

incentives mentioned in section 706 of the 1996 Act²³⁹⁶ to encourage deployment of advanced telecommunications capability to health care providers.²³⁹⁷ Alliance for Public Technology argues that the fundamental challenge in extending universal service is to include market-compatible ways of overcoming the implicit "social engineering" of the marketplace in developing new technologies.²³⁹⁸ Alliance for Public Technology asserts that the best way to meet this challenge is to provide financial incentives to the states to get them to open proceedings which would develop "strategies and market-oriented options." This would, in turn, encourage deployment of those advanced telecommunications services which, they argue, would meet the full spectrum of individual and community-based needs.²³⁹⁹

749. Competitive Neutrality. Several commenters respond to the requirement that the rules established must be competitively neutral.²⁴⁰⁰ Council on Competitiveness states that it is important that the universal service program remain provider neutral and technology neutral.²⁴⁰¹ PacTel asserts that ensuring competitive neutrality means that all telecommunications and information service providers must bear responsibility for providing and funding these services.²⁴⁰² Metricom argues that the support program should unfairly favor neither competitors nor technologies because "wireless, unlicensed and other alternatives to traditional landline service may prove to be the best choice for these public institutional users. . ."²⁴⁰³

3. Discussion

750. The Commission's adoption of rules providing universal service support under section 254(h)(1) will significantly increase the availability and deployment of telecommunications services for rural health care providers. Furthermore, we conclude that the additional action the Commission will undertake, as discussed above, will be sufficient to ensure the enhancement of access to advanced telecommunications and information services for these and other health care providers. In this regard, we note that the class of users who

²³⁹⁶ 1996 Act, § 706.

²³⁹⁷ NCTA comments at 23; USTA comments at 12.

²³⁹⁸ Alliance for Public Technology comments at 19.

²³⁹⁹ Alliance for Public Technology comments at 19.

²⁴⁰⁰ See, e.g., Metricom comments at 7.

²⁴⁰¹ Council on Competitiveness comments at 4.

²⁴⁰² PacTel comments at 11.

²⁴⁰³ Metricom comments at 7-8.

may benefit from the implementation of section 254(h)(2)(A) includes all public and non-profit health care providers, not solely rural health care providers or those who serve persons residing in rural areas.²⁴⁰⁴

G. Implementation

751. We propose that the Commission establish rules governing the implementation of the support mechanisms recommended above. We anticipate that the fund administrator will begin receiving and processing telecommunications service requests on or about June 1, 1997. Therefore, we recommend that the Commission advise eligible health care providers that they may begin submitting requests to carriers for supported services as soon as practicable after the Commission adopts final rules.

752. The rules should provide that the telecommunications carrier may begin to deploy the requested service as soon as practicable after it has received 1) a written request for an eligible telecommunications service, 2) a properly completed signed and sworn certification as provided in paragraph 92 of this section, 3) approval, if necessary, from the appropriate agency of the rate to be charged for the requested service, and 4) satisfactory payment or payment arrangements for the portion of the rate charged that is the responsibility of the health care provider.

XII. INTERSTATE SUBSCRIBER LINE CHARGES AND CARRIER COMMON LINE CHARGES

A. Overview

753. In this section, the Joint Board considers the existing mechanisms for the recovery of subscriber loop costs²⁴⁰⁵ -- the SLC and the residual CCL charges, which include LTS payments -- to determine whether they contain support mechanisms that are inconsistent with the directives in the 1996 Act. The Joint Board concludes that the existing LTS payment structure is inconsistent with the 1996 Act, because contributions to universal service should

²⁴⁰⁴ See 47 U.S.C. § 254(h)(2)(A).

²⁴⁰⁵ "Subscriber loops" or "loops" are the connection between the telephone company's central office and the customer's premises. In the *Local Competition Order*, the Commission defined the loop, for unbundling purposes, as "a transmission facility between a distribution frame, or its equivalent, in an ILEC central office, and the network interface device at the customer premises." *Local Competition Order* at para. 380. Currently, 25 percent of the total cost of the loop is allocated to the interstate jurisdiction, 47 C.F.R. § 36.154(c), though interstate traffic actually represents only about 15 percent of loop usage. See *FCC Monitoring Report*, CC Docket No. 80-286, Table 4.7 (rel. May 1996).

be "equitable and nondiscriminatory."²⁴⁰⁶ We recommend that LTS be removed from the access charge regime and instead recovered from the new federal universal service support mechanism.

754. We recommend that there be no increase in the current \$3.50 SLC cap for primary residential and single-line business lines. If the Commission utilizes both inter- and intrastate revenues as the revenue base for assessing interstate telecommunications carriers' contributions to the new national universal service support mechanism, we recommend that there be a downward adjustment in the SLC cap for those lines, as well as CCL charges, to reflect the recovery of LTS and pay telephone costs from other sources. Further, we conclude that the current usage-sensitive CCL charge structure is economically inefficient and urge the Commission to change the current CCL rate structure so that LECs are no longer required to recover the NTS cost of the loop from IXCs on a traffic-sensitive basis.

B. Background

755. Section 254(b)(4) establishes the universal service principle that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." Section 254(d) requires that "[e]very 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." Section 254(e) further requires that any universal service support "should be explicit," and the Joint Explanatory Statement indicates that the requirement that support be explicit serves the "conferees' intent that all universal service support should be clearly identified."²⁴⁰⁷ Section 254(b)(1) also establishes the principle that universal service should be available at affordable rates, and section 254(i) directs the Commission and the states to ensure that universal service is available at affordable rates.

756. Currently, LECs recover the portion of subscriber loop costs assigned to the interstate jurisdiction through a combination of the SLC and CCL charges. The SLC is capped at \$3.50 per month for residential and single-line business customers and \$6.00 per month for multi-line business customers.²⁴⁰⁸ In the NPRM, the Commission noted that the imposition of usage-sensitive CCL charges on one class of carriers (IXCs) to reduce flat rates for end users, with the goal of increasing subscribership, "appears to constitute a universal

²⁴⁰⁶ 47 U.S.C. § 254 (b) (4).

²⁴⁰⁷ Joint Explanatory Statement at 131.

²⁴⁰⁸ 47 C.F.R. §§ 69.104, 69.203.

service support flow."²⁴⁰⁹ The NPRM noted that this apparent support flow appears inconsistent with the 1996 Act's directives that support be "explicit" and that it be collected on an equitable and nondiscriminatory basis from all carriers providing interstate telecommunications services.²⁴¹⁰ The Commission observed that some parties have suggested in the past that loop costs be recovered solely from end users through an increase in the SLC, and requested comment on this issue.²⁴¹¹ The Commission also requested comment on the potential effect on subscribership of increasing the SLC.²⁴¹²

757. The NPRM further observed that the CCL charges of ILECs not participating in the NECA pool recover LECs' LTS obligations.²⁴¹³ As noted in the NPRM, LTS payments serve to equalize access charges among LECs by requiring larger LECs that no longer participate in the NECA access charge pool to contribute funds sufficient to reduce pooling companies' access charges to the national average.²⁴¹⁴ The NPRM tentatively concluded that "LTS payments, which directly increase interstate access charges assessed by some LECs so as to reduce charges assessed by other LECs, are an identifiable support flow in the existing interstate access charge system" and "propose[d] to eliminate the recovery of LTS revenues through ILECs' interstate CCL charges."²⁴¹⁵ The NPRM requested public comment on these issues, and referred to the Joint Board the question of how interstate-allocated subscriber loop costs should be recovered.²⁴¹⁶

758. On July 3, 1996, the Commission's Common Carrier Bureau released a Public Notice soliciting further comment on 72 specific questions.²⁴¹⁷ Two of those questions

²⁴⁰⁹ NPRM at para. 113.

²⁴¹⁰ 47 U.S.C. § 254(d) - (e).

²⁴¹¹ NPRM at paras. 113-14.

²⁴¹² NPRM at para. 114.

²⁴¹³ NPRM at para. 115.

²⁴¹⁴ NPRM at para. 115.

²⁴¹⁵ NPRM at para. 115.

²⁴¹⁶ NPRM paras. 114-115. Formerly, CCL charges also recovered ILEC pay telephone costs. The Commission, in its recent pay telephone compensation decision, directed ILECs to remove this element of CCL charges by April 15, 1997. *See Implementation of the Pay Telephone Reclassification Provisions of the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-128, FCC 96-388 (rel. Sept. 20, 1996) (*recon. pending*) (*Pay Telephone Order*).

²⁴¹⁷ *See* Public Notice.

pertained to loop cost recovery. One asked, "If a portion of the CCL charge represents a subsidy to support universal service, what is the total amount of the subsidy?" It also requested supporting evidence to substantiate estimates of the amount of support, including information on the cost methodology used to estimate the magnitude of the support amount. The other question asked, "If a portion of the CCL charge represents contribution to the recovery of loop costs, please identify and discuss alternatives to the CCL charge for recovery of those costs from all interstate telecommunications service providers (e.g., bulk billing, flat rate/per-line charge)."

759. In its August decision implementing section 251 and related provisions of the 1996 Act,²⁴¹⁸ the Commission concluded that purchasers of unbundled network elements should not be required to pay access charges, including CCL charges.²⁴¹⁹ The Commission determined that the "payment of rates based on TELRIC plus a reasonable allocation of common costs, pursuant to section 251(d)(1), represents full compensation to the ILEC for use of the network elements that telecommunications carriers purchase."²⁴²⁰ Nevertheless, the Commission recognized that some portion of the CCL charge represents universal service support that should not be terminated before the Commission has begun to implement new support mechanisms.²⁴²¹ To preserve existing support flows until the completion of the universal service and access charge reform proceedings, the Commission adopted an interim mechanism that requires purchasers of the unbundled local switching element to continue to pay CCL charges (plus a charge equal to 75 percent of the TIC) for all interstate minutes traversing the ILEC's local switches.²⁴²² The Commission applied the transitional mechanism to "the unbundled local switching element, rather than to any other network elements, because such an approach is most closely analogous to the manner in which the [CCL charge] and TIC are recovered in the interstate access regime."²⁴²³ This transitional mechanism will expire upon completion of the universal service and access charge proceedings, but no later than June 30, 1997.²⁴²⁴

²⁴¹⁸ See *Local Competition Order*.

²⁴¹⁹ *Local Competition Order* at para. 721.

²⁴²⁰ *Local Competition Order* at para. 721. "TELRIC" is an acronym for "total element long run incremental cost." See *id.* at para. 674.

²⁴²¹ *Local Competition Order* at para. 719.

²⁴²² *Local Competition Order* at para. 720.

²⁴²³ *Local Competition Order* at para. 721.

²⁴²⁴ For BOCs, the transitional mechanism will also expire on the date the BOC is authorized to provide in-region inter-LATA services if this occurs before completion of the two proceedings or June 30, 1997. *Local Competition Order* at para. 720.

C. Comments

760. CCL Charges Are Not a Support Mechanism. Many commenters, including most states and state consumer advocates as well as some small LECs, Teleport, and NECA, argue that the CCL charge does not represent a support flow because it is a mechanism for LECs to recover IXCs' share of the joint and common loop costs.²⁴²⁵ These commenters contend that IXCs should bear some or all of the burden for interstate loop costs because IXCs would otherwise have use of the loop, an input to their service, at no charge. Several commenters contend that, because the loop is a joint and common cost, section 254(k) requires that IXCs bear a reasonable share of loop costs.²⁴²⁶ Other commenters, while still arguing that CCL charges are not a support mechanism, suggest that LECs may be over-recovering loop costs because CCL charges are computed based on embedded costs.²⁴²⁷ These commenters believe that re-computation of loop costs based on forward-looking cost principles justifies lowering at least the SLC, and perhaps CCL charges as well. Other commenters suggest that the current \$3.50 residential SLC cap should be lowered to reflect declines in the real cost of providing loops.²⁴²⁸ Some commenters note the use of digital loop carrier technology in the feeder portion of the loop and suggest that has resulted in less of the loop being a non-traffic-sensitive, dedicated facility.²⁴²⁹

761. Most states take the position that CCL charges do not constitute a support flow and favor elimination of the SLC and recovery of interstate loop costs entirely from IXCs.²⁴³⁰ Many of these commenters argue that this change will allow the marketplace to determine

²⁴²⁵ See, e.g., AARP comments at 14-15; Bell Atlantic comments at 10-11; OPC-DC comments at 17; Florida PSC comments at 21-23; Harris comments at 13; Maine PUC comments at 17; NASUCA comments at 4-6; RTC comments at 17-18; Rural Iowa Indep. Tel. Ass'n comments at 6; Teleport comments at 10-11; Texas OPUC comments at 6-7; Washington UTC comments at 18-19; DC PSC reply comments at 9-10; United Utilities reply comments at 3-4; NECA further comments at 37.

²⁴²⁶ See, e.g., Indiana PUC comments at 9; NARUC comments at 16; Texas OPC comments at 3-4; AARP reply comments at 16; NASUCA reply comments at 13-14; Oklahoma CC reply comments at 21.

²⁴²⁷ See, e.g., Maine PUC comments at 21-22; New York DPS comments at 4; Washington UTC comments at 18-19.

²⁴²⁸ According to AARP, loop costs have decreased by 7 percent per year for the past decade. AARP comments at 17. See also Maine PUC comments at 21-22; Texas OPUC comments at 13-14.

²⁴²⁹ See, e.g., Testimony of Mark Cooper, Director of Research, CFA, Federal State Joint Board Meeting, Sept. 13, 1996.

²⁴³⁰ See, e.g., Idaho PSC comments at 16-17; Maine PUC comments at 17; NARUC comments at 17.

how such costs will be recovered from end users.²⁴³¹ Many of these parties also favor converting the CCL charge to a flat-rate, per-line, revenue-based, or other type of charge to IXCs,²⁴³² agreeing that "it is not economically efficient to recover non-traffic sensitive costs on a traffic sensitive basis"²⁴³³ (as CCL charges are currently recovered). NYNEX argues that "loop costs represent approximately 80 percent of total [incremental] universal service costs," and observes that "the current end user charge cap of \$3.50 was initially felt to represent 50 percent of average interstate assigned loop costs."²⁴³⁴ NYNEX therefore proposes that 40 percent (i.e., 80 percent of 50 percent) of interstate-allocated loop costs be recovered from end users, with the remaining 60 percent to be recovered from IXCs on the basis of presubscribed lines.²⁴³⁵ NARUC and some states suggest that loop costs for customers who refuse to select a PIC should be allocated among the IXCs that those specific customers actually use.²⁴³⁶ Other commenters favor flat-rate charges to all carriers using the loop.²⁴³⁷ The Texas OPUC suggests that, as local markets become more competitive, "the Commission will have to abandon subscriber line charges altogether and allow costs for the provision of the loop to be recovered by service providers in the rates they charge each other and their customers."²⁴³⁸

762. Support Flows Not Covered by the Act. At least one commenter argues that, although CCL charges and LTS payments may constitute support flows, they are not support flows intended to serve the universal service goals of the 1996 Act and therefore do not need

²⁴³¹ See, e.g., Idaho PSC comments at 17; Maine PUC comments at 18; Pennsylvania PUC reply comments at 21.

²⁴³² See, e.g., Maine PUC comments at 16-17 (advocating a flat charge to PIC with proportional division of charges for customers who make casual use of non-PIC carriers); NARUC comments at 17 (same); DC PSC reply comments at 8-9 (flat charge divided proportionally among carrier on basis of relative use). See also Ohio Consumers' Council comments at 20; Ameritech further comments at 46; Century and TDS further comments at 33; NYNEX further comments at 47-48 (arguing that a per-line charge might encourage customers to un-presubscribe and use dial-around codes for long distance calls, and advocating a revenue-based charge).

²⁴³³ Maine PUC comments at 16-17. See also NARUC comments at 17; Alabama PUC reply comments at 13; DC PSC reply comments at 8-9.

²⁴³⁴ See *ex parte* letter from Frank J. Gumper, NYNEX, to William F. Caton, Secretary (Oct. 21, 1996) at 2.

²⁴³⁵ *Id.*

²⁴³⁶ See, e.g., Idaho PUC comments at 17; Maine PUC comments at 17; NARUC comments at 17.

²⁴³⁷ Pennsylvania PUC comments at 24; CFA further comments at 27.

²⁴³⁸ Texas OPUC comments at 10.

to be made explicit to comply with the 1996 Act.²⁴³⁹ Some small LECs and a few states disagree with the elimination of the LTS component of CCL charges.²⁴⁴⁰ No party appears, however, to have attempted to refute the NPRM's tentative conclusion that LTS represents an impermissible implicit support mechanism.²⁴⁴¹

763. CCL Charges as Impermissible Support Mechanisms. On the other hand, a substantial number of commenters argue that CCL charges contain support flows inconsistent with the 1996 Act.²⁴⁴² Many advocate eliminating CCL charges altogether and recovering interstate loop costs entirely through the SLC.²⁴⁴³ Others advocate increasing the SLC by some fixed amount, such as the amount necessary to compensate for inflation since the SLC cap was imposed.²⁴⁴⁴ Some contend that economic theory supports the recovery of non-traffic sensitive facility costs, like loop costs, from the cost causer -- which they contend is the end user.²⁴⁴⁵ Sprint argues that, since the loop must be unbundled pursuant to section 251, it is no longer a shared facility; therefore, IXCs should no longer share in the recovery of its cost.²⁴⁴⁶

764. Many of these commenters argue that shifting loop costs previously recovered through CCL charges to end users through the SLC will not have an adverse impact on universal service.²⁴⁴⁷ These commenters cite statistics showing that telephone penetration rates

²⁴³⁹ See NYNEX comments at 3-8. NYNEX nevertheless argues that the current access charge regime, developed in a monopoly environment, will be unsustainable in a competitive marketplace. *Id.*

²⁴⁴⁰ See, e.g., Harris comments at 18-19; Missouri PSC comments at 20-21; Pennsylvania PUC comments at 24; Rock Port Tel. Co. comments at 2; Western Alliance comments at 8; Fred Williamson comments at 17-18.

²⁴⁴¹ See NPRM at para. 115.

²⁴⁴² See, e.g., AT&T comments at 3-4, 16; Ad Hoc Telecom. Users comments at 22; BellSouth comments at 8; California PUC comments at 20; GSA comments at 4; SNET comments at 6; Time Warner comments at 19-20; NTIA reply comments at 21 n.54.

²⁴⁴³ See, e.g., AT&T comments at 16; Ad Hoc Telecom. Users comments at 22; BellSouth comments at 4; CPT comments at 1-2; GTE comments at 15; NTIA comments 21 n.54; Time Warner comments at 20; USTA comments at 18.

²⁴⁴⁴ See, e.g., Ad Hoc Telecom. Users comments at 22-24; Churchill County comments at 4.

²⁴⁴⁵ Ad Hoc Telecom. Users comments at 22; BellSouth comments at 8.

²⁴⁴⁶ Sprint reply comments at 20.

²⁴⁴⁷ See, e.g., BellSouth comments at 17-18; Time Warner comments at 20. AirTouch argues that shifting loop cost recovery to end users will increase demand for telecommunications services by lowering toll rates. AirTouch further comments at 28-29.

have increased since the introduction of the SLC in 1985 as evidence that there has not been an adverse effect on universal service.²⁴⁴⁸ This view contrasts with other commenters who assert that increasing the SLC could have a negative impact on subscribership in contravention of the 1996 Act's universal service goals.²⁴⁴⁹ Some of these commenters also argue that end-user loop cost recovery would violate section 254(k), which requires that services included in the definition of universal service bear no more than their fair share of joint and common costs.²⁴⁵⁰ AARP contends that allowing IXCs to pay nothing for the use of the loop would violate the prohibition in section 254(k) against non-competitive services subsidizing competitive services.²⁴⁵¹

765. Some commenters argue that IXCs should be required to pass on savings associated with any CCL charge reductions to their subscribers on a dollar-for-dollar basis.²⁴⁵² At the same time, some commenters observe that the computation of loop costs that LECs should be allowed to recover should be based on forward-looking, not embedded, costs.²⁴⁵³ They assert that recalculating loop cost recovery based on a forward-looking methodology may allow full recovery of such costs from end users with little or no increase in current SLC levels. USTA notes that, on a wire center basis, 48 percent of access lines would pay a SLC equal to or less than the current \$3.50 residential cap.²⁴⁵⁴ GSA recommends recovering loop costs through SLCs rather than CCL charges, but would set the SLC at *urban* loop cost levels, and recover the difference in non-urban areas from a new universal service fund to which all interstate telecommunications carriers would contribute on a non-discriminatory basis.²⁴⁵⁵

²⁴⁴⁸ See, e.g., AT&T comments at 16-17 n.21; BellSouth comments at 17-18; Time Warner comments at 20; USA reply comments at 12.

²⁴⁴⁹ See, e.g., Maine comments at 20-21; NARUC comments at 16; New York DPS comments at 4; AARP reply comments at 14-15.

²⁴⁵⁰ These commenters argue that basic telephone service will include the services defined as universal service. At the same time, they argue that loop costs are joint and common costs shared between local service and competitive services such as interexchange service. They therefore contend that end-user recovery of loop costs would force recovery of those costs through rates for basic service, and thus force services included in the definition of universal service to bear the entire burden of a joint and common cost shared with competitive services, in violation of section 254(k). See, e.g., AARP comments at 15-16; DC OPC reply comments at 2.

²⁴⁵¹ AARP comments at 16.

²⁴⁵² See, e.g., Bell Atlantic comments at 11-13; Citizens Utilities comments at 9; NARUC comments at 15; Siskiyou reply comments at 2.

²⁴⁵³ See, e.g., MCI comments at 14; AT&T further comments at 45-46.

²⁴⁵⁴ USTA *ex parte* letter dated August 1, 1996, from Porter E. Childers to William F. Caton.

²⁴⁵⁵ GSA comments at 5-6.

GTE, in contrast, would eliminate CCL charges and de-average the amount of the SLC on a geographic basis.²⁴⁵⁶ A few commenters would recover all interstate loop costs not recovered from SLC revenues through a new universal service fund.²⁴⁵⁷

766. Other Comments. A few commenters assert that the collection of LTS could be restructured to be consistent with the 1996 Act's non-discrimination requirements.²⁴⁵⁸ Missouri PSC argues that retaining the LTS mechanism in some form will increase interexchange competition in rural and high cost areas.²⁴⁵⁹ Several argue that any elimination of LTS should occur over time or through some other type of transition mechanism.²⁴⁶⁰ A small number of commenters claim that too great a proportion of subscriber loop costs are allocated to the interstate jurisdiction, and advocate reform of the separations mechanism.²⁴⁶¹ At least one commenter would delay any consideration of revisions to the SLC and CCL charge until more information is submitted to the record.²⁴⁶² Finally, a few commenters contend that proposals to change CCL charges and LTS payments are outside the scope of the universal service proceeding.²⁴⁶³

D. Discussion

1. LTS Payments

767. We recommend that the Commission adopt the tentative conclusion reached in

²⁴⁵⁶ GTE comments at 14-15. USTA would modify the existing SLC caps based on a local affordability benchmark. USTA comments at 15. *See also* SWBT comments at 4-6.

²⁴⁵⁷ *See, e.g.*, Ohio PUC comments at 17-18; PacTel comments at 13.

²⁴⁵⁸ Missouri PSC comments at 21; Pennsylvania PUC comments at 24; Winnebago Tel. comments at 1.

²⁴⁵⁹ *See* Missouri PSC comments at 20-21. Missouri PSC observes that the LTS system has historically served to reduce pressure on IXCs to de-average rates. *Id.* The 1996 Act requires IXCs to charge geographically averaged rates, however, and the Commission recently adopted rules implementing this provision. 47 U.S.C. § 254(g); *See also Policy and Rules Concerning the Interstate, Interexchange Marketplace, Report and Order*, CC Docket No. 96-61, FCC 96-331 (rel. August 7, 1996). Missouri PSC argues that, under a mandate to deaverage rates and absent access charges equalized by LTS, IXCs might choose not to serve high cost areas. Missouri PSC comments at 21.

²⁴⁶⁰ Citizens comments at 7-9; Florida PSC comments at 22; Montana Indep. Telecom. comments at 7; West Virginia Consumer Advocate comments at 12-13.

²⁴⁶¹ *See, e.g.*, ALTS comments at 7-8; Frontier comments at 10.

²⁴⁶² Indiana URC reply comments at 25.

²⁴⁶³ Rural Iowa Indep. Tel. Ass'n comments at 6; Fred Williamson comments at 17-18.

the NPRM that LTS payments constitute a universal service support mechanism. As the Commission noted in the NPRM, LTS payments serve to equalize LECs' access charges by raising some carriers' charges and lowering others. While some commenters have noted the beneficial purposes currently served by LTS, no commenter argued that LTS was not a support flow. We conclude that this support mechanism is inconsistent with the 1996 Act's requirement that support be collected from all providers of interstate telecommunications services on a non-discriminatory basis.²⁴⁶⁴ Currently, only LECs that do not participate in the NECA pool make LTS payments, which they in turn recover from their IXC customers through CCL charges, and only LECs participating in the NECA pool receive LTS support.²⁴⁶⁵ We reject some commenters' argument that the 1996 Act only requires *new* universal service support mechanisms to comply with section 254, and does not require the reformation of existing support mechanisms, such as LTS, that were not originally adopted in furtherance of section 254.²⁴⁶⁶ We believe Congress intended not only that any new universal service support mechanisms recommended in this proceeding comply with section 254, but also that we should recommend reform of existing support mechanisms, if necessary. We are required to "recommend changes to any of [the Commission's] regulations in order to implement sections 214(e) and this section [254]."²⁴⁶⁷ Section 254(d) specifically states that universal service support mechanisms should be supported by contributions by all providers of interstate telecommunications services. The Conference Report provides further support, stating that "[t]he conferees intend that, in making its recommendation, the Joint Board will thoroughly review the existing system of Federal universal service support."²⁴⁶⁸

768. We therefore recommend that the LTS system no longer be supported via the access charge regime. As described more fully in section VII, *supra*, we recommend that rural LECs continue to receive payments comparable to LTS²⁴⁶⁹ from the new universal service support mechanism. To this extent, we recommend that the Commission adopt the position of those commenters favoring the reformation of the LTS mechanism to make it

²⁴⁶⁴ 47 U.S.C. § 254(d).

²⁴⁶⁵ See 47 C.F.R. § 69.105(b)(3) - (4).

²⁴⁶⁶ See *supra* section XII.C.

²⁴⁶⁷ 47 U.S.C. § 254(a)(1).

²⁴⁶⁸ Joint Explanatory Statement at 131.

²⁴⁶⁹ As discussed *supra* in section VII, such payments would be computed on a per-line basis for each ILEC currently receiving LTS, based on the LTS payments that carrier has received over a historical period prior to the release of this Recommended Decision. In the interest of competitive neutrality, such payments would also be portable, on a per-line basis, to competitors that win the ILEC's subscribers.

consistent with the 1996 Act.²⁴⁷⁰ We make this recommendation because we find that LTS payments currently serve the important public interest function of reducing the amount of loop cost that high cost LECs must seek to recover from IXCs through interstate access charges, and thereby facilitating interexchange service in high cost areas.

2. Other Modifications to Interstate Loop Cost Recovery Mechanisms

a. SLC Caps

769. In this Recommended Decision, we have stated our view that current rates are generally affordable,²⁴⁷¹ and that primary residential and single-line business lines are central to the provision of universal service.²⁴⁷² We further observe that the SLC, as a charge assessed directly on local telephone subscribers, has an impact on universal service concerns such as affordability. Consistent with these premises, the Joint Board concludes that the current \$3.50 SLC cap for primary residential and single-line business lines should not be increased.

770. At the same time, the Joint Board recognizes that the SLC represents a critical element of a complex, interdependent mechanism for the recovery of loop costs allocated to the interstate jurisdiction. The Commission has the responsibility for maintaining the economic sustainability of interstate cost-recovery mechanisms. That mechanism necessarily depends upon a number of issues not presented to this Joint Board. One important factor is the permissible level of total common line recovery, which is not a part of this proceeding. For example, it is not yet clear the extent to which unbundled loops may provide a market-based pricing discipline on common line charges. The prices for these loops are currently being determined through negotiations among carriers and in arbitrations before state commissions. While the Commission adopted standards to govern pricing of those unbundled loops in the *Local Competition Order*, those pricing rules are currently stayed pending appeal.²⁴⁷³ We also note that the rules adopted in the *Local Competition Order* required deaveraging of unbundled loop prices into at least three zones, which could also have some impact on common line recovery methods. To the extent that local exchange competition develops, whether using unbundled loops or a competitive carrier's own loop facilities, mandatory common line rate structures for ILECs may become unnecessary. In this regard,

²⁴⁷⁰ See, e.g., Missouri PSC comments at 20-21; Pennsylvania PUC comments at 24; Winnebago Tel. comments at 1.

²⁴⁷¹ See *supra* section V.

²⁴⁷² See *supra* section IV.

²⁴⁷³ See *Iowa Utilities Board v. FCC*, 1996 WL 557116 (8th Cir., rel. Oct. 15, 1996).

we note that competitive carriers do not have mandatory common line rate structures.

771. Any consideration of common line recovery must also take account of the impact of high cost support, and of the magnitude of such support on the recovery of total loop costs in high cost areas. There is also the question of how the revenue derived from such support is treated in the separations process. The Commission must also address the extent to which embedded loop costs should be recovered in its upcoming access charge reform proceeding. Ultimately, the establishment of the SLC cap depends upon the Commission's resolution of each of these issues.

772. In this Recommended Decision, we have reached no conclusion with respect to the proper revenue base for determining contributions by providers of interstate telecommunications services to the new national high cost and low-income universal service support mechanism. We observe that if the Commission ultimately establishes a rule assessing carriers' contributions based upon both inter- and intrastate revenues, we recommend that the Commission, as part of the transition to the new universal service contribution methodology, implement a downward adjustment in the SLC cap in order to help mitigate any potential effects on end-user charges related to local service.

773. We note that the Commission could implement such a transition without increasing aggregate revenues currently collected through CCL charges. We observe that the provisions of the 1996 Act will likely result in a reduction in the total costs that ILECs will recover through common line recovery methods -- currently, the SLC and CCL charges. In implementing the Act, the Commission recently directed ILECs to eliminate from their CCL charges an amount equal to the interstate allocation of pay telephone costs currently recovered through those charges,²⁴⁷⁴ and we here are recommending that the Commission provide LTS-surrogate payments out of a new universal service support mechanism.²⁴⁷⁵ In the event that the Commission implements a rule assessing carriers' universal service contributions based on all telecommunications revenues regardless of jurisdictional classification, we recommend that the benefits from these CCL reductions be apportioned equally between primary residential and single-line-business subscribers to local exchange service, on the one hand, through a reduction in the SLC cap for those lines, and interstate toll users, on the other hand, through lower CCL charges.

b. Recovery of Residual Interstate Loop Costs

774. Currently, ILECs are required to recover through traffic-sensitive CCL charges

²⁴⁷⁴ See *Pay Telephone Order* at para. 181.

²⁴⁷⁵ See *supra* section XII.D.1.

those interstate-allocated NTS loop costs not recovered through SLCs and LTS payments.²⁴⁷⁶ In the NPRM, the Commission referred to the Joint Board questions related to the recovery of these loop costs, and suggested that the current mechanism may constitute a universal service support flow.²⁴⁷⁷ Commenters disagree on whether the current, usage-sensitive CCL charge represents a true universal service support flow.²⁴⁷⁸ The Joint Board reaches no conclusion on this question.

775. Like many commenters,²⁴⁷⁹ however, the Joint Board recognizes that the usage-sensitive CCL charge constitutes an inefficient mechanism for recovering NTS loop costs. The cost of the loop is largely a fixed cost, i.e., it does not vary with usage.²⁴⁸⁰ To provide proper economic signals, it would be preferable for prices related to the loop, such as the CCL charge, to be set in a manner that is consistent with the manner in which the loop's cost is incurred. Because the cost of a loop generally does not vary with the minutes of use transmitted over the loop, the current CCL charge that mandates recovery of loop costs through per-minute-of-use charges represents an inefficient cost-recovery mechanism.

776. Accordingly, we believe it would be desirable for the Commission in the very near future to consider revising the current CCL charge structure so that LECs are no longer required to recover the NTS cost of the loop from IXCs on a traffic-sensitive basis. One promising alternative that would send the proper market signals to potential users and carriers would involve permitting ILECs to recover CCL costs from IXCs through a flat, per-line charge. It appears that the most administratively simple mechanism to recover such a flat-rate CCL charge would be to assess it against each customer's PIC. This approach could promote efficiency if IXCs, in turn, can recover this charge as they see fit, including passing the flat charge directly to the end user (whether or not the end user generates any usage-based charges).²⁴⁸¹ We recognize, however, that imposing such a charge only on the PIC may simply encourage end users not to select a PIC. To resolve this problem, if the Commission

²⁴⁷⁶ See 47 C.F.R. § 69.105.

²⁴⁷⁷ NPRM at para. 113.

²⁴⁷⁸ Compare, e.g., Bell Atlantic comments at 11-13 with, e.g., MCI comments at 6.

²⁴⁷⁹ See, e.g., TCI further comments at 35-36.

²⁴⁸⁰ We acknowledge, as some commenters have noted, that, as new loop technologies such as digital loop carrier and hybrid fiber-coaxial cable loops supplant traditional twisted-copper loops, it may become less accurate to characterize the loop as a dedicated, NTS facility. We find that the best manner in which to deal with this changing technology is, as we recommend today, to give carriers the flexibility to recover these costs in a manner that is consistent with the way they are incurred.

²⁴⁸¹ We acknowledge that the 1996 Act's IXC rate averaging requirement may affect IXCs' ability to pass flat charges to their subscribers. See 47 U.S.C. § 254(g).

allows carriers to assess a flat-rate CCL charge on customers' PICs, the Joint Board suggests that the Commission allow ILECs to collect the flat-rate charge that would otherwise be assessed against the PIC from any customer who elects not to choose a PIC.

XIII. ADMINISTRATION OF SUPPORT MECHANISMS

A. Overview

777. Section 254(d) instructs the Commission to require "every telecommunications carrier that provides interstate telecommunications services" to contribute, on an equitable and nondiscriminatory basis, to the preservation and advancement of universal service. The 1996 Act permits the Commission to require other providers of interstate telecommunications to contribute to support mechanisms, if the Commission finds that it would serve the public interest. The 1996 Act also permits the Commission to exempt carriers from contribution if their contribution to universal service would be *de minimis*. To satisfy these statutory requirements, the Commission must determine which carriers shall contribute to support mechanisms, which carriers should be exempt from contribution, the basis for assessing contributions, and whom should administer the new support mechanism.

778. The Joint Board recommends that all carriers that provide interstate telecommunications services make contributions to the support mechanism based on their gross interstate and intrastate telecommunications revenues net payments to other telecommunications carriers. We recommend exempting from contribution those carriers for which the cost of collection exceeds the amount of the contribution. We also recommend that the Commission appoint a universal service advisory board to appoint, through competitive bidding, and oversee a neutral, third-party administrator of the support mechanism.

B. Mandatory Contributors to Support Mechanisms

1. Background

779. Section 254(b) provides that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service"²⁴⁸² through "specific, predictable and sufficient Federal and State mechanisms."²⁴⁸³ To accomplish these goals, the 1996 Act mandates that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and

²⁴⁸² 47 U.S.C. § 254(b)(4).

²⁴⁸³ 47 U.S.C. § 254(b)(5).

sufficient mechanisms established by the Commission to preserve and advance universal service."²⁴⁸⁴ The statute defines the term "telecommunications carrier" as "any provider of telecommunications services,"²⁴⁸⁵ and the term "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."²⁴⁸⁶ In addition, the 1996 Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."²⁴⁸⁷ Congress added that "the term 'telecommunications service' is defined as those services and facilities offered on a 'common carrier' basis, recognizing the distinction between common carrier offerings that are provided to the public . . . , and private services."²⁴⁸⁸ In the NPRM, the Commission sought comments as to which service providers would fall within the scope of the term "telecommunications carrier" and would be required to contribute to federal support mechanisms.²⁴⁸⁹

2. Comments

780. Mandatory Contributors. All commenters agree that "all providers of interstate telecommunications services" should be required to contribute to universal service support mechanisms,²⁴⁹⁰ and while some state that the definition should be construed broadly,²⁴⁹¹ most

²⁴⁸⁴ 47 U.S.C. § 254(d).

²⁴⁸⁵ The 1996 Act specifically exempts aggregators of telecommunications services (as defined in section 226) from the definition of "telecommunications carrier." 47 U.S.C. § 153(44).

²⁴⁸⁶ 47 U.S.C. § 153(46).

²⁴⁸⁷ 47 U.S.C. § 153(43).

²⁴⁸⁸ Jt. Statement of Managers, S. Conf. Rept. No. 104-230, 104th Cong., 2nd Sess. 115 (1996).

²⁴⁸⁹ NPRM at para. 119.

²⁴⁹⁰ See, e.g., Alliance for Public Technology comments at 13; Ardmore Tel. comments at 5; Associated Communications comments at 4; Colorado PUC comments at 6; Frontier comments at 10; Louisiana PSC comments at 6-7; MCI comments at 15-16; New York CPB comments at 10; New York DPS comments at 10; Oklahoma CC comments at 6-7; Oregon PUC comments at 7-8; PacTel comments at 20-21; Pacific Telecom comments at 3; Pennsylvania RDC comments at 4-5; Teleport comments at 12; Telec Consulting comments at 17; Ameritech reply comments at 9; California PUC reply comments at 7; Dell Tel. reply comments at 7; WinStar reply comments at 6.

²⁴⁹¹ See, e.g., Alabama-Mississippi Tel. Ass'n. comments at 5-6; Alliance for Distance Education comments at 2; Keystone comments at 4; LDDS comments at 14. See also CSE Foundation comments at 16-17 (if carrier ultimately allows subscribers to access switched local exchange networks across the states); West Virginia Consumer Advocates comments at 13 (all providers of switched services); Fred Williamson comments at 8 (all

do not specifically describe which types of entities should be included within that definition. Several commenters, however, attempt in varying degrees to provide some suggestions or guidance on how to identify all contributors. Some commenters suggest that the group of contributors to the universal service fund should mirror the group that contributes to the TRS fund.²⁴⁹² Every carrier providing interstate telecommunications services must contribute to the TRS fund,²⁴⁹³ and, for TRS purposes, the Commission has stated that interstate telecommunications services include, but are not limited to, "cellular telephone and paging, mobile radio, operator services, PCS, access (including subscriber line charges), alternative access and special access, packet switched, WATS, 800, 900, MTS, private line, telex, telegraph, video, satellite, international, intraLATA, and resale services."²⁴⁹⁴ Reed, Smith argues that the TRS fund is not the proper model for defining contributors to support mechanisms, because the funding mechanism for the TRS fund is based on the Americans with Disabilities Act, not the 1996 Act.²⁴⁹⁵ Several other commenters provide illustrative lists of the types of carriers that should be required to contribute to universal service. Those lists include one or more of the following: ILECs; CLECs; IXCs; competitive access providers (CAPs); resellers; CMRS providers - including cellular, PCS, paging, SMR and BETRS; satellite providers; payphone service providers; enhanced service providers (ESPs); voice over the internet (VON) providers; operator service providers; cable television companies; providers of inside wiring; providers of customer premise equipment; utility companies and other providers of telecommunications services.²⁴⁹⁶

who use and benefit from the public switched telephone network).

²⁴⁹² See Keystone comments at 4; Illinois CC comments at 9; USTA comments at 24.

²⁴⁹³ See 47 C.F.R. § 64.604(c)(iii)(A).

²⁴⁹⁴ See 47 C.F.R. § 64.604(c)(iii)(A).

²⁴⁹⁵ Reed, Smith reply comments at 4.

²⁴⁹⁶ See, e.g., ALTS comments at 17 (ILECs, CLECs, IXCs, cellular, PCS, payphone service providers); Ameritech comments at 23 (all wireline service providers; LECs, IXCs, CAPs, cable companies to the extent they provide telecommunications services, resellers, wireless providers, cellular, PCS, satellite, BETRS, SMRs, paging, ESPs if they are found to provide telecommunications services); CSE Foundation comments at 16-17 (ILECs, IXCs, Resellers, CAPs, cellular, PCS, cable television providers); Cincinnati Bell comments at 14 (ILECs, new local service providers, IXCs, CAPs, cellular, PCS, resellers and other future providers); CompTel comments at 15 (ILECs, IXCs, CAPs, CMRS, cellular, paging and PCS); Harris comments at 3-4 (ILECs, IXCs, wireless, cable television companies, public payphone service providers, providers of inside wiring, providers of customer premise equipment and operator service providers); Keystone comments at 4 (ILECs, IXCs, RHCs; electric or gas; cellular, paging, PCS, resellers, 900 services, satellite and video companies); SWBT comments at 20 (ILECs, other LECs, resellers, wireless carriers, IXCs, CAPs, alternate operator service providers); GCI reply comments at 16 (ILECs, CAPs, cellular, payphone service providers, ESPs); LDDS reply comments at 13-14 (ILECs, IXCs, CAPs, CMRS; including paging; some ESPs, such as entities that provide VON services).

781. Exempted Carriers. Several commenters proffer arguments that specific types of carriers should not be required to contribute to support mechanisms.²⁴⁹⁷ Some commenters assert that contributions should only be required from facilities-based providers, because resellers of such services already make contributions to universal service through their payments to facilities-based carriers.²⁴⁹⁸ Rural Electric Coop. states that companies that lease excess capacity to other telecommunications carriers should not be required to contribute to support mechanisms, because they do not provide telecommunications services "directly" to the public for a fee.²⁴⁹⁹ These parties argue that, as "wholesalers," such entities do not provide services directly to the public, which they interpret as meaning to subscribers/end users. Rural Electric Coop. adds that, since rural electric cooperatives providing telecommunications services to rural and high cost areas further universal service goals, they should not be required to contribute.²⁵⁰⁰ UTC states that entities that do not offer services on a for-profit commercial basis, such as utility and pipeline companies, do not offer services "for a fee" and thus do not offer "telecommunications services."²⁵⁰¹ A few commenters argue that CMRS providers should not contribute to support mechanisms, because they already contribute to universal service through interconnection payments to LECs and, due to the limited nature of their service, may be ineligible to receive universal service support.²⁵⁰² Additionally, PCIA states that the paging industry should be exempt as a result of its very low profit margins.²⁵⁰³ Comsat, a satellite telecommunications company, argues that it should not be required to contribute, because the terms of its license bar it from offering interstate service.²⁵⁰⁴ The Governor of Guam clarifies that Comsat provides limited service between

²⁴⁹⁷ See, e.g., PCIA comments at 7; Rural Electric Coop. comments at 2; TRA comments at 6-8; UTC comments at 4-5; Vanguard comments at 4-5; Ad Hoc Telecom. Users reply comments at 6.

²⁴⁹⁸ See TRA comments at 6-8; Ad Hoc Telecom. Users reply comments at 6. See also Merit comments at 5 (arguing that carriers that build value-added networks using leased facilities already contribute through their payments to facilities-based carriers).

²⁴⁹⁹ Rural Electric Coop. comments at 2. See also Motorola reply comments at 5-6. See also UTC comments at 5-8.

²⁵⁰⁰ Rural Electric Coop. comments at 2.

²⁵⁰¹ UTC comments at 4-5.

²⁵⁰² See PCIA comments at 7; Vanguard comments at 4-5; Reed, Smith reply comments at 1-3.

²⁵⁰³ PCIA comments at 7. See also MobileMedia comments at 9-11; Commnet Cellular reply comments at 4-5.

²⁵⁰⁴ Comsat comments at 11.

Guam, other Pacific insular areas, Hawaii and the U.S. mainland through Intelsat facilities.²⁵⁰⁵

782. Enhanced Service Providers. Many ESPs argue that they are not providers of interstate telecommunications services and therefore should not be required to contribute to support mechanisms.²⁵⁰⁶ They assert that on-line informational and Internet services do not meet the definition of "telecommunications," because: users do not choose the destination of the information or the travel path when information is dynamically routed through the Internet; users do not choose the content of the information that is sent when they engage in functions such as browsing a Web page; and ESPs change the content and form of the information through the use of protocols, headers or similar aspects of the subscriber's transmitted information.²⁵⁰⁷ ESPs also argue that the 1996 Act, by distinguishing information services from telecommunications services in section 254(h)(2), confirms their assertion that ESPs do not provide "telecommunications services."²⁵⁰⁸ They state that this distinction is based on the Commission's basic and enhanced service classifications. ESPs note that the Commission has traditionally defined on-line and Internet services as enhanced services and has not regulated ESPs as common carriers, thus ESPs should not be included as telecommunications carriers for contribution purposes.²⁵⁰⁹ They conclude by stating that, even if the Commission finds that ESPs provide "telecommunications services" for universal service support mechanisms, public policy would dictate against ESPs contributing, because ESPs already contribute to support mechanisms through their payments to other carriers, contributions would hinder the growth of on-line and Internet services and would raise the price of such services, identifying, tracking and monitoring ESPs would be administratively difficult, and such action would encourage other states or countries to regulate ESPs.²⁵¹⁰ CompuServe also states that the Commission must distinguish between ESPs and VON software companies.²⁵¹¹ It states that many companies, unrelated to ESPs, produce software

²⁵⁰⁵ Governor of Guam reply comments at 6. *See also* Guam Tel. Authority reply comments at 3.

²⁵⁰⁶ *See* CompuServe comments at 7-11; Florida PSC comments at 24; Interactive Service Ass'n comments at 6-9; Texas PUC comments at 19-20; NAB reply comments at 1-2.

²⁵⁰⁷ *Id.*

²⁵⁰⁸ *See* CompuServe comments at 12-16; ITA/EMA comments at 5-10; Interactive Service Ass'n comments at 10-11. Section 254(h)(2)(a) states that the Commission shall establish rules "to enhance ... access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries." 47 U.S.C. § 254(h)(2)(a).

²⁵⁰⁹ *See* CompuServe comments at 12-16; ITA/EMA comments at 5-10.

²⁵¹⁰ *See* CompuServe comments at 16-20; Information Industry Ass'n comments at 6; Interactive Service Ass'n comments at 11-13.

²⁵¹¹ CompuServe reply comments at 8.

that enable users to transmit voice over the Internet. In addition, CompuServe contends that ESPs make the same content and protocol changes to VON traffic as they make to E-mail, thus rendering VON calls as something other than "telecommunications."²⁵¹²

783. CMRS. Several CMRS commenters argue that they should be exempt from state support programs, pursuant to section 332(c)(3).²⁵¹³ That provision preempts state and local governments from regulating rates and entry for CMRS, yet allows states to regulate other terms and conditions.²⁵¹⁴ Some commenters interpret this provision as prohibiting states from requiring state support contributions from CMRS providers unless their services are a substitute for land-line service. They note that no state government has demonstrated that any commercial mobile radio service is a substitute for land-line service in a substantial portion of a state.²⁵¹⁵ Reed, Smith also mentions that section 253(e), which governs the removal of barriers to entry, provides that nothing in section 253(e) shall affect the application of section 332(c)(3).²⁵¹⁶ Reed, Smith argues that this provision indicates that Congress did not intend section 254(f) to affect section 332(c)(3).²⁵¹⁷ Several other CMRS providers also argue that CMRS providers do not provide intrastate telecommunications services, because wireless services are inherently interstate services.²⁵¹⁸ Several state PUCs urge the Commission not to disrupt state universal service programs by exempting CMRS carriers from contributing to state universal service programs.²⁵¹⁹ Pennsylvania PUC contends that such an exemption conflicts with both the Omnibus Budget Reconciliation Act of 1993 and the 1996 Act.²⁵²⁰ California PUC notes that CMRS providers currently contribute to California's existing universal service programs.²⁵²¹

²⁵¹² CompuServe reply comments at 8-10. *See also* ITA/EMA reply comments at 16.

²⁵¹³ 47 U.S.C. § 332(c)(3).

²⁵¹⁴ 47 U.S.C. § 332(c)(3).

²⁵¹⁵ *See* AirTouch comments at 3-4; CTIA comments at 5-8; MobileMedia comments at 3-12; Reed, Smith comments at 3-7; PCIA reply comments at 7-9.

²⁵¹⁶ Reed, Smith comments at 7.

²⁵¹⁷ *Id.*

²⁵¹⁸ *See* MobileMedia comments at 8; PCIA comments at 10-12; Reed, Smith comments at 7.

²⁵¹⁹ *See, e.g.,* California PUC reply comments at 7-8; Pennsylvania PUC reply comments at 7-10.

²⁵²⁰ Pennsylvania PUC reply comments at 7-8.

²⁵²¹ California PUC reply comments at 7-8.

3. Discussion

784. We recommend to the Commission that the statutory requirement that "all carriers that provide interstate telecommunications services"²⁵²² must contribute to support mechanisms be construed broadly. A broad base of funding will ensure that competing firms make "equitable and nondiscriminatory contributions" and will reduce the burden on any particular class of carrier. In order to interpret the term "telecommunications carrier" as broadly as possible, we recommend providing a non-exclusive, illustrative list of "interstate telecommunications" (discussed below). We recommend requiring any entity that provides any interstate telecommunications for a fee to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public, to contribute to the fund.

785. Thus, for the purposes of identifying which entities must contribute to universal service support mechanisms, the Joint Board recommends that the Commission adopt a definition of "interstate telecommunications" that is similar to the one used for determining TRS support. We recommend that "interstate telecommunications" include, but are not limited to, the interstate portion of the following:

cellular telephone and paging, mobile radio, operator services, PCS, access (including SLCs), alternative access and special access, packet switched, WATS, toll-free, 900, MTS, private line, telex, telegraph, video, satellite, international/foreign, intraLATA, and resale services

Generally, telecommunications are "interstate" when the communication or transmission originates in one state, territory, possession or the District of Columbia and terminates in another state, territory, possession or the District of Columbia.²⁵²³ In addition, under the Commission's rules, if over ten percent of the traffic over a private or WATS line is interstate, then the revenues and costs generated by the entire line are allocated to the interstate jurisdiction.²⁵²⁴ We agree with CNMI that interstate telecommunications services include telecommunications services between territories and possessions, and if Comsat provides telecommunications services between the Northern Mariana Islands and any state, territory or possession, Comsat does provide interstate telecommunications services.²⁵²⁵

²⁵²² 47 U.S.C. § 254(d).

²⁵²³ 47 U.S.C. § 153(22).

²⁵²⁴ See 47 C.F.R. § 36.154(a).

²⁵²⁵ We note that Comsat filed with the Commission an *Application for Review, or in the Alternative, a Waiver, Telecommunications Relay Services (TRS) and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, on March 17, 1995, regarding the Commission's contribution requirements for the interstate TRS Fund. Comsat's Application for Review is still pending.

786. We recommend adoption of the TRS approach,²⁵²⁶ because carriers and the Commission are already familiar with this approach. In addition, the TRS approach is administratively easier than adopting a list of specific types of carriers that must contribute to support mechanisms. The TRS approach will automatically require entities that provide telecommunications services through new media to contribute to support mechanisms. By contrast, listing specific types of carriers requires the Commission continually to amend its list to take into account technological changes. We find unpersuasive Reed, Smith's argument that, because it was designed in response to the Americans with Disabilities Act, TRS is an inappropriate model to identify those entities that must contribute to universal service support mechanisms. Whatever its genesis, the TRS funding mechanism, like the universal service support mechanism, requires that those entities that are interstate telecommunications service providers be identified. The Commission has developed a method of defining entities that are interstate telecommunications service providers for TRS that appears to be easy to explain and easy to apply.

787. We find no reason to exempt from contribution CMRS, satellite operators, resellers, paging companies, utility companies or carriers that serve rural or high cost areas that provide interstate telecommunications services, because the 1996 Act requires "every telecommunications carrier that provides interstate telecommunications services" to contribute to support mechanisms.²⁵²⁷ Thus, to the extent that these entities are considered "telecommunications carriers" providing "interstate telecommunications services," they must contribute to universal service support mechanisms.

788. The Joint Board agrees with Rural Electric Coop.'s comments that services offered "directly to the public" means services offered to the public or to end users. This decision is consistent with prior Commission interpretation of the phrase.²⁵²⁸ We recommend that "wholesale" carriers, carriers that provide services to other carriers, should be required to contribute, because such carriers' activities are included in the phrase "to such classes of eligible users as to be effectively available to a substantial portion of the public."²⁵²⁹ The Commission has interpreted this phrase to mean "systems not dedicated exclusively to internal

²⁵²⁶ Contributions to the TRS fund are based on gross interstate telecommunications revenues. See 47 C.F.R. § 64.604(c)(4)(iii)(A). As discussed *infra*, we do not recommend that the Commission base contributions to the support mechanism in this manner.

²⁵²⁷ 47 U.S.C. § 254(d).

²⁵²⁸ See *Implementation of Sections 3(n) and 332 of the Communications Act*, Second Report and Order, FCC 94-31, 9 FCC Rcd 1411 (1994) at 1439, para. 65 (defining to the public as offered to the public without restriction on who may receive it) (*CMRS 2nd R&O*).

²⁵²⁹ See 47 U.S.C. § 153(46).

use," or systems that provide service to users other than significantly restricted classes.²⁵³⁰ We recommend adopting the same definition for universal service purposes. Thus, for example, to the extent PMRS MSS providers lease capacity to other carriers, they would be considered carriers that provide interstate telecommunications services.

789. Furthermore, we disagree with UTC's position that the phrase "for a fee" means for profit. We do not find any reason to define "for a fee" as "for profit" and recommend that the Commission interpret the phrase "for a fee" as meaning services rendered in exchange for something of value or a monetary payment. The Joint Board concludes that the requirement that "every telecommunications carrier" contribute towards the support of universal service, requires all interstate telecommunications carriers, including wholesalers and non-profit organizations, to contribute to support mechanisms.²⁵³¹ Thus, we recommend that the Commission require any entity that provides any of the listed interstate telecommunications services on a wholesale, resale or retail basis to contribute to support mechanisms to the extent that it provides interstate telecommunications services.

790. The 1996 Act defines an "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications . . . but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."²⁵³² The Commission's rules define "enhanced services" as "services offered over common carrier transmission facilities used in interstate communications which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information."²⁵³³ The definition of enhanced services is substantially similar to the definition of information services,²⁵³⁴ and information services are not

²⁵³⁰ See *CMRS 2nd R&O* at 1441, para. 68.

²⁵³¹ See 47 U.S.C. §§ 254(b)(4), 254(d).

²⁵³² 47 U.S.C. § 153(20).

²⁵³³ 47 C.F.R. § 64.702. See also *North American Telecommunications Association, Petition for Declaratory Ruling under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services and Customer Premises Equipment*, Report and Order, 101 FCC 2d 349 (1985), recon. 3 FCC Rcd 4385 (1988).

²⁵³⁴ The Non-Accounting Safeguards NPRM sought comment on the relationship between enhanced services and information services. See *Implementation of the Non-Accounting Safeguards of sections 271 and 272 of the Communications Act of 1934*, NPRM, FCC 96-308, at para. 42 (rel. July 18, 1996).

"telecommunications services."²⁵³⁵ Thus we recommend that information service providers and enhanced service providers not be required to contribute to support mechanisms. We note, however, that if information or enhanced service providers provide any of the listed interstate telecommunications to the public for a fee, they would be required to contribute to support mechanisms based on the revenues derived from telecommunications services. We also recommend that the Commission re-evaluate which services qualify as information services in the near future to take into account changes in technology and the regulatory environment.

791. With respect to the issue of whether CMRS providers should contribute to state universal service support mechanisms, we find that section 332(c)(3)²⁵³⁶ does not preclude states from requiring CMRS providers to contribute to state support mechanisms. In addition, section 254(f) requires that all contributions to state support mechanisms be equitable and nondiscriminatory.

C. Other Providers of Interstate Telecommunications

1. Background

792. The Commission may require "[a]ny other provider of interstate telecommunications" to contribute to universal service, "if the public interest so requires."²⁵³⁷ A provider of interstate telecommunications would provide "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."²⁵³⁸ Unlike providers of interstate telecommunications services, however, providers of interstate telecommunications would not offer telecommunications "for a fee directly to the public."²⁵³⁹ Congress noted this distinction when it stated that an entity can offer telecommunications on a private-service basis without

²⁵³⁵ In the *Local Competition Order*, the Commission stated that information service providers are not telecommunications carriers. *Local Competition Order* at para. 995. Thus, information services, by definition, are different than telecommunications services. See 47 U.S.C. §§ 153(20), 153(43).

²⁵³⁶ Section 332(c)(3) states that "[n]othing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates." 47 U.S.C. § 332(c)(3).

²⁵³⁷ 47 U.S.C. § 254(d).

²⁵³⁸ 47 U.S.C. § 153(43).

²⁵³⁹ 47 U.S.C. § 153(46).

incurring obligations as a common carrier.²⁵⁴⁰ In the NPRM, the Commission asked if the public interest requires us to extend support obligations to "[a]ny other provider[s] of interstate telecommunications," and, if so, which categories of providers, other than telecommunications carriers, should be so obligated.²⁵⁴¹

2. Comments

793. A few commenters, including small incumbent LECs, state that the phrase "any other provider of interstate telecommunications" refers to private network operators and that the Commission should exercise its discretion to require these entities to contribute to support mechanisms.²⁵⁴² ACTA adds that private network operators should contribute if they access the public switched network.²⁵⁴³ ITA/EMA argues that private network operators should not be required to contribute because they derive little or no direct benefit from universal service and generally serve only the internal needs of the operator.²⁵⁴⁴ ITA/EMA also states that even if a private network operator leased some of its network to another entity, it should not be required to contribute, because the generated revenues would be minimal.²⁵⁴⁵ If private network operators are required to contribute, ITA/EMA argues that the requirement should be limited to "other providers" who own their own transmission facilities. UTC argues even if private network operators are required to contribute, private network operators who provide essential public services should be exempted from contribution.²⁵⁴⁶

3. Discussion

794. We recommend that the Commission not require "other providers of telecommunications" to contribute to support mechanisms at this time. We agree with commenters that the phrase "other providers" refers to entities that provide telecommunications that meet the entity's internal needs or that are provided free-of-charge. We believe that such providers should not be required to contribute to support mechanisms,

²⁵⁴⁰ Jt. Statement of Managers, S. Conf. Rept. No. 104-230, 104th Cong., 2nd Sess. 115 (1996).

²⁵⁴¹ NPRM at para. 119.

²⁵⁴² See, e.g., Ardmore Tel. at 5; Bledsoe Tel. comments at 5; Blountsville Tel. comments at 5; Harris comments at 8; Ragland Tel. Co. comments at 5.

²⁵⁴³ ACTA comments at 12-13.

²⁵⁴⁴ ITA/EMA comments at 18-19.

²⁵⁴⁵ ITA/EMA comments at 18-19. See also UTC comments at 4-5 (charging fees on a not-for-profit basis does not equal "to the public for a fee").

²⁵⁴⁶ UTC comments at 9.