

RURAL HEALTH CARE CONNECTIVITY ACT OF 2016

MAY 23, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 4111]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4111) to include skilled nursing facilities as a type of health care provider under section 254(h) of the Communications Act of 1934, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Rural Health Care Connectivity Act of 2016”.

SEC. 2. TELECOMMUNICATIONS SERVICES FOR SKILLED NURSING FACILITIES.

(a) **IN GENERAL.**—Section 254(h)(7)(B) of the Communications Act of 1934 (47 U.S.C. 254(h)(7)(B)) is amended—

- (1) in clause (vi), by striking “and” at the end;
- (2) by redesignating clause (vii) as clause (viii);
- (3) by inserting after clause (vi) the following:

“(vii) skilled nursing facilities (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a))); and”; and

- (4) in clause (viii), as redesignated, by striking “clauses (i) through (vi)” and inserting “clauses (i) through (vii)”.

(b) **SAVINGS CLAUSE.**—Nothing in subsection (a) shall be construed to affect the aggregate annual cap on Federal universal service support for health care providers under section 54.675 of title 47, Code of Federal Regulations, or any successor regulation.

(c) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply beginning on the date that is 180 days after the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 4111, Rural Health Care Connectivity Act of 2016, expands the definition of a “health care provider” under the Healthcare Connect Fund, a program within the Universal Service Fund. The term “health care provider” would be expanded to include skilled nursing facilities (SNFs), allowing those facilities to be eligible for support under the Healthcare Connect Fund. The purpose of the legislation is to increase broadband connectivity for health care providers in rural areas to improve care and advance innovative health technologies. In addition, the legislation provides the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) six months to implement the necessary changes to the program.

BACKGROUND AND NEED FOR LEGISLATION

The principle that all Americans should have access to communications services is implemented through the Universal Service Fund. As a way to facilitate that goal, the Telecommunications Act of 1996 instructed the FCC to expand the traditional purpose of the Universal Service Fund to include increased access to advanced services. To fulfill the statute, four programs were established: the high-cost support program (now called the Connect America Fund), the schools and libraries program (E-Rate), the low-income program (now called Lifeline), and the Rural Health Care program. These programs are funded by contributions from telecommunications providers based on a formula based on the needs of the Fund and anticipated interstate telecommunications revenue.

The four programs, and the various support mechanisms within each program, serve a range of purposes to implement the Act’s directive, varying from increasing broadband connectivity in schools and libraries to providing voice and Internet services to low-income consumers. In particular, the Rural Health Care Program (RHCP) provides subsidies to public and non-profit rural health care providers to reduce the cost of communications services. Under the Act, eligibility for RHCP funding is limited to public or non-profit entities.

The 2010 National Broadband Plan (NBP) observed that there is a health IT broadband connectivity gap that exists, particularly in

rural areas, notwithstanding the RHCP. Among other things, the NBP recommended various reforms to the RHCP, including that the FCC re-examine the interpretation of “health-care provider” in light of trends in the provision of healthcare.

In 2012, the FCC created the Healthcare Connect Fund to reform, expand, and modernize the RHCP. Although the FCC acknowledged that SNFs provide some of the “same post-acute services that are traditionally provided at hospitals,” it could not conclude how a SNF might qualify as a health care provider under the Act. Notwithstanding this conclusion, the FCC established a pilot program to test how it could support broadband connectivity to non-profit skilled nursing facilities. In 2014, the FCC announced it was deferring the SNF pilot program.

H.R. 4111 expands the statutory definition of “health care provider” under section 254 of the Communications Act of 1934, as amended to include Skilled Nursing Facilities. SNFs provide a range of traditional health care services, such as home health, assisted living, skilled nursing care, post-acute care, and hospice care. Additionally, technology is being developed to connect patients in rural SNFs to doctors and specialists located in distant areas. The legislation will allow such facilities to request support from the fund to bring broadband connectivity to SNFs in rural communities where it might otherwise not be available to power the advanced technologies that can enhance patient care in rural areas.

HEARINGS

On April 13, 2016, the Subcommittee on Communications and Technology held a hearing on H.R. 4111, and received testimony from Dan Holdhusen, Director of Government Relations, Good Samaritan Society, on the bill.

COMMITTEE CONSIDERATION

On April 18 and 19, 2016, the Subcommittee on Communications and Technology met in open markup session and forwarded H.R. 4111 to the full Committee, without amendment, by a voice vote.

On April 26, 27, and 28, 2016, the full Committee on Energy and Commerce met in open markup session to consider H.R. 4111. Congressmen Lance and Loeb sack offered a bipartisan amendment to the bill, which was passed by voice vote. Chairman Upton ordered H.R. 4111 reported to the House, as amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 4111 reported.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 4111 is to increase broadband connectivity for skilled nursing facilities located in rural communities.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4111 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 4111 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MAY 17, 2016.

Hon. FRED UPTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4111, the Rural Health Care Connectivity Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 4111—Rural Health Care Connectivity Act of 2015

Summary: H.R. 4111 would make certain skilled nursing facilities (SNFs) eligible for grants under the Universal Service Fund's Rural Health Care (RHC) program. The Universal Service program is administered by the Federal Communications Commission (FCC) and is intended to promote the availability of telecommunications services at affordable rates. The cash flows of the fund appear in the budget as direct spending (for amounts distributed from the fund) and as revenues (for fund collections).

CBO estimates that enacting H.R. 4111 would increase direct spending by \$193 million and revenues by \$212 million over the

2017–2026 period, resulting in an estimated net reduction in the deficit of \$19 million. CBO estimates that implementing the bill would have no significant discretionary costs. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4111 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Because CBO expects the FCC would increase fee collections associated with the Universal Service Fund, the bill would increase the cost of an existing mandate on private entities required to pay those fees. Based on information from the FCC, CBO estimates that the incremental cost of the mandate would amount to no more than \$25 million in any of the next five years. Thus, the aggregate cost of the mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 4111 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—											2017- 2021	2017- 2026	
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026				
	INCREASE IN DIRECT SPENDING													
Estimated Budget Authority	2	10	15	20	25	25	25	30	30	30	30	72	212	
Estimated Outlays	1	6	11	17	22	24	25	28	29	30	30	57	193	
	INCREASE IN REVENUES													
Estimated Revenues	2	10	15	20	25	25	25	30	30	30	30	72	212	
	NET DECREASE IN THE DEFICIT													
Impact on Deficit	-1	-4	-4	-3	-3	-1	0	-2	-1	0	0	-15	-19	

Basis of estimate: Current law authorizes the FCC to collect and spend up to \$400 million a year for RHC programs, which provide reduced rates for telecommunications services for certain rural public and nonprofit health care providers. Expanding the eligibility criteria to include SNFs would increase both direct spending and revenues because the RHC programs currently operate below the statutory cap on total spending.

CBO estimates that enacting the program would increase direct spending and revenues by \$193 million and \$212 million, respectively, over the 2017–2026 period. CBO also estimates that an average of 1,650 public and nonprofit SNFs in rural areas would be eligible for grants during that period and that participation rates and grant awards would be similar to those for existing RHC programs. Based on information from the FCC, CBO estimates that participation rates would reach 75 percent over a period of several years and that certain nonrural entities affiliated with those participants also would receive funding. Grant awards would vary in size depending on the recipient’s location and choice of benefits. In 2015, most RHC grantees received an average of about \$14,000 for telecommunications services. CBO estimates that grants would av-

erage about \$18,000 a year over the next 10 years, reflecting the historical growth in payments for other RHC programs.

Finally, based on information from the FCC, CBO estimates that the administrative activities needed to implement the new program would significantly increase the agency's operating costs. Moreover, under current law, the FCC is authorized to collect fees sufficient to offset the cost of its regulatory activities each year.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4111, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON ENERGY AND COMMERCE ON APRIL 28, 2015

	By Fiscal Year, in Millions of Dollars—												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-2021	2016-2026
	DECREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact ...	0	-1	-4	-4	-3	-3	-1	0	-2	-1	0	-15	-19
Memorandum:													
Changes in Outlays	0	1	6	11	17	22	24	25	28	29	30	57	193
Changes in Revenues ...	0	2	10	15	20	25	25	25	30	30	30	72	212

Increase in long-term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Estimated impact on state, local, and tribal governments: H.R. 4111 contains no intergovernmental mandates as defined in UMRA.

Estimated impact on the private-sector: CBO expects the FCC to increase fee collections to offset the costs associated with expanding the RHC program to cover skilled nursing facilities. As a result, the bill would increase the cost of an existing mandate on some telecommunications companies required to pay those fees. Based on information from the FCC, CBO estimates that the additional fees collected would amount to about \$2 million in 2017, increasing to about \$25 million in 2021. Therefore, the incremental cost of the mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation). CBO expects that telecommunications companies would generally pass most of the cost of the fee increase on to consumers.

Previous estimate: On March 24, 2016, CBO transmitted a cost estimate for S. 1916, the Rural Health Care Connectivity Act of 2015, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 18, 2015. The differences between the estimates reflect the effect of a provision in H.R. 4111 that would delay the implementation of the program by six months.

Estimate prepared by: Federal costs: Kathleen Gramp; Impact on state, local, and tribal governments: Rachel Austin; Impact on the private sector: Logan Smith.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 4111 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 4111 specifically directs to be completed 0 rule makings within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title as the “Rural Health Care Connectivity Act of 2016”.

Section 2. Telecommunications services for skilled nursing facilities

This section adds “skilled nursing facilities” to the definition of a Health Provider in Section 254 of the Communications Act related to Universal Service. The bill defines skilled nursing facility by cross-reference to the definition used in the Social Security Act. The section requires the changes identified in the bill be made six months after the legislation is enacted.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, and existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * *

TITLE II—COMMON CARRIERS

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**PART II—DEVELOPMENT OF COMPETITIVE
MARKETS**

* * * * *

SEC. 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 (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 SAFETY.—

(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, local educational agency, or other au-

thority with responsibility for administration of the school—

(I) submits to the Commission the certifications described in subparagraphs (B) and (C);

(II) submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the school under subsection (1); and

(III) ensures the use of such computers in accordance with the certifications.

(ii) APPLICABILITY.—The prohibition in clause (i) 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.

(iii) PUBLIC NOTICE; HEARING.—An elementary or secondary school described in clause (i), or the school board, local educational agency, or other authority with responsibility for administration of the school, shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy. In the case of an elementary or secondary school other than an elementary school or a secondary school as defined in section 8101 of the Elementary and Secondary Education Act of 1965, the notice and hearing required by this clause may be limited to those members of the public with a relationship to the school.

(B) CERTIFICATION WITH RESPECT TO MINORS.—A certification under this subparagraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school—

(i) is enforcing a policy of Internet safety for minors that includes monitoring the online activities of minors and the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene;

(II) child pornography; or

(III) harmful to minors;

(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors; and

(iii) as part of its Internet safety policy is educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.

(C) CERTIFICATION WITH RESPECT TO ADULTS.—A certification under this paragraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school—

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene; or

(II) child pornography; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers.

(D) **DISABLING DURING ADULT USE.**—An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

(E) **TIMING OF IMPLEMENTATION.**—

(i) **IN GENERAL.**—Subject to clause (ii) in the case of any school covered by this paragraph as of the effective date of this paragraph under section 1721(h) of the Children’s Internet Protection Act, the certification under subparagraphs (B) and (C) shall be made—

(I) with respect to the first program funding year under this subsection following such effective date, not later than 120 days after the beginning of such program funding year; and

(II) with respect to any subsequent program funding year, as part of the application process for such program funding year.

(ii) **PROCESS.**—

(I) **SCHOOLS WITH INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN PLACE.**—A school covered by clause (i) that has in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C) shall certify its compliance with subparagraphs (B) and (C) during each annual program application cycle under this subsection, except that with respect to the first program funding year after the effective date of this paragraph under section 1721(h) of the Children’s Internet Protection Act, the certifications shall be made not later than 120 days after the beginning of such first program funding year.

(II) **SCHOOLS WITHOUT INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN PLACE.**—A school covered by clause (i) that does not have in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C)—

(aa) for the first program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is undertaking such actions, in-

cluding any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C); and

(bb) for the second program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is in compliance with subparagraphs (B) and (C).

Any school that is unable to certify compliance with such requirements in such second program year shall be ineligible for services at discount rates or funding in lieu of services at such rates under this subsection for such second year and all subsequent program years under this subsection, until such time as such school comes into compliance with this paragraph.

(III) WAIVERS.—Any school subject to subclause (II) that cannot come into compliance with subparagraphs (B) and (C) in such second year program may seek a waiver of subclause (II)(bb) if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by such subclause. A school, school board, local educational agency, or other authority with responsibility for administration of the school shall notify the Commission of the applicability of such subclause to the school. Such notice shall certify that the school in question will be brought into compliance before the start of the third program year after the effective date of this subsection in which the school is applying for funds under this subsection.

(F) NONCOMPLIANCE.—

(i) FAILURE TO SUBMIT CERTIFICATION.—Any school that knowingly fails to comply with the application guidelines regarding the annual submission of certification required by this paragraph shall not be eligible for services at discount rates or funding in lieu of services at such rates under this subsection.

(ii) FAILURE TO COMPLY WITH CERTIFICATION.—Any school that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraphs (B) and (C) shall reimburse any funds and discounts received under this subsection for the period covered by such certification.

(iii) REMEDY OF NONCOMPLIANCE.—

(I) FAILURE TO SUBMIT.—A school that has failed to submit a certification under clause (i) may remedy the failure by submitting the certification to which the failure relates. Upon submittal of such certification, the school shall be eligible for services at discount rates under this subsection.

(II) FAILURE TO COMPLY.—A school that has failed to comply with a certification as described in clause (ii) may remedy the failure by ensuring the use of its computers in accordance with such certification. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school shall be eligible for services at discount rates under this subsection.

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

(A) INTERNET SAFETY.—

(i) IN GENERAL.—Except as provided in clause (ii), 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 the certifications described in subparagraphs (B) and (C); and

(II) submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the library under subsection (1); and

(III) ensures the use of such computers in accordance with the certifications.

(ii) APPLICABILITY.—The prohibition in clause (i) 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.

(iii) PUBLIC NOTICE; HEARING.—A library described in clause (i) shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

(B) CERTIFICATION WITH RESPECT TO MINORS.—A certification under this subparagraph is a certification that the library—

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene;

(II) child pornography; or

(III) harmful to minors; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors.

(C) CERTIFICATION WITH RESPECT TO ADULTS.—A certification under this paragraph is a certification that the library—

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene; or

(II) child pornography; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers.

(D) **DISABLING DURING ADULT USE.**—An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

(E) **TIMING OF IMPLEMENTATION.**—

(i) **IN GENERAL.**—Subject to clause (ii) in the case of any library covered by this paragraph as of the effective date of this paragraph under section 1721(h) of the Children’s Internet Protection Act, the certification under subparagraphs (B) and (C) shall be made—

(I) with respect to the first program funding year under this subsection following such effective date, not later than 120 days after the beginning of such program funding year; and

(II) with respect to any subsequent program funding year, as part of the application process for such program funding year.

(ii) **PROCESS.**—

(I) **LIBRARIES WITH INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN PLACE.**—A library covered by clause (i) that has in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C) shall certify its compliance with subparagraphs (B) and (C) during each annual program application cycle under this subsection, except that with respect to the first program funding year after the effective date of this paragraph under section 1721(h) of the Children’s Internet Protection Act, the certifications shall be made not later than 120 days after the beginning of such first program funding year.

(II) **LIBRARIES WITHOUT INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN PLACE.**—A library covered by clause (i) that does not have in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C)—

(aa) for the first program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C); and

(bb) for the second program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is in compliance with subparagraphs (B) and (C).

Any library that is unable to certify compliance with such requirements in such second program year shall be ineligible for services at discount rates or funding in lieu of services at such rates under this subsection for such second year and all subsequent program years under this subsection, until such time as such library comes into compliance with this paragraph.

(III) WAIVERS.—Any library subject to subclause (II) that cannot come into compliance with subparagraphs (B) and (C) in such second year may seek a waiver of subclause (II)(bb) if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by such subclause. A library, library board, or other authority with responsibility for administration of the library shall notify the Commission of the applicability of such subclause to the library. Such notice shall certify that the library in question will be brought into compliance before the start of the third program year after the effective date of this subsection in which the library is applying for funds under this subsection.

(F) NONCOMPLIANCE.—

(i) FAILURE TO SUBMIT CERTIFICATION.—Any library that knowingly fails to comply with the application guidelines regarding the annual submission of certification required by this paragraph shall not be eligible for services at discount rates or funding in lieu of services at such rates under this subsection.

(ii) FAILURE TO COMPLY WITH CERTIFICATION.—Any library that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraphs (B) and (C) shall reimburse all funds and discounts received under this subsection for the period covered by such certification.

(iii) REMEDY OF NONCOMPLIANCE.—

(I) FAILURE TO SUBMIT.—A library that has failed to submit a certification under clause (i) may remedy the failure by submitting the certification to which the failure relates. Upon submittal of such certification, the library shall be eligible for services at discount rates under this subsection.

(II) FAILURE TO COMPLY.—A library that has failed to comply with a certification as described in clause (ii) may remedy the failure by ensuring the use of its computers in accordance with such certification. Upon submittal to the Commission of

a certification or other appropriate evidence of such remedy, the library shall be eligible for services at discount rates under this subsection.

(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 section 8101 of the Elementary and Secondary Education Act of 1965.

(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) *skilled nursing facilities (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i-3(a))*; and

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

(E) OBSCENE.—The term “obscene” has the meaning given such term in section 1460 of title 18, United States Code.

(F) CHILD PORNOGRAPHY.—The term “child pornography” has the meaning given such term in section 2256 of title 18, United States Code.

(G) HARMFUL TO MINORS.—The term “harmful to minors” means any picture, image, graphic image file, or other visual depiction that—

(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(H) SEXUAL ACT; SEXUAL CONTACT.—The terms “sexual act” and “sexual contact” have the meanings given such terms in section 2246 of title 18, United States Code.

(I) TECHNOLOGY PROTECTION MEASURE.—The term “technology protection measure” means a specific technology

that blocks or filters Internet access to the material covered by a certification under paragraph (5) or (6) to which such certification relates.

(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.

(l) INTERNET SAFETY POLICY REQUIREMENT FOR SCHOOLS AND LIBRARIES.—

(1) IN GENERAL.—In carrying out its responsibilities under subsection (h), each school or library to which subsection (h) applies shall—

(A) adopt and implement an Internet safety policy that addresses—

(i) access by minors to inappropriate matter on the Internet and World Wide Web;

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

(iii) unauthorized access, including so-called “hacking”, and other unlawful activities by minors online;

(iv) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and

(v) measures designed to restrict minors’ access to materials harmful to minors; and

(B) provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

(2) LOCAL DETERMINATION OF CONTENT.—A determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may—

(A) establish criteria for making such determination;

(B) review the determination made by the certifying school, school board, local educational agency, library, or other authority; or

(C) consider the criteria employed by the certifying school, school board, local educational agency, library, or other authority in the administration of subsection (h)(1)(B).

(3) AVAILABILITY FOR REVIEW.—Each Internet safety policy adopted under this subsection shall be made available to the Commission, upon request of the Commission, by the school, school board, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of the review of such Internet safety policy by the Commission.

(4) EFFECTIVE DATE.—This subsection shall apply with respect to schools and libraries on or after the date that is 120 days after the date of the enactment of the Children’s Internet Protection Act.

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