services provided by the carrier providing the service in the rural area in which the health care provider is located. Where the providing carrier does not provide identical or technically similar services, the rural rate will be determined by the average of the tariffed and other publicly available rates for the same or similar services charged by other carriers in the rural area, not including rates reduced by universal service programs. If such rates are deemed unreasonable by the providing carrier or if no similar services are provided in the rural area by the carrier or others, the providing carrier may submit a cost-based rate for approval to the state commission or the FCC. Such cost-based rates should be supported and justified periodically.

2. Identifying the Applicable Urban Rate (¶ 664-685)

Definition (¶ 669-672) The rate "reasonably comparable to rates charged for similar services in urban areas in that State" (the "urban rate") is a rate no higher than the highest tariffed or publicly available rate actually being charged to a commercial customer within the jurisdictional boundary of the nearest city in the state with a population of at least 50,000. The measurement shall be point-to-point from the health care providers location to the closest point on that city's jurisdictional boundary. Suggestions for the use of averaged or TELRIC rates were rejected on statutory, administrative, and fairness grounds.

Rates and Distance-Based Charges (¶ 673-675) Distance-based charges (defined as those based on a unit of distance such as mileage) merit support based on the FCC's definition of "rate" in the statute as the entire cost of or charge for a service and the fact that they are an impediment to rural health care providers' use of telemedicine. Such charges will be supported consistent with the limitations described below.

Support Mechanisms (¶ 676-679) Support for eligible telecommunications services shall be provided for a distance not to exceed the distance between the health care provider and the point on the jurisdictional boundary of the city used to calculate the urban rate that is most distant from the health care provider's location. An eligible health care provider may also choose to connect to a point within the state or across state lines that is closer than the nearest city with 50,000 population and still receive support, provided that the health care services utilizing the supported telecommunications service can be provided consistent with state law.

Standard Urban Distance (¶ 680-681) The standard urban distance is the average of the longest diameters of all cities with a population of 50,000 or more within a state. Where a rural health care provider requests a service to be provided over a distance that is less than or equal to the standard urban distance for its state, the urban rate for that service shall be no higher than the highest tariffed or publicly available rate charged to a commercial customer for a similar service provided over the same distance in the nearest large city in the state, calculated as if the service were provided between two points within the city. If the rural health provider requests a service to be provided over a distance greater than the standard urban distance, the urban rate shall be no higher than the rate for the standard urban distance

calculated as above. These urban rates will then be compared to the rural rate to determine the support level.

InterLATA Charges (¶ 682-683) No additional support mechanisms are provided for LATA-crossing charges. Rural/urban rate averaging is already required under § 254(g). The adopted mechanisms also already provide support for access charges resulting in a difference in rural and urban rates. New competitive entry should further reduce disparities.

Limiting Supported Services (¶ 684-685) A rural health care provider is eligible to receive, for each separate site or location, the most cost-effective, commercially-available telecommunications service with a bandwidth capacity of 1.544 Mbps at a rate no higher than the urban rate provided over a distance not to exceed the distance between the health care provider and the point on the jurisdictional boundary of the city used to calculate the urban rate that is the most distant from the health care provider's location (the allowable distance). "Cost-effective service" is a service available at the lowest cost after consideration of the features, quality and reliability deemed necessary by the health care provider. A health care provider may request any combination of services with transmission speeds slower than 1.544 Mbps transmitted over the same or shorter distances so long as the total annual support amount for all such services does not exceed the support amount that would have been available for the most cost-effective service with that total bandwidth capacity at the allowable distance.

3. Competitive Bidding (¶ 686-689)

Requirements (¶ 686-689) Health care providers are required to seek competitive bids for all services eligible for support by submitting bona fide requests for services to the Administrator. Such requests shall include a certification to the bona fide request requirements discussed below. The request shall be posted on the Administrator's website and contain information sufficient to identify the requester and the services requested. The health care provider shall certify that the service chosen is the most cost-effective service available after selection of a telecommunications carrier. The health care provider need not select the lowest bid and may take other considerations into account, but must submit copies of non-chosen responses to the Administrator. The chosen carrier shall certify the urban rate, the rural rate, and the support required to the Administrator.

4. Insular Areas and Alaska (¶ 690-701)

Statutory Authority (¶ 692) Special mechanisms for calculation of support for territories and possessions are authorized under the statute.

Insular Areas (¶ 693-698) The FCC will issue a Public Notice regarding the telecommunications needs of insular areas and the costs of supporting such services. For purposes of the mechanisms adopted in this Order, the following urban areas are designated: for American Samoa, the island of Tutuila; for CNMI, the island of Saipan; for Guam, the town of Agana; for the U.S. Virgin Islands, the town of Charlotte Amalie. All other areas in each of these territories are designated as rural. Support shall be calculated in the same manner as provided above for non-insular areas.

Puerto Rico (¶ 699) No additional support measures are required for Puerto Rico. The support mechanisms already adopted under § 254(h)(1)(A) can be applied within the territorial limits of Puerto Rico.

Alaska (¶ 700-701) Alaska is uniquely dependent upon satellite transmission and is burdened by antiquated analog earth stations and other infrastructure deficiencies. The support mechanisms adopted in this Order should provide some relief, particularly for distance-sensitive telecommunications charges. Other concerns should be addressed in response to the FCC's Public Notice on infrastructure development.

D. Capping and Administering the Mechanisms (¶ 702-716)

1. Selecting Between Combined or Separate Support Mechanisms for Health Care Providers and for Schools and Libraries (¶ 702-703)

The FCC will use a unified mechanism for eligible health care providers and schools and libraries with separate accounting and allocation systems for the funds collected for the two groups.

2. Funding Cap (¶ 704-716)

a) Funding Cap Level (¶ 704-709)

The FCC established an annual cap of $400 million on the amount of funds available to health care providers. Collection and distribution of the funding will begin in January 1998, consistent with other universal support mechanisms implemented pursuant to this Order. The FCC declined to adopt a per-institution dollar cap.

b) Operation of Cap (¶ 710-716)

Timing of Funding Requests (¶ 710-712) Support will be committed on a first-come-first-served basis. The funding year for health care providers will begin on January 1, with requests for support accepted beginning on the first of July prior to each calendar year. Health care providers will be permitted to submit funding requests once they have made agreements for specific eligible services, and the Administrator will commit funds based on the agreements until the total payments committed during a funding year reach the amount of the cap.

The Administrator shall measure the commitments against the $400 million limit based on the contractually-specified expenditures for recurring flat-rate charges for telecommunications services that a health care provider has agreed to pay and the commitment of an estimated variable usage charge, based on documentation from the health care provider of the estimated expenditures that it has budgeted to pay for its share of usage charges. Health care providers must file their contracts with the Administrator either electronically or by paper copy. Health care providers must file new funding requests for each funding year. Such requests will be placed in the funding queue based on the date and time they are received by the Administrator.

Adjustments to Cap (¶ 713) The FCC will consider the need to revise the cap in its three-year review proceeding and sooner if it finds it necessary to ensure the sufficiency of the fund or to respond to requests from interested parties for expedited review.

Advance Payment for Multi-Year Contracts (¶ 714) While eligible health care providers should be permitted to enter into pre-paid/multi-year contracts for supported services, the Administrator will only commit funds to cover the portion of a long-term contract that is scheduled to be delivered during the funding year. Eligible health care providers may either structure their contracts so that payment is required on at least a yearly basis or, if they wish to enter contracts requiring advance payment for multiple years of service, they may use their own funds to pay full price for the portion of the contract exceeding one year (pro rata), and request that the service provider rebate the payments from the support mechanism that it receives in subsequent years to the eligible health care provider.

Collections (¶ 715-716) Funds should be collected for assistance to health care providers on an as-needed basis, to meet anticipated actual expenditures over time. The Administrator will collect $100 million for the first three months of 1998 and adjust future contribution assessments quarterly based on its evaluation of health care provider demand for funds, within the limits of the spending cap established in this Order. The Administrator must report to the Commission, on a quarterly basis, both the total amount of payments made to entities providing services to health care providers to finance universal service support and its determination regarding contribution assessments for the next quarter. Adjustments for any large reserve of remaining funds can be addressed in the FCC's review in the year 2001. As part of its review in the year 2001, the Joint Board likewise will review the appropriate level of funding of the health care program.

E. Restrictions and Administration (¶ 717-737)

1. Restrictions on Resale and Aggregated Purchases (¶ 717-723)

Consortia (¶ 719-722) The FCC adopted, with slight modification, the Joint Board's recommendation to encourage health care providers to enter into aggregate purchasing and maintenance agreements for telecommunications services with other entities and individuals, as long as the entities not eligible for universal service support pay full rates for their portion of the services. Eligible health care providers participating in consortia that include private sector members will not be eligible to receive universal service support, with one exception. Eligible health care providers participating in such a consortium may receive support, if the consortium is receiving tariffed rates or market rates, from those providers who do not file tariffs.

Telecommunications carriers must carefully maintain complete records of how they allocate the costs of shared facilities among consortium participants in order to charge eligible health care providers the appropriate amounts. Under such arrangements, the rural health care provider is eligible for reduced rates and the telecommunications carrier is eligible for support only on that portion of the services purchased and used by that eligible health care provider. These arrangements will be subject to full disclosure requirements and closely scrutinized

under an audit program. Carriers shall also be required to keep detailed records of services provided to rural health care providers, which shall be available for public inspection. The carriers must quantify and justify the amount of support for which members of consortia are eligible. Accordingly, a provider of telecommunications services to a health care provider participating in a consortium must establish the applicable rural rate for the health care provider's portion of the shared telecommunications services, as well as the relevant urban rate. Absent supporting documentation that quantifies and justifies the amount of universal service support requested by an eligible telecommunications carrier, the Administrator shall not allow that carrier to offset, or receive reimbursement for, the costs of providing services to rural health care providers participating in consortia.

Health care providers that belong to consortia that share facilities should maintain their own records of use, in addition to the records that service providers keep. Such records may be subject to an audit or examination by the Administrator or other state or federal agency with jurisdiction.

Unless telecommunications carriers can demonstrate to the Administrator that the average rate that members of a consortium pay is greater than the applicable urban rate, such carriers will not be able to receive universal service under this provision. Health care providers participating in consortia that are not eligible to receive services supported under § 254(h)(1)(A) may be eligible to receive limited toll-free access to an Internet service provider.

Use of Multi-purpose Telecommunications Connections (¶ 723) The FCC encourages the use of shared lines. An eligible health care provider, however, can be eligible for reduced rates, and the telecommunications carrier can be eligible for support, only on that portion of the telecommunications services purchased and used by the health care provider for an eligible purpose. Single health care providers that use lines for several purposes must therefore maintain records of use, which may be the subject of an audit by the Administrator or other state or federal agency with jurisdiction. Moreover, carriers must retain careful records regarding how they have allocated the costs of shared facilities. The Administrator will work with rural health care providers to keep any record keeping requirement to a minimum consistent with the need to ensure the integrity of the program.

2. Bona Fide Requests (¶ 724-731)

Certification Requirements (¶ 726-727) The FCC adopted the Joint Board's recommendation, with modifications, to require every health care provider that requests universal service supported telecommunications services to submit to the carrier a written request, signed by an officer of the health care provider authorized to order telecommunications services, certifying under oath to the following conditions in order to establish a bona fide request for services:

1) that the requester is a public or nonprofit entity that falls within one of the seven categories set forth in the definition of health care provider in § 254(h)(5)(B);

2) unless the requested service is supported under § 254(h)(2)(A), that the requester is physically located in a rural area (OMB defined non-metro county or Goldsmith defined rural section of an OMB metro county); or, if the requested service is supported under § 254(h)(2)(A), that the requester cannot obtain toll-free access to an Internet service provider;

3) that the services requested will be used solely for purposes reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law of the state in which they are provided;

4) that the services will not be sold, resold, or transferred in consideration of money or any other thing of value;

5) if the services are being purchased as part of an aggregated purchase with other entities or individuals, the full details of any such arrangement governing the purchase, including the identities of all co-purchasers and the portion of the services being purchased by the health care provider;

6) that it is ordering the most cost-effective method(s) of providing the requested services, which is the method available at the lowest cost, after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing an adequate method of providing the required health care services.

Health care providers must renew their certification annually. A health care provider requesting services eligible for support under § 254(h)(2)(A) need not establish that it is located in a rural area but rather that it cannot obtain toll-free access to an Internet service provider.

Compliance Review (¶ 728-730) The FCC adopted the Joint Board's recommendation that it require the Administrator to establish and administer a monitoring and evaluation program to oversee the use of supported services by health care providers and the pricing of those services, and it adopted an approach consistent with the requirements for schools and libraries. Consequently, health care providers, as well as telecommunications carriers, must maintain the same kind of procurement records for purchases under this program as they now keep for other purchases. Health care providers must be able to produce these records at the request of any auditor appointed by the Administrator or any other state or federal agency with jurisdiction. Health care providers may be subject to random compliance audits by an auditor appointed by the Administrator or any other state or federal agency with jurisdiction to ensure that services are being used for the provision of state authorized health care, that requesting providers are complying with certification requirements, that requesting providers are otherwise eligible to receive supported services, that rates charged comply with the statute and regulations, and that the prohibitions against resale or transfer for profit are strictly enforced. The compliance audits will also be used to evaluate what services health care providers are purchasing, the costs of such services, and how such services are being used. Such

information will permit the Commission to determine whether universal service support policies require adjustment.

The Administrator shall develop a method for obtaining information from health care providers on what services they are purchasing and how such services are being used and shall submit a report to the Commission on the first business day in May of each year. The Commission will use this report, in conjunction with any information provided by the Joint Working Group on Telemedicine, to monitor the progress of health care providers in obtaining access to telecommunications and other information services. From such monitoring activities, the Administrator should gather and report the following data: 1) the number and nature of requests for supported services submitted to the Administrator and posted by the Administrator; 2) the number and kinds of services requested; 3) the number, locations, and descriptions of health care providers requesting services; 4) the number and nature of the requests that are filled, delayed, partially filled, or unfilled, and the reasons therefore; 5) the number, nature, and descriptions of carriers offering to provide or providing supported services; 6) the requested services that are found ineligible for support; 7) the rates, prices and charges for services, including the submissions of proposed urban and rural rates for each service; and 8) the number and nature of rate submissions to state commissions and the Commission.

Carrier Notification (¶ 731) The FCC adopted the Joint Board's recommendation to encourage carriers across the country to notify all health care providers in their service areas of the availability of lower rates resulting from universal service support so that eligible health care providers can take full advantage of the supported services. The FCC declined, however, to impose a requirement that carriers notify health care providers about the availability of supported services.

3. Selecting Between Offset or Reimbursement for Telecommunications Carriers (¶ 732-737)

Subject to the limitation on services previously described, a telecommunications carrier shall receive support for providing an eligible telecommunications service under § 254(h)(1)(A) equal to the difference, if any, between the rural rate and the urban rate charged for the service, as defined above. A telecommunications carrier shall also receive support for providing services under § 254(h)(2)(A). With modifications, the FCC adopted the Joint Board's recommendation that it require carriers to receive this support through offsets to the amount they would otherwise have to contribute to federal universal support mechanisms, rather than through direct reimbursement. To the extent that the amount of universal service support owed a carrier exceeds that carrier's universal service obligation, calculated on an annual basis, the carrier may receive a direct reimbursement in the amount of the difference. Any reimbursement due a carrier will be made after the offset is credited against that carrier's universal service obligation, but in any event, no later than the first quarter of the calendar year following the year in which the costs for services were incurred. Those small carriers that do not contribute to universal service support mechanisms because they qualify for the *de minimis* exemption may receive direct reimbursement as well.

F. Advanced Telecommunications and Information Services (¶ 738-749)

Toll-free Access to an Internet Service Provider (¶ 744-749) Each health care provider that cannot obtain toll-free access to an Internet service provider is entitled to receive a limited amount of toll-free access. Upon submitting a request to a telecommunications carrier, each such health care provider may receive the lesser of the toll charges incurred for 30 hours of access to an Internet service provider or $180.00 per month in toll charge credits for toll charges imposed for connecting to an Internet service provider. Such support will fund toll charges but not distance-sensitive charges for a dedicated connection to an Internet service provider. Although the FCC recognized that some commenters propose facilitating Internet access in other ways, including auctions for the establishment of local Internet "points of presence" throughout the country, the creation of special 800-number Internet access, and the development of special incentives to ILECs that might include exemption form current restrictions on providing interLATA services, the FCC declines to adopt any of these proposals at this time due to the limited information available and their potential complexity.

XII. INTERSTATE SUBSCRIBER LINE CHARGES AND CARRIER COMMON LINE CHARGES (¶ 750-771)

A. LTS Payments (¶ 753-759)

The FCC adopted the Joint Board's recommendation that Long-Term Support (LTS) should be removed from access charges. Although the FCC removed the LTS system from the access charge regime, it adopted the Joint Board's recommendation that it enable rural LECs to continue to receive payments comparable to LTS from the new universal service support mechanisms. Because the FCC expects to make other changes to its Part 69 rules in its pending access charge reform proceeding, it will promulgate the rules to effectuate the removal of LTS contributions from CCL charges as part of those broader changes.

B. SLC Caps (¶ 760-766)

The FCC concluded that it would be inappropriate to make significant changes to the SLC cap for primary residential and single line business lines at this time, particularly because it is under consideration in the access charge reform docket. Accordingly, the FCC adopted the Joint Board's recommendation that the SLC cap for primary residential and single-line business lines should remain unchanged. Because the SLC is an interstate charge prescribed in Part 69 of the Commission's rules, the FCC will consider the SLC cap for lines other than primary residential and single-line business lines in its concurrent proceeding to reform its Part 69 rules.

C. CCL Charges (¶ 767-768)

In the its *Access Charge Reform Order*, the Commission adopted the Joint Board's suggestion that the CCL charge should be recovered in a more efficient manner. Specifically, in the *Access Charge Reform Order*, the FCC created and implemented a system of flat, per-

line charges on the PIC. Where an end user declines to select a PIC, the FCC adopted the Joint Board's suggestion that the PIC charge be assessed on the end user. As more fully described in the *Access Charge Reform Order*, the FCC contemplates that, over time, all implicit subsidies will be removed form these flat-rate charges and that any universal service costs will be borne explicitly by its universal service support mechanisms.

D. Replacement of LTS (¶ 769-771)

Rural carriers' LTS payments will be replaced with comparable, per-line payments from the new universal service support mechanisms on January 1, 1998. Because current LTS payments will cease on that date, the FCC's rules must be modified so that ILECs that currently contribute to LTS also will stop making LTS payments on that date. LTS contributors currently recover the revenue necessary for their LTS contributions through their own CCL charges. Because current LTS contributors will no longer be making such contributions after January 1, 1998, their CCL charges should be adjusted to account for this change. In the companion *Access Charge Reform Order*, the FCC is effectuating the necessary changes to ILECs' CCL charges to account for the elimination of LTS contributions.

XIII. ADMINISTRATION OF SUPPORT MECHANISMS (¶ 772-869)

A. Mandatory Contributors to the Support Mechanisms (¶ 775-792)

1. Criteria for Mandatory Contributions (¶ 777-786)

All telecommunications carriers that provide interstate telecommunications services must contribute to the support mechanisms. To be considered a mandatory contributor to universal service under § 254(d):

- (1) a telecommunications carrier must offer "interstate" "telecommunications";
- (2) those interstate telecommunications must be offered "for a fee"; and
- (3) those interstate telecommunications must be offered "directly to the public, or to such classes of users as to be effectively available to the public."

Interstate (¶ 778-779) Telecommunications are "interstate" when the communication or transmission originates in any state, territory, possession of the United States, or the District of Columbia and terminates in another state, territory, possession, or the District of Columbia. If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.

Foreign communications that are billed to domestic end users should be included in the revenue base, including country direct calls when provided between the United States and a foreign point. Revenues from communications between two international points or foreign countries would not be included in the universal service base. Carriers that provide only international telecommunications services are not required to contribute to universal service

support mechanisms because they are not "telecommunications carriers that provide interstate telecommunications services." Incidental interstate traffic created during the transmission of an international communication should not qualify as "interstate communications."

Telecommunications (¶ 780-783) Telecommunications is defined as a "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." The following services satisfy the above definition and are examples of interstate telecommunications: cellular telephone and paging services; mobile radio services; operator services; PCS; access to interexchange service; special access; wide area telephone service (WATS); toll-free services; 900 services; MTS; private line; telex; telegraph; video services; satellite services; and resale services.

"Packet switched" services can qualify as interstate telecommunications. Competitive access services provided by competitive access providers qualify as "interstate telecommunications."

Satellite and video service providers must contribute to universal service only to the extent that they are providing interstate telecommunications services. Thus, for example, entities providing, on a common carrier basis, video conferencing services, channel service or video distribution services to cable head-ends would contribute to universal service. Entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services would not be required to contribute on the basis of revenues derived from those services.

For a Fee (¶ 784) The phrase "for a fee" means services rendered in exchange for something of value or a monetary payment. "For a fee" does not mean "for-profit." Cost sharing for the construction and operation of private telecommunications networks does not render participants "telecommunications carriers" because such arrangements do not involve service "directly to the public."

Directly to the Public (¶ 785-786) The definition of "telecommunications services" in which the phrase "directly to the public" appears is intended to encompass only telecommunications provided on a common carrier basis. A carrier may be a common carrier if it holds itself out "to service indifferently all potential users." Such users, however, are not limited to end users. Common carrier services include services offered to other carriers, such as exchange access service, which is offered on a common carrier basis, but is offered primarily to other carriers. A carrier will not be a common carrier "where its practice is to make individualized decisions in particular cases whether and on what terms to serve."

Private network operators that lease excess capacity on a non-common carrier basis should contribute to universal service support as "other providers of interstate telecommunications."

2. Particular Cases (¶ 787-792)

There is no reason to exempt satellite operators, resellers, wholesalers, paging companies, utility companies, or carriers that serve rural or high cost areas.

Information service providers (ISP) and enhanced service providers are not required to contribute to support mechanisms to the extent they provide such services. The FCC intends, in its Notice of Inquiry seeking comment on the treatment of Internet access and other information services that use the public switched network, to review the status of ISPs.

Section 332(c)(3) does not preclude states from requiring CMRS providers to contribute to state support mechanisms

B. Other Providers of Interstate Telecommunications (¶ 793-800)

Section 254(d) states that the Commission may require "[a]ny other provider of interstate telecommunications" to contribute to universal service, "if the public interest so requires." Unlike providers of interstate telecommunications services, however, providers of interstate telecommunications would not offer telecommunications "for a fee directly to the public" (i.e., it would not be telecommunications offered on a common carrier basis).

The public interest requires private service providers that offer their services to others for a fee and payphone aggregators to contribute to the support mechanisms. Payphone aggregators that provide payphones primarily as a convenience to the customers of their primary business and do not provide payphone services as part of their core business may qualify for the *de minimis* exemption.

"Other providers of telecommunications" that provide telecommunications solely to meet their internal needs should not be required to contribute to the support mechanisms at this time. Cost-sharing for the construction and operation of private networks would not render participants "other providers of telecommunications" that must contribute to the support mechanisms. If a lead participant owned and operated its own telecommunications network and received monetary payments for service from other participants, the lead participant would be a provider of telecommunications and, if it provided interstate telecommunications, would be included within the group that must contribute to the support mechanisms, subject to the *de minimis* exemption.

Government entities that purchase telecommunications services in bulk on behalf of themselves, e.g., state networks for schools and libraries, will not be considered "other providers of telecommunications" that will be required to contribute. Public safety and local governmental entities licensed under Subpart B of Part 90 will not be required to contribute. An entity that exclusively provides interstate telecommunications to public safety or government entities and does not offer services to others will not be required to contribute.

C. The De Minimis Exemption (¶ 801-805)

The FCC may exempt a carrier or class of carriers from contributing to the universal service mechanisms "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*." Contributors whose contributions are less than the administrator's administrative costs of collection should be exempt from reporting and contribution requirements. If a contributor's contribution would be less than $100.00, it will not be required to contribute or comply with reporting requirements.

The *de minimis* exemption cannot and should not be interpreted to allow reduced contributions or contribution exemptions for ineligible carriers, e.g., paging.

D. Scope of the Commission's Authority Over the Universal Service Support Mechanisms (¶ 806-841)

Universal service support mechanisms for schools and libraries and rural health care providers will be funded by assessing both the intrastate and interstate revenues of providers of interstate telecommunications services. The FCC will continue to assess carriers' contributions for the high cost and low-income support mechanisms based only upon the carriers' interstate revenues, although § 254 grants the FCC the authority to assess contributions for the universal service support mechanisms for rural, insular, and high cost areas and low income consumers from intrastate as well as interstate revenues and to require carriers to seek authority from states to recover a portion of the contribution in intrastate rates.

At least for the present the FCC will permit carriers to recover their federal universal service contributions through rates for interstate services only.

1. General Jurisdiction Over Universal Service Support Mechanisms (¶ 813-823)

The FCC has jurisdiction to assess contributions for the universal service support mechanisms from intrastate as well as interstate revenues and to require carriers to seek state (and not federal) authority to recover a portion of the contribution in intrastate rates. This authority is derived from § 254(a), which gives the FCC the ultimate responsibility to effectuate § 254, § 254(c)(2), which authorizes the FCC to define the parameters of universal service, and § 254(d), which grants the FCC jurisdiction to establish support mechanisms of a sufficient size adequately to support universal service.

Even when the Commission exercises jurisdiction to assess contributions for universal service support from intrastate as well interstate revenues (i.e., for eligible schools and libraries and rural health care providers), such an approach does not constitute rate regulation of those services or regulation of those services so as to violate § 2(b).

2. Scope of the Revenue Base for the High Cost and Low-Income Support Mechanisms (¶ 824-836)

The FCC will assess and permit recovery of contributions to the rural, insular, and high cost and low-income support mechanisms based only on interstate revenues, and will seek further guidance on this subject from the Joint Board.

Recovery of Carriers' Contributions to the High Cost and Low-Income Support Mechanisms (¶ 825-830) Carriers may recover contributions to universal service support mechanisms (i.e., recoup the amount of their contributions to universal service) through rates for interstate services only.

Carriers will be permitted, but not required, to pass through their contributions to their interstate access and interexchange customers. If some carriers (e.g., IXCs) decide to recover their contribution costs from their customers, the carriers may not shift more than an equitable share of their contributions to any customer or group of customers.

ILECs subject to price cap rules may treat their contributions for the new universal service support mechanisms as an exogenous cost change. Carriers not subject to federal price caps (e.g., other ILECs), may recover universal service contributions by applying a factor to increase their carrier common line charge revenue requirement. LECs and their affiliates that provide interLATA interstate services each will have their own universal service obligations and, therefore, the affiliates will be required to recover their own universal service contributions.

Assessment of the Revenue Base for the High Cost and Low-Income Support Mechanisms (¶ 831-836) Between January 1, 1998 and January 1, 1999, contributions for the existing high cost support mechanisms and low-income support programs will be assessed against interstate end-user telecommunications revenues. Beginning on January 1, 1999, the FCC will modify universal service assessments to fund 25 percent of the difference between cost of service defined by the applicable forward-looking economic cost method less the national benchmark, through a percentage contribution on interstate end-user telecommunications revenues.

For the programs for low-income consumers, established under the jurisdiction of §§ 1, 4(i), and 201-205, the FCC provides $3.50 in federal support for every Lifeline consumer, which will be for ILECs a waiver of the SLC, plus an additional $1.75 pending state commission approval of a reduction in state rates. In addition, assuming state commission approval of state rate reductions, the FCC will provide $1.00 of support for every $2.00 of support provided by the states, up to a maximum of $7.00 of federal support.

Carriers that provide interstate services must include all revenues derived from interstate and international telecommunications services. Thus, international telecommunications services billed to a domestic end user will be included in the contribution base of a carrier that provides interstate telecommunications services. Revenues from communications between two international points would not be included in the revenue base.

3. Scope of the Revenue Base for the Support Mechanisms for Eligible Schools, Libraries, and Rural Health Care Providers (¶ 837-841)

Universal support mechanisms for schools and libraries and rural health care providers will be funded by contributions based on both the intrastate and interstate revenues of providers of interstate telecommunications services. The FCC will provide for recovery of the entirety of these contributions via interstate mechanisms. Carriers that provide interstate services must include all revenues derived from interstate and international telecommunications services.

E. Basis for Assessing Contributions (¶ 842-857)

Contributions should be based on end-user telecommunications revenues. This basis for assessing contributions represents a basis for the universal service support mechanisms more administratively efficient than the net telecommunications revenues method.

End-user telecommunications revenues include revenues derived from SLCs and revenues derived from other carriers when such carriers utilize telecommunications services for their own internal uses because such carriers would be end users for those services. This methodology is both competitively neutral and relatively easy to administer.

Basing contributions on end-user revenues, rather than gross revenues, is competitively neutral because it eliminates the problem of counting revenues derived from the same services twice for resold services. Although it will relieve wholesale carriers from contributing directly to the support mechanisms, the end-user method does not exclude wholesale revenues from the contribution base of carriers that sell to end users because wholesale charges are built into retail rates.

Calculating assessments based upon end-user telecommunications revenues also will be administratively easy to implement. Although the end-user telecommunications revenues method will require carriers to distinguish sales to end users from sales to resellers, this will be difficult because resellers will have an incentive to notify wholesalers that they are purchasing services for resale in order to get a lower price that does not reflect universal service contribution requirements.

ILECs are prohibited from incorporating universal service support into rates for unbundled network elements because universal service contributions are not part of the forward-looking costs of providing unbundled network elements.

The FCC does not mandate that carriers recover contributions in a particular manner; carriers are permitted to pass through their contribution requirements to all of their customers of interstate services in an equitable and nondiscriminatory fashion. Universal service contributions constitute a sufficient public interest rationale to justify contract adjustments. This finding is not intended to pre-empt state contract laws.

An end-user surcharge is not necessary to ensure that contributions be explicit. Unlike the SLC, the universal service contribution is not a federally mandated direct end-user surcharge. It would be misleading for a carrier to characterize its contribution as a surcharge. If contributors choose to pass through part of their contributions and to specify that fact on customers' bills, contributors must be careful to convey information in a manner that does not mislead by omitting important information that indicates that the contributor has chosen to pass through the contribution or part of the contribution to its customers and that accurately describes the nature of the charge.

If carriers provide services eligible for support from universal service support mechanisms at a discount or below cost, carriers may receive credits against their contributions. Contributions to the support mechanisms may be made in cash. In addition, carriers that provide services to eligible schools, libraries, or rural health care providers may offset their required contribution by an amount equal to the difference between the pre-discount price for service and the amount charged to the eligible institution.

Carriers should not include support mechanism payments when calculating their contributions. Payments received from the universal service support mechanisms do not qualify as revenues derived from end users for telecommunications revenues and should not be included in the assessment base.

F. Administrator of the Support Mechanisms (¶ 858-866)

The FCC will create a Federal Advisory Committee (Committee) whose sole responsibility will be to recommend to the Commission through a competitive process a neutral, third-party administrator to administer the support mechanisms. Administration by a central administrator would be most efficient and would ensure uniform application of the rules governing the collection and distribution of funding for universal service support mechanisms nationwide. NECA will be appointed the temporary administrator of the support mechanisms.

The administrator must: (1) be neutral and impartial; (2) not advocate specific positions to the Commission in proceedings not related to the administration of the universal service support mechanisms; (3) not be aligned or associated with any particular industry segment; and (4) not have a direct financial interest in the support mechanisms established by the Commission.

The administrator must not advocate positions before the Commission in non-universal service administration proceedings related to common carrier issues, although membership in a trade association that advocates positions before the Commission will not render an entity ineligible to serve as the administrator. The administrator may not be an affiliate of any provider of "telecommunications services." The administrator and any affiliate thereof may not issue a majority of its debt to, nor may it derive a majority of its revenues from any provider(s) of telecommunications services. If the administrator has a Board of Directors that contains members with direct financial interests in entities that contribute to or benefit from the support mechanisms, no more than a third of the Board members may represent interests

from any one segment of contributing carriers or support recipients, and the Board's composition must reflect the broad base of contributors to and recipients of universal service support.

No one in a position of influence within the administrator's organization may have a direct financial interest in the support mechanisms. Any candidate must also have the ability to process large amounts of data efficiently and quickly and to bill large numbers of carriers. The administrator's costs will be added to the support mechanisms and will be funded by the contributing carriers.

NECA would not be qualified to be the permanent administrator. If, however, changes to its Board of Directors or its corporate structure render it able to satisfy the neutrality criteria discussed above, NECA would be permitted to participate in the permanent administrator selection process. NECA is appointed the temporary administrator of the support mechanisms, subject to changes in NECA's governance that render it more representative of non-ILEC interests. The temporary administrator may not spend universal service support mechanisms' funds until it is appointed by the Commission.

G. Implementation (¶ 867-869)

The FCC requires that the Committee recommend a neutral, third-party administrator through a competitive process no later than six months after the Committee's first meeting. The FCC intends to act upon the Committee's recommendation within six months. The administrator will be appointed for a five-year term, beginning on the date that the Commission selects it as the administrator.

The Commission will direct the chosen administrator to report annually to the Commission an itemization of monthly administrative costs and be subject to a yearly audit.

The administrator is directed to maintain and report to the Commission detailed records relating to the determination and amounts of payments made and monies received in the universal service support mechanisms.

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