a school or library's specific content policy in making a universal service fund certification. The legislation provides that the universal Service subsidy may be used to cover the cost of the acquisition of the software or technology necessary to comply with requirements added by the bill.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 15, 1999.

Hon. JOHN MCCAIN,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 97, the Children's Internet Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs), and Shelley Finlayson (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 97—Children's Internet Protection Act

CBO estimates that enacting this bill would have no significant effect on the federal budget. Enacting S. 97 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S. 97 would amend the Communications Act of 1934 to require that schools and libraries that seek assistance from the Universal Service Fund for telecommunications expenses certify to the Federal Communications Commission (FCC) that they have selected and will install a system to filter or block Internet material that is inappropriate for minors. Based on information from the FCC, CBO estimates that processing these certifications would have a negligible impact on the FCC's administrative costs.

S. 97 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Nevertheless, to the extent that schools and libraries receive subsidies from the Universal Service Fund, they would be required to comply

with the bill's Internet filtering requirements and standards. Because those requirements are a condition of participating in a voluntary federal program, they would not be mandates as defined by UMRA.

The cost of complying with the bill's standards would vary widely based on each institution's computer infrastructure, current filtering system if any, chosen method for filtering, additional staff requirements, and negotiated discounts. Some states, school districts, and libraries have already begun installing filtering systems that may meet the bill's requirements; they would bear no additional costs to comply with the requirements of this bill. In most cases, the cost per computer is likely to be relatively small. But a large number of schools and libraries could be affected, and the additional aggregate cost could be in the tens of millions of dollars. (CBO estimates that subsidies from the Universal Service Fund for schools and libraries will total more than \$1 billion in fiscal year 1999.)

The CBO staff contacts are Mark Hadley (for federal costs), and Shelley Finlayson (for the state and local impact). This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

A precise total of the schools and libraries applying for universal assistance under section 254(h)(1)(B) is not available at this time. At the conclusion of the first program year of the E-rate, the Schools and Libraries Corporation (SLC), responsible for administration of the E-rate subsidy program, had processed 30,120 applications and funded 25,785. Due to the permissive eligibility standards envisioned by Section 254(h)(1)(B), it is conceivable that a majority of schools and libraries will apply for some part of universal service assistance. There are currently some 86,000 public elementary and secondary schools in the United States, which are potentially eligible for assistance. In addition there are currently approximately 16,000 private elementary and secondary schools in the United States with an endowment of less than \$50 million that are also potentially eligible for assistance. There are an estimated 9,000 public libraries in the United States.

ECONOMIC IMPACT

This bill will add marginally to the costs of connecting to the Internet for schools and libraries. Filtering and blocking systems are included in the categories of universal service providers covered by section 254. Under the needs-based matrix, universal service assistance will provide up to a 90 percent discount on the purchase price of these systems. The remainder will be incurred by the schools and libraries. The cost of these systems is anticipated to be

minimal, and is not expected to have a significant economic impact on the schools or libraries installing them.

PRIVACY

Because the filtering or blocking system is entirely user-based, there will be no impact on personal privacy as a result of this legislation. In addition, because sites are blocked or filtered before children have access to them, there will be less need to trace where children have been on the Internet in order to enforce a “standard of use” policy.

PAPERWORK

Schools and libraries applying for universal service assistance already are required to fill out forms for the Federal Communications Commission (FCC) in order to qualify for the program. Implementation of this bill will add an additional certification requirement to this application. It is intended that this certification requirement will be minimal, and will consist of no more than an affirmation that the school or library has met the requisite certification requirement. In the case of a library changing its blocking or filtering system, or discontinuing the use of such system, or discounting the use of such system after installation, an additional certification will have to be made.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the bill may be cited as the “Children’s Internet Protection Act.”

Section 2. Requirement for schools and libraries to implement filtering or blocking technology for computers with Internet access as condition of universal service discounts

Section 2 of the bill adds a new section 254(h)(5) to the Communications Act of 1934 that establishes a requirement that, in order to qualify for assistance under the paragraph (1)(B) of that section, any elementary, or secondary school applying for such assistance must submit to the Commission certification that: (1) such school has selected a technology for its computers with Internet access in order to filter or block Internet access through such computer to material that is obscene; and child pornography; (2) is enforcing a policy to ensure the operation of the technology during any use of such computers by minors. In addition, schools are affirmatively empowered, but not required, to utilize such selected technology to block or filter any additional material that such school may determine to be inappropriate for minors.

Under new section 254(h)(5)(D), schools with computers on the effective date of the bill are required to submit such certification as described above within 30 days after such effective date. Schools which may be unable to comply within this 30-day window due to State or local procurement rules or regulations, or competitive bidding requirements, must provide notice to the Commission of such situation, and provide to the Commission a date certain for when they will be in compliance.

Schools acquiring computers after the effective date would be required to submit certification to the Commission within 10 days after the date on which the school first becomes covered.

Under new section 254(h)(5)(E), any school that knowingly fails to comply with certification requirements is required to reimburse the telecommunications carriers that provided discounted services in amounts equal to the amount of the discount provided the school.

Under new section 254(h)(5)(F), the Commission is directed, in such situations where a school is in noncompliance, to determine the date on which discount rates are to cease, and to notify the appropriate common carriers of such termination of services.

New section 254(h)(5)(G) provides for recommencement of services at discounted rates upon resubmittal to the Commission, by such terminated school, of a certification that such school is in compliance with the requirements.

New section 254(h)(5)(H) expressly prohibits the Commission from establishing a criterion for determination of material to be blocked, or filtered, reviewing the specific criteria of policies of schools and libraries as a contingent for certification, or taking action against any school or library that has taken good faith efforts to comply with the requirements.

Section 2 of the bill also adds a new section 254(h)(6) that requires libraries with more than one computer follow the same certification and compliance requirements as established under section 254(h)(5) for computers while in use by a minor. Equally, such libraries are subject to the same penalties for noncompliance as provided under that section. Similarly, the same restrictions on Commission activities apply under the libraries portion of the Act.

Section 2 of the bill also adds a definition of the term “minor” to section 254(h) of the Communications Act to mean any individual that has not reached the age of 17 years.

The amendments made by the bill take effect 120 days after the date of enactment.

Section 2 of the bill also provides that discounted rates under section 254(h)(1)(B) shall be made available in amounts up to the annual cap on Federal universal service support for schools and libraries only for the services covered by Commission regulations on priorities for funding telecommunications services, Internet access, Internet services, and Internal connections that assign priority for available funds for the poorest schools. Additionally, under the same conditions, such discounts may be applied to the purchase or acquisition of filtering or blocking products necessary to meet the requirements of the Act.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

SEC. 254. [47 U.S.C. 254] UNIVERSAL SERVICE.

(a) PROCEDURES TO REVIEW UNIVERSAL SERVICE REQUIREMENTS.—

(1) **FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE.**—Within one month after the date of enactment of the Telecommunications Act of 1996, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) and this section, including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations. In addition to the members of the Joint Board required under section 410(c), one member of such Joint Board shall be a State-appointed utility consumer advocate nominated by a national organization of State utility consumer advocates. The Joint Board shall, after notice and opportunity for public comment, make its recommendations to the Commission 9 months after the date of enactment of the Telecommunications Act of 1996.

(2) **COMMISSION ACTION.**—The Commission shall initiate a single proceeding to implement the recommendations from the Joint Board required by paragraph (1) and shall complete such proceeding within 15 months after the date of enactment of the Telecommunications Act of 1996. The rules established by such proceeding shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.

(b) **UNIVERSAL SERVICE PRINCIPLES.**—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) **QUALITY AND RATES.**—Quality services should be available at just, reasonable, and affordable rates.

(2) **ACCESS TO ADVANCED SERVICES.**—Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) **ACCESS IN RURAL AND HIGH COST AREAS.**—Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) **EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.**—All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.—There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.—Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) ADDITIONAL PRINCIPLES.—Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

(c) DEFINITION.—

(1) IN GENERAL.—Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services—

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.

(2) ALTERATIONS AND MODIFICATIONS.—The Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms.

(3) SPECIAL SERVICES.—In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h).

(d) TELECOMMUNICATIONS CARRIER CONTRIBUTION.—Every 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. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis. 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.

(e) UNIVERSAL SERVICE SUPPORT.—After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.

(f) STATE AUTHORITY.—A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

(g) INTEREXCHANGE AND INTERSTATE SERVICES.—Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

(h) TELECOMMUNICATIONS SERVICES FOR CERTAIN PROVIDERS.—

(1) IN GENERAL.—

(A) HEALTH CARE PROVIDERS FOR RURAL AREAS.—A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State. A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.

(B) EDUCATIONAL PROVIDERS AND LIBRARIES.—All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection

(c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. A telecommunications carrier providing service under this paragraph shall—

(i) have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or

(ii) notwithstanding the provisions of subsection (e) of this section, receive reimbursement utilizing the support mechanisms to preserve and advance universal service.

(2) **ADVANCED SERVICES.**—The Commission shall establish competitively neutral rules—

(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries; and

(B) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.

(3) **TERMS AND CONDITIONS.**—Telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.

(4) **ELIGIBILITY OF USERS.**—No entity listed in this subsection shall be entitled to preferential rates or treatment as required by this subsection, if such entity operates as a for-profit business, is a school described in **[paragraph (5)(A)] paragraph (7)(A)** with an endowment of more than \$50,000,000, or is a library or library consortium not eligible for assistance from a State library administrative agency under the Library Services and Technology Act.

(5) **REQUIREMENTS FOR CERTAIN SCHOOLS WITH COMPUTERS HAVING INTERNET ACCESS.**—

(A) **INTERNET FILTERING.**—

(i) *IN GENERAL.*—*Except as provided in clause (ii), an elementary or secondary school having computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the school, school board, or other authority with responsibility for administration of the school—*

(I) submits to the Commission a certification described in subparagraph (B); and

(II) ensures the use of such computers in accordance with the certification.

(ii) *APPLICABILITY.*—The prohibition in paragraph (1) shall not apply with respect to a school that receives services at discount rates under paragraph (1)(B) only for purposes other than the provision of Internet access, Internet service, or internal connections.

(B) *CERTIFICATION.*—A certification under this subparagraph is a certification that the school, school board, or other authority with responsibility for administration of the school—

(i) has selected a technology for its computers with Internet access in order to filter or block Internet access through such computers to—

(I) material that is obscene; and

(II) child pornography; and

(ii) is enforcing a policy to ensure the operation of the technology during any use of such computers by minors.

(C) *ADDITIONAL USE OF TECHNOLOGY.*—A school, school board, or other authority may also use a technology covered by a certification under subparagraph (B) to filter or block Internet access through the computers concerned to any material in addition to the material specified in that subparagraph that the school, school board, or other authority determines to be inappropriate for minors.

(D) *TIMING OF CERTIFICATIONS.*—

(i) *SCHOOLS WITH COMPUTERS ON EFFECTIVE DATE.*—

(I) *IN GENERAL.*—Subject to subclause (II), in the case of any school covered by this paragraph as of the effective date of this paragraph under section 2(h) of the Childrens' Internet Protection Act, the certification under subparagraph (B) shall be made not later than 30 days after such effective date.

(II) *DELAY.*—A certification for a school covered by subclause (I) may be made at a date that is later than is otherwise required by that subclause if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification on the date otherwise required by that subclause. A school, school board, or other authority with responsibility for administration of the school shall notify the Commission of the applicability of this subclause to the school. Such notice shall specify the date on which the certification with respect to the school shall be effective for purposes of this clause.

(ii) *SCHOOLS ACQUIRING COMPUTERS AFTER EFFECTIVE DATE.*—In the case of any school that first becomes covered by this paragraph after such effective date, the certification under subparagraph (B) shall be made not later than 10 days after the date on which the school first becomes so covered.

(iii) *NO REQUIREMENT FOR ADDITIONAL CERTIFICATIONS.*—A school that has submitted a certification

under subparagraph (B) shall not be required for purposes of this paragraph to submit an additional certification under that subparagraph with respect to any computers having Internet access that are acquired by the school after the submittal of the certification.

(E) NONCOMPLIANCE.—

(i) **FAILURE TO SUBMIT CERTIFICATION.**—Any school that knowingly fails to submit a certification required by this paragraph shall reimburse each telecommunications carrier that provided such school services at discount rates under paragraph (1)(B) after the effective date of this paragraph under section 2(h) of the Childrens' Internet Protection Act in an amount equal to the amount of the discount provided such school by such carrier for such services during the period beginning on such effective date and ending on the date on which the provision of such services at discount rates under paragraph (1)(B) is determined to cease under subparagraph (F).

(ii) **FAILURE TO COMPLY WITH CERTIFICATION.**—Any school that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraph (B) shall reimburse each telecommunications carrier that provided such school services at discount rates under paragraph (1)(B) after the date of such certification in an amount equal to the amount of the discount provided such school by such carrier for such services during the period beginning on the date of such certification and ending on the date on which the provision of such services at discount rates under paragraph (1)(B) is determined to cease under subparagraph (F).

(iii) **TREATMENT OF REIMBURSEMENT.**—The receipt by a telecommunications carrier of any reimbursement under this subparagraph shall not affect the carrier's treatment of the discount on which such reimbursement was based in accordance with the third sentence of paragraph (1)(B).

(F) CESSATION DATE.—

(i) **DETERMINATION.**—The Commission shall determine the date on which the provision of services at discount rates under paragraph (1)(B) shall cease under this paragraph by reason of the failure of a school to comply with the requirements of this paragraph.

(ii) **NOTIFICATION.**—The Commission shall notify telecommunications carriers of each school determined to have failed to comply with the requirements of this paragraph and of the period for which such school shall be liable to make reimbursement under subparagraph (E).

(G) RECOMMENCEMENT OF DISCOUNTS.—

(i) **RECOMMENCEMENT.**—Upon submittal to the Commission of a certification under subparagraph (B) with respect to a school to which clause (i) or (ii) of subpara-

graph (E) applies, the school shall be entitled to services at discount rates under paragraph (1)(B).

(ii) NOTIFICATION.—The Commission shall notify the school and telecommunications carriers of the recommencement of the school's entitlement to services at discount rates under this subparagraph and of the date on which such recommencement begins.

(iii) ADDITIONAL NONCOMPLIANCE.—The provisions of subparagraphs (E) and (F) shall apply to any certification submitted under clause (i).

(H) LIMITATION ON FEDERAL ACTION.—

(i) IN GENERAL.—No agency or instrumentality of the United States Government may—

(I) establish any criteria for making a determination under subparagraph (C);

(II) review a determination made by a school, school board, or other authority for purposes of a certification under subparagraph (B); or

(III) consider the criteria employed by a school, school board, or other authority for purposes of determining the eligibility of a school for services at discount rates under paragraph (1)(B).

(ii) ACTION BY COMMISSION.—The Commission may not take any action against a school, school board, or other authority for a violation of a provision of this paragraph if the school, school board, or other authority, as the case may be, has made a good faith effort to comply with such provision.

(6) REQUIREMENTS FOR CERTAIN LIBRARIES WITH COMPUTERS HAVING INTERNET ACCESS.—

(A) INTERNET FILTERING.—

(i) IN GENERAL.—A library having one or more computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the library—

(I) submits to the Commission a certification described in subparagraph (B); and

(II) ensures the use of such computers in accordance with the certification.

(ii) APPLICABILITY.—The prohibition in paragraph (1) shall not apply with respect to a library that receives services at discount rates under paragraph (1)(B) only for purposes other than the provision of Internet access, Internet service, or internal connections.

(B) CERTIFICATIONS.—

(i) LIBRARIES WITH ONE COMPUTER HAVING INTERNET ACCESS.—A certification under this subparagraph with respect to a library that has only one computer with Internet access is a certification that the library is enforcing a policy to ensure that minors do not use the computer for Internet access to—

(I) material that is obscene; and

(II) child pornography.

(ii) *LIBRARIES WITH MORE THAN ONE COMPUTER HAVING INTERNET ACCESS.*—A certification under this subparagraph with respect to any library covered by this paragraph, and not covered by clause (i), is a certification that the library—

(I) has selected a technology for its computers with Internet access in order to filter or block Internet access through such computers to—

(aa) material that is obscene; and

(bb) child pornography; and

(II) is enforcing a policy to ensure the operation of the technology during any use of such computers by minors.

(C) *ADDITIONAL USE OF TECHNOLOGY.*—A library may also use a technology covered by a certification under subparagraph (B) to filter or block Internet access through the computers concerned to any material in addition to the material specified in that subparagraph that the library determines to be inappropriate for minors.

(D) *TIMING OF CERTIFICATIONS.*—

(i) *LIBRARIES WITH COMPUTERS ON EFFECTIVE DATE.*—

(I) *IN GENERAL.*—In the case of any library covered by this paragraph as of the effective date of this paragraph under section 2(h) of the Childrens' Internet Protection Act, the applicable certification under subparagraph (B) shall be made not later than 30 days after such effective date.

(II) *DELAY.*—A certification for a library covered by subclause (I) may be made at a date than is later than is otherwise required by that subclause if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification on the date otherwise required by that subclause. A library shall notify the Commission of the applicability of this subclause to the library. Such notice shall specify the date on which the certification with respect to the library shall be effective for purposes of this clause.

(ii) *LIBRARIES ACQUIRING COMPUTERS AFTER EFFECTIVE DATE.*—In the case of any library that first becomes subject to a certification under either clause (i) or (ii) of subparagraph (B) after such effective date, the applicable certification under that subparagraph shall be made not later than 10 days after the date on which the library first becomes so subject.

(iii) *NO REQUIREMENT FOR ADDITIONAL CERTIFICATIONS.*—A library that has submitted a certification under subparagraph (B)(ii) shall not be required for purposes of this paragraph to submit an additional certification under that subparagraph with respect to any computers having Internet access that are acquired by the library after the submittal of such certification.

(E) *NONCOMPLIANCE.*—

(i) *FAILURE TO SUBMIT CERTIFICATION.*—Any library that knowingly fails to submit a certification required by this paragraph shall reimburse each telecommunications carrier that provided such library services at discount rates under paragraph (1)(B) after the effective date of this paragraph under section 2(h) of the Childrens' Internet Protection Act in an amount equal to the amount of the discount provided such library by such carrier for such services during the period beginning on such effective date and ending on the date on which the provision of such services at discount rates under paragraph (1)(B) is determined to cease under subparagraph (F).

(ii) *FAILURE TO COMPLY WITH CERTIFICATION.*—Any library that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraph (B) shall reimburse each telecommunications carrier that provided such library services at discount rates under paragraph (1)(B) after the date of such certification in an amount equal to the amount of the discount provided such library by such carrier for such services during the period beginning on the date of such certification and ending on the date on which the provision of such services at discount rates under paragraph (1)(B) is determined to cease under subparagraph (F).

(iii) *TREATMENT OF REIMBURSEMENT.*—The receipt by a telecommunications carrier of any reimbursement under this subparagraph shall not affect the carrier's treatment of the discount on which such reimbursement was based in accordance with the third sentence of paragraph (1)(B).

(F) *CESSATION DATE.*—

(i) *DETERMINATION.*—The Commission shall determine the date on which the provision of services at discount rates under paragraph (1)(B) shall cease under this paragraph by reason of the failure of a library to comply with the requirements of this paragraph.

(ii) *NOTIFICATION.*—The Commission shall notify telecommunications carriers of each library determined to have failed to comply with the requirements of this paragraph and of the period for which such library shall be liable to make reimbursement under subparagraph (E).

(G) *RECOMMENCEMENT OF DISCOUNTS.*—

(i) *RECOMMENCEMENT.*—Upon submittal to the Commission of a certification under subparagraph (B) with respect to a library to which clause (i) or (ii) of subparagraph (E) applies, the library shall be entitled to services at discount rates under paragraph (1)(B).

(ii) *NOTIFICATION.*—The Commission shall notify the library and telecommunications carriers of the recommencement of the library's entitlement to services at

discount rates under this paragraph and of the date on which such recommencement begins.

(iii) *ADDITIONAL NONCOMPLIANCE.*—The provisions of subparagraphs (E) and (F) shall apply to any certification submitted under clause (i).

(H) *LIMITATION ON FEDERAL ACTION.*—

(i) *IN GENERAL.*—No agency or instrumentality of the United States Government may—

(I) establish any criteria for making a determination under subparagraph (C);

(II) review a determination made by a library for purposes of a certification under subparagraph (B); or

(III) consider the criteria employed by a library for purposes of determining the eligibility of the library for services at discount rates under paragraph (1)(B).

(ii) *ACTION BY COMMISSION.*—The Commission may not take any action against a library for a violation of a provision of this paragraph if the library has made a good faith effort to comply with such provision.

[(5)] (7) *DEFINITIONS.*—For purposes of this subsection:

(A) *ELEMENTARY AND SECONDARY SCHOOLS.*—The term “elementary and secondary schools” means elementary schools and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(B) *HEALTH CARE PROVIDER.*—The term “health care provider” means—

(i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;

(ii) community health centers or health centers providing health care to migrants;

(iii) local health departments or agencies;

(iv) community mental health centers;

(v) not-for-profit hospitals;

(vi) rural health clinics; and

(vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi).

(C) *PUBLIC INSTITUTIONAL TELECOMMUNICATIONS USER.*—The term “public institutional telecommunications user” means an elementary or secondary school, a library, or a health care provider as those terms are defined in this paragraph.

(D) *MINOR.*—The term “minor” means any individual who has not attained the age of 17 years.

(i) *CONSUMER PROTECTION.*—The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.

(j) *LIFELINE ASSISTANCE.*—Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance

Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.

(k) SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.—A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

