
**FEDERAL COMMUNICATIONS
COMMISSION**
47 CFR Part 54**[CC Docket No. 96–45; FCC 01–120]****Federal-State Joint Board on Universal
Service: Children's Internet Protection
Act****AGENCY:** Federal Communications
Commission.**ACTION:** Final rule.

SUMMARY: In this document, the Commission adopts rules proposed in the Further Notice of Proposed Rulemaking, to implement the Children's Internet Protection Act (CIPA). On December 21, 2000, the President signed into law the Children's Internet Protection Act, included as part of the Consolidated Appropriations Act, 2001.

DATES: Effective April 20, 2001.**FOR FURTHER INFORMATION CONTACT:** Jonathan Secrest or Narda Jones, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order in CC Docket No. 96–45 released on April 5, 2001. 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, SW., Washington, DC 20554.**I. Introduction**

1. In this Report and Order, we adopt rules proposed in the Further Notice of Proposed Rulemaking (*FNPRM*), 66 FR 8374, January 31, 2001, to implement the Children's Internet Protection Act (CIPA). Congress included CIPA as part of the Consolidated Appropriations Act, 2001. Sections 1721 *et seq.* of CIPA provide that schools and libraries that have computers with Internet access must certify that they have in place certain Internet safety policies and technology protection measures in order to be eligible under section 254(h) of the Communications Act of 1934, as amended (the Act), to receive discounted Internet access, Internet services, and internal connection services. CIPA also requires that our

rules implementing the statute be in effect by April 20, 2001.

2. We adopt these rules with the goal of faithfully implementing CIPA in a manner consistent with Congress's intent. We have attempted to craft our rules in the most practical and efficacious way possible, while providing schools and libraries with maximum flexibility in determining the best approach. Moreover, to reduce burdens in the application process, we have designed rules to use existing processes where applicable. We conclude that local authorities are best situated to choose which technology measures and Internet safety policies will be most appropriate for their relevant communities.

II. Executive Summary

3. In this Order, we adopt rules that do the following:

- In order to receive discounts for Internet access and internal connections services under the universal service support mechanism, school and library authorities must certify that they are enforcing a policy of Internet safety that includes measures to block or filter Internet access for both minors and adults to certain visual depictions. These include visual depictions that are obscene, or child pornography, or, with respect to use of computers with Internet access by minors, or harmful to minors. An authorized person may disable the blocking or filtering measure during any use by an adult to enable access for bona fide research or other lawful purpose.
- A school administrative authority must certify that its policy of Internet safety includes monitoring the online activities of minors.
- In order to receive discounts, school and library authorities must also certify that they have adopted and implemented an Internet safety policy addressing access by minors to inappropriate matter on the Internet and World Wide Web; the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications; unauthorized access, including so-called "hacking," and other unlawful activities by minors online; unauthorized disclosure, use, and dissemination of personal information regarding minors; and measures designed to restrict minors' access to materials harmful to minors.
- For this funding year, schools and libraries must certify by October 28, 2001 that they have the policies and technology measures in place, or that they are undertaking such actions, including any necessary procurement

procedures, to put them in place for the following funding year. Because no school or library may receive services at discount rates during any time period in which it is out of compliance with its certification, as of the time that a school or library begins receiving services in Funding Year 4, it must either have the policies and technology measure in place, or be undertaking necessary actions to put them in place for the next year.

- Schools and libraries shall make the necessary certifications in FCC Form 486, which is submitted after a decision is made on requests for discounts under the universal service support mechanism.

III. Procedural Matters

A. Effective Date

4. We conclude that the effective date of the rules promulgated in this Order shall be April 20, 2001, which will be less than thirty days after publication in the **Federal Register**. Although the Administrative Procedures Act normally requires 30 days notice before rules become effective, the Commission, for good cause, may make rules effective with less than 30 days notice. We find such good cause based on the shortened time frame imposed by Congress for implementation of CIPA.

B. Paperwork Reduction Act

5. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA. FCC will announce receipt of OMB approval in the **Federal Register**.

C. Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the FNPRM. The Commission sought written public comments on the proposals in the FNPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.

1. Need for, and Objectives of, the Proposed Rules

7. The Children's Internet Protection Act (CIPA), included as part of the Consolidated Appropriations Act, 2001, Public Law 106-554, requires the

Commission to prescribe regulations in order to implement the legislation. This Order adopts rules that implement CIPA. Eligible school and library authorities must certify that they are enforcing a policy of Internet safety that includes measures to block or filter Internet access for both minors and adults to certain visual depictions, that schools' policies of Internet safety includes monitoring the online activities of minors, and that schools and libraries have adopted and implemented an Internet safety policy under section 254(l).

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

8. The Commission received no comments directly addressing the IRFA. However some comments dispute our estimate that executing the certifications on FCC Form 486 would take approximately one minute. These comments assert that the time requirement was longer due to the preparation and information gathering necessary to make the CIPA certifications. This information gathering is not a requirement imposed upon schools and libraries by the Commission, rather CIPA requires the collection of this data. After considering these comments, we conclude that requiring the certifications as part of the existing FCC Form 486 process is the least burdensome procedure for program participants.

3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

9. 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 that: is independently owned and operated; is not dominant in its field of operation; and 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 governmental entities 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 (96 percent) are small entities.

10. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law." A secondary school is generally as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12. For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined as small entities elementary and secondary schools and libraries having \$5 million or less in annual receipts. In funding year 2 (July 1, 1999 to June 30, 2000) approximately 83,700 schools and 9,000 libraries received discounts under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's definition, we estimate that fewer than 83,700 schools and 9,000 libraries would be affected annually by the rules promulgated in this Order, under current operation of the program.

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

11. This Order adopts measures that will result in minimal additional reporting. Specifically, the Order requires eligible schools and libraries receiving federal universal service support for Internet access or internal connections to make one certification on FCC Form 486.

12. A Billed Entity who filed a Form 471 as a "consortium application" and who is also a recipient of services as a

member of that consortium must select a certification from FCC Form 486.

13. Furthermore, every Billed Entity who filed a Form 471 as a "consortium application" on behalf of consortium members shall make one certification.

14. The Form 486 certification section shall also include a disclaimer stating that the certification language is not intended to fully set forth or explain all the requirements of the statute.

15. The Commission adopts rules, which modify FCC Form 486 to include the certification language listed. This form is already completed on a regular basis, and the modification would merely require the checking of one additional box prior to signing the form. We continue to estimate that it would take no more than one minute to review and check the appropriate certification box. The Commission concludes that this approach would be the most effective procedure for implementation of CIPA's requirements, and the least burdensome to recipients.

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

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or part thereof, for small entities.

17. This certification requirement is legislatively mandated by CIPA. The Commission is attempting to implement this requirement in the most effective and least burdensome manner possible for all entities, including small schools and libraries. Given that a certification is required by the legislation, we considered the alternative of having each school and library submit separate documentation, including the appropriate certification, to the Commission; however, such an approach seemed unnecessarily burdensome, particularly on small entities. In addition, even in light of comments that we underestimated the time required to complete the certification, we still believe that it is less burdensome to certify as part of an ongoing process. The parties' concerns about the time taken to comply with

CIPA in order to be able to certify are not at issue here. The Commission's responsibility is to assure the certification of compliance. As discussed, the Commission concludes that adding the certification requirement to the existing FCC Form 486 process is the least burdensome alternative for implementing the requirements of the CIPA.

18. In reaching this conclusion the Commission also considered, as an alternative, adding the certification language to the existing FCC Form 471. However, the Form 471 is submitted by applicants for universal service discounts, whereas CIPA requires certifications by recipients. Furthermore, entities completing Form 471 are not assured of receiving discounted funds, and consequently might not become subject to CIPA requirements. Therefore we have concluded that Form 486, which is completed only by recipients of services, is more appropriate for CIPA certifications by recipients. Recipients will know by the time they submit the modified Form 486 that they will receive discounts, which is not the case at the time of Form 471 submission. By certifying on Form 486, recipients will only have to certify as to CIPA compliance once they are certain of receiving discounted services.

19. *Report to Congress:* The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

IV. Ordering Clauses

20. Pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, section 553 of the Administrative Procedure Act, and the Children's Internet Protection Act, Public Law 106-554 1701 *et seq.* as codified at 47 U.S.C. 254(h) and (l), *In the Matter of Federal-State Joint Board on Universal Service*, Children's Internet Protection Act, Report and Order in CC Docket No. 96-45 is adopted. The collection of information contained within this Report and Order is contingent upon approval by the Office of Management and Budget.

21. Pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, section 553 of the Administrative Procedure Act, and the Children's Internet Protection Act, Public Law 106-554 1701 *et seq.* as codified at 47 U.S.C. 254(h) and (l), § 54.520 of the Commission's rules, is adopted, as set forth.

22. Because the Commission has found good cause, this Report and Order and 47 CFR 54.520, as adopted and set forth, are effective April 20, 2001, which is less than thirty days following publication in the **Federal Register**.

23. The authority is delegated to the Chief of the Common Carrier Bureau pursuant to § 0.291 of the Commission's rules, to modify, or require the filing of, any forms that are necessary to implement the decisions and rules adopted in this Report and Order.

24. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

25. FCC Forms 486 and 479 contains information collections that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the approval of these forms.

List of Subjects 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

Subpart H—Administration

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 § 54.520 to subpart H to read as follows:

§ 54.520 Children's Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

(a) *Definitions.*

(1) *School*. For the purposes of the certification requirements of this rule, school means school, school district, local education agency or other authority responsible for administration of a school.

(2) *Library*. For the purposes of the certification requirements of this rule, library means library, library board or authority responsible for administration of a library.

(3) *Billed entity*. Billed entity is defined in § 54.500. In the case of a consortium, the billed entity is the lead member of the consortium.

(4) *Statutory definitions*. The terms "minor," "obscene," "child pornography," "harmful to minors" and "technology protection measure" as used in this section, are defined in the Children's Internet Protection Act section 1721(c).

(b) *Who is required to make certifications?* (1) A school or library that receives discounts for Internet access and internal connections services under the federal universal service support mechanism for schools and libraries, must make such certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(2) Schools and libraries that only receive discounts for telecommunications services under the federal universal service support mechanism for schools and libraries are not subject to the requirements 47 U.S.C. 254(h) and (l), but must indicate, pursuant to the certification requirements in paragraph (c) of this section, that they only receive discounts for telecommunications services.

(c) *Certifications required under 47 U.S.C. 254(h) and (l)*. (1) *Schools*. The billed entity for a school that receives discounts for Internet access or internal connections must certify on FCC Form 486 that an Internet safety policy is being enforced. If the school is an eligible member of a consortium but is not the billed entity for the consortium, the school must certify instead on FCC Form 479 ("Certification to Consortium Leader of Compliance with the Children's Internet Protection Act") that an Internet safety policy is being enforced.

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. This Internet

safety policy must also include monitoring the online activities of minors.

(ii) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(l) must address all of the following issues:

(A) Access by minors to inappropriate matter on the Internet and World Wide Web,

(B) The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications,

(C) Unauthorized access, including so-called "hacking," and other unlawful activities by minors online;

(D) Unauthorized disclosure, use, and dissemination of personal information regarding minors; and

(E) Measures designed to restrict minors' access to materials harmful to minors.

(iii) A school must satisfy its obligations to make certifications by making one of the following certifications required by paragraph (c)(1) of this section on FCC Form 486:

(A) The recipient(s) of service represented in the Funding Request Number(s) on this Form 486 has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486 is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) on this Form 486 is (are) receiving discount services only for telecommunications services.

(2) *Libraries*. The billed entity for a library that receives discounts for Internet access and internal connections must certify, on FCC Form 486, that an Internet safety policy is being enforced. If the library is an eligible member of a consortium but is not the billed entity for the consortium, the library must instead certify on FCC Form 479 ("Certification to Consortium Leader of Compliance with the Children's Internet Protection Act") that an Internet safety policy is being enforced.

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254 (h) must include a technology

protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors.

(ii) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(l) must address all of the following issues:

(A) Access by minors to inappropriate matter on the Internet and World Wide Web;

(B) The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;

(C) Unauthorized access, including so-called "hacking," and other unlawful activities by minors online;

(D) Unauthorized disclosure, use, and dissemination of personal information regarding minors; and

(E) Measures designed to restrict minors' access to materials harmful to minors.

(iii) A library must satisfy its obligations to make certifications by making one of the following certifications required by paragraph (c)(2) of this section on FCC Form 486:

(A) The recipient(s) of service represented in the Funding Request Number(s) for which you have requested or received Funding Commitments has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act (CIPA), as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) receiving discount services only for telecommunications services.

(3) *Certifications required from consortia members and billed entities for consortia*. (i) The billed entity of a consortium, as defined in paragraph (a)(3) of this section, must collect from the authority for each of its school and library members, one of the following signed certifications on FCC Form 479

("Certification to Consortium Leader of Compliance with the Children's Internet Protection Act"), which must be submitted to the billed entity consistent with paragraph (c)(1) or paragraph (c)(2) of this section:

(A) The recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) receiving discount services only for telecommunications services; and

(ii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, must make one of the following two certifications on FCC Form 486: "I certify as the Billed Entity for the consortium that I have collected duly completed and signed certifications from all eligible members of the consortium."; or I certify as the Billed Entity for the consortium that the only services received under the universal service support mechanism by eligible members of the consortium are telecommunications services, and therefore the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), do not apply."; and

(iii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, who filed an FCC Form 471 as a "consortium application" and who is also a recipient of services as a member of that consortium must select one of the certifications under paragraph (c)(3)(i) of this section on FCC Form 486.

(d) *Failure to provide certifications.*

(1) *Schools and libraries.* A school or

library that knowingly fails to submit certifications as required by this section, shall not be eligible for discount services under the federal universal service support mechanism for schools and libraries until such certifications are submitted.

(2) *Consortia.* A billed entity's knowing failure to collect the required certifications from its eligible school and library members or knowing failure to certify that it collected the required certifications shall render the entire consortium ineligible for discounts under the federal universal service support mechanism for school and libraries.

(3) *Reestablishing eligibility.* At any time, a school or library deemed ineligible for discount services under the federal universal service support mechanism for schools and libraries because of failure to submit certifications required by this section, may reestablish eligibility for discounts by providing the required certifications to the Administrator and the Commission.

(e) *Failure to comply with the certifications.* (1) *Schools and libraries.* A school or library that knowingly fails to ensure the use of computers in accordance with the certifications required by this section, must reimburse any funds and discounts received under the federal universal service support mechanism for schools and libraries for the period in which there was noncompliance.

(2) *Consortia.* In the case of consortium applications, the eligibility for discounts of consortium members who ensure the use of computers in accordance with the certification requirements of this section shall not be affected by the failure of other school or library consortium members to ensure the use of computers in accordance with such requirements.

(3) *Reestablishing compliance.* At any time, a school or library deemed ineligible for discounts under the federal universal service support mechanism for schools and libraries for failure to ensure the use of computers in accordance with the certification requirements of this section and that has been directed to reimburse the program for discounts received during the period of noncompliance, may reestablish compliance by ensuring the use of its computers in accordance with the certification requirements under this section. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school or library shall be eligible for discounts under the universal service mechanism.

(f) *Waivers based on state or local procurement rules and regulations and competitive bidding requirements.* Waivers shall be granted to schools and libraries when the authority responsible for making the certifications required by this section, cannot make the required certifications because its state or local procurement rules or regulations or competitive bidding requirements, prevent the making of the certification otherwise required. The waiver shall be granted upon the provision, by the authority responsible for making the certifications on behalf of schools or libraries, that the schools or libraries will be brought into compliance with the requirements of this section, before the start of the third program year after December 21, 2000 in which the school is applying for funds under this title.

(g) *Funding year certification deadlines.* (1) *Funding Year 4.* For Funding Year 4, billed entities shall provide one of the certifications required under paragraph (c)(1), (c)(2) or (c)(3) of this section to the Administrator on an FCC Form 486 postmarked no later than October 28, 2001.

(2) *Funding Year 5 and subsequent funding years.* For Funding Year 5 and for subsequent funding years, billed entities shall provide one of the certifications required under paragraph (c)(1), (c)(2) or (c)(3) of this section in accordance with the existing program guidelines established by the Administrator.

[FR Doc. 01-9325 Filed 4-13-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 96-61 and 98-183; FCC 01-98]

Policy and Rules Concerning the Interstate, Interexchange Marketplace; Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document eliminates the bundling restriction, adopted in the Commission's *Computer II* proceeding, that limits the ability of common carriers to offer consumers bundled packages of telecommunications services and customer premises