

Communications Ass'n recommends that the Commission impose quality of service rules that measure service availability, errors per second, mean time to restore outages, and service disruption.²⁸⁸ Some parties argue that, if competition comes to rural areas, the Commission should institute sufficient safeguards to assure that the quality of service is equivalent to the standards met by the incumbent provider.²⁸⁹ USTA, in contrast, opposes the implementation of quality of service standards, because, it argues, the market will provide the best means to enforce quality services in competitive areas.²⁹⁰

97. Some commenters provide specific models on which to base quality of service standards. Wyoming PSC recommends that the Commission adopt on a nationwide basis its service quality rules, which are based on the National Regulatory Research Institute service quality framework model.²⁹¹ Michigan Library Ass'n also recommends the use of the National Regulatory Research Institute model for a service quality framework.²⁹² Texas PUC cites NARUC's Model Telecommunications Service Quality Rules and Telephone Service Quality Handbook as models for regulators to use to implement quality of service standards.²⁹³ Some parties argue that the Commission should base its service quality standards on existing standards in the states²⁹⁴ or supplement those state standards.²⁹⁵

98. A few parties argue that the receipt of universal service support should be contingent on maintaining certain quality of service levels.²⁹⁶ For example, CWA argues that any carrier wishing to receive federal universal service support must meet quality standards in all four prior calendar quarters in order to receive support, and that a carrier that does not reach this goal should be required to pay a penalty in the form of a contribution to universal service.²⁹⁷

²⁸⁸ International Communications Ass'n comments at 3-4.

²⁸⁹ GVNW comments at 2; Montana Indep. Telecom. comments at 2.

²⁹⁰ USTA comments at 14.

²⁹¹ Wyoming PSC comments at 2-3.

²⁹² Michigan Library Ass'n comments at 5.

²⁹³ Texas PUC comments at 2.

²⁹⁴ NASUCA comments at 9; Virginia CC comments at 1.

²⁹⁵ CWA comments at 9.

²⁹⁶ *See, e.g.*, CWA comments at 6; GCI comments at 7.

²⁹⁷ CWA comments at 6.

99. State Roles. Several commenters believe state commissions should enforce quality of service standards.²⁹⁸ A few state public utility commissions argue that the Commission should defer to the states to monitor service quality.²⁹⁹ Other state commissions submit that quality standards should be based on existing state standards.³⁰⁰ A few parties maintain that states should monitor the quality of services provided by incumbent LECs until a competitive market emerges.³⁰¹ Taconic Tel. argues that states will have the responsibility to designate which carriers will be eligible to receive support, and, thus, states should have the responsibility to establish and monitor service quality levels.³⁰²

100. Technical Standards. Some parties propose specific technical standards, such as transmission rates. For example, Merit argues that carriers should be required to provide voice grade access to the public switched network capable of supporting high-speed modem access.³⁰³ Michigan Consumer Federation contends that quality standards tied to performance level requirements are preferable to technical specifications that may become obsolete.³⁰⁴ Michigan Consumer Federation argues that the Commission must ensure that any technical standard setting bodies to which it defers include public representation.³⁰⁵ NorTel, in contrast, supports the Commission's tentative conclusion that it is unnecessary for the Commission to prescribe specific technical standards to ensure quality telecommunications services.³⁰⁶

101. Quality of Service Reporting Requirements. Several commenters contend that

²⁹⁸ See, e.g., Alabama-Mississippi Tel. Ass'n comments at 4; Century comments at 9; GTE comments at 7 n.15; MCI comments at 22; OITA-WITA comments at 16; Pennsylvania PUC comments at 8; Fred Williamson comments at 6.

²⁹⁹ Idaho PUC comments at 6; Oregon PUC comments at 3.

³⁰⁰ New York DPS comments at 3; Wyoming PUC comments at 2.

³⁰¹ LDDS comments at 10; Oregon PUC comments at 3.

³⁰² Taconic Tel. reply comments at 4.

³⁰³ Merit comments at 2 (proposing an initial definition of "high speed" equal to 28,000 kbps). See also People For comments at 10.

³⁰⁴ Michigan Consumer Federation comments at 8.

³⁰⁵ Michigan Consumer Federation comments at 7.

³⁰⁶ NorTel reply comments at 4 (also arguing that the industry should focus on the development of standards specifically adapted to the needs of rural and high costs areas).

imposing reporting requirements would be unduly burdensome to carriers.³⁰⁷ For example, MCI argues that new entrants have no incentive to provide lower quality services, and, thus, although states should monitor quality of service generally, they should not burden new entrants with the cost of collecting and filing service quality data.³⁰⁸ USTA contends that efforts to increase regulatory requirements are contrary to the 1996 Act's intent to provide for a pro-competitive, deregulatory national policy framework.³⁰⁹ A few state commissions, however, argue that information that would enable comparisons between the performance levels of various telecommunications carriers must be available to consumers.³¹⁰

102. Using Publicly-Available Data. A few parties maintain that carriers are already required to file quality of service reports with state agencies to which the Commission could have access if necessary.³¹¹ GTE argues that the Commission's ARMIS reporting requirements on certain price cap carriers already provide the Commission with service quality information on mandatory price cap carriers.³¹² North Dakota PSC, in contrast, states that the Commission would have to extend its reporting requirements to obtain quality of service information because many small carriers are currently exempt from its quality of service oversight and from the Commission's existing reporting requirements.³¹³ In addition, CWA argues that many states do not have service standards and that some that do have standards do not make quality information available to the public.³¹⁴

103. Future Evaluation of Continued Monitoring. North Dakota PSC argues that the Commission should review the need for quality of service reports as local service competition develops.³¹⁵

³⁰⁷ See, e.g., Alabama-Mississippi Tel. Ass'n comments at 4; Taconic Tel. reply comments at 4.

³⁰⁸ MCI comments at 22 (also arguing that the Commission and Joint Board should create a higher burden for any state that seeks to implement reporting requirements on new entrants that are equivalent to those imposed on incumbents).

³⁰⁹ USTA comments at 14. See also ALTS comments at 20.

³¹⁰ Florida PSC comments at 18-19; NASUCA comments at 10; North Dakota PSC comments at 3; OPC-DC comments at 14.

³¹¹ Alabama-Mississippi Tel. Ass'n comments at 4; Pennsylvania PUC reply comments at 17.

³¹² GTE comments at 7 n.15.

³¹³ North Dakota PSC comments at 3.

³¹⁴ CWA comments at 6 (referring to a 1992 NARUC publication).

³¹⁵ North Dakota PSC comments at 4.

3. Discussion

104. The 1996 Act enunciates the principle that "quality services" should be available.³¹⁶ We refrain from recommending that the Commission require that eligible carriers meet specific technical standards established by the Commission as a condition to receiving universal service support. We have already recommended the specific definitions of the services a telecommunications carrier must provide before receiving support. While we decline to recommend that the Commission establish federal service quality standards beyond the basic capabilities that carriers receiving universal service support must provide, we recognize that states may adopt and enforce service quality rules, on a competitively neutral basis, consistent with section 253(a), which furthers the congressional intent of ensuring that all Americans have quality services at just, reasonable and affordable rates.

105. We recommend that the Commission, to the extent possible, rely on existing data to monitor service quality. Because many states already have adopted service quality requirements,³¹⁷ we do not recommend that the Commission undertake efforts to collect quality of service data in addition to those already in place with respect to price cap LECs. In many cases, additional requirements by the Commission would duplicate the states' efforts. Instead, we recommend that state commissions submit to the Commission the service quality data provided to them by carriers. We further recommend that the Commission not impose data collection requirements on carriers at this time.³¹⁸ Therefore, we conclude that the Commission should rely on service quality data collected at the state level in making its determination that "quality services" are available, consistent with section 254(b)(1).

106. Further, we agree with NCCA that competition should ultimately give carriers

³¹⁶ See 47 U.S.C. § 254(b)(1).

³¹⁷ See, e.g., National Regulatory Research Institute, *Telecommunications Service Quality* (March 1996) (indicating that 32 state regulatory commissions and the District of Columbia have instituted quality of service standards since the AT&T divestiture).

³¹⁸ We note that the Commission already imposes quality reporting requirements on some carriers. For example, price cap LECs are required to file service quality reports with the Commission. The ARMIS 43-05 and ARMIS 43-06 reports provide measures of service quality. Specifically, the ARMIS 43-05 report covers service LECs provide to IXCs (Table I), the provision of local service (Table II), blockage on common trunk groups between the LEC wire centers and access tandems (Table III), LEC switch downtime (Table IV), and service quality complaints filed with the Commission and with state commissions (Table V). Table I of the ARMIS 43-06 report covers subjective measures of customer satisfaction. See Second Report and Order, 5 FCC Rcd 6786 (1990) and Erratum, 5 FCC Rcd 7664 (1990) (*LEC Price Cap Order*), modified on recon., 6 FCC Rcd 2637 (1991), further modified on recon. 6 FCC Rcd 4524 (1991) (ONA Part 69 Order), Second Further Recon. *aff'd* 7 FCC Rcd. 5235 (1992), upheld on appeal, *National Rural Telecom Association v. FCC*, 988 F.2d 174 (D.C. Cir. 1993). See also *Policy and Rules Concerning Rates for Dominant Carriers*, Memorandum Opinion and Order, 6 FCC Rcd 2974, *pet. for recon. denied* 6 FCC Rcd 7482 (1991).

the incentive to provide quality services by allowing consumers to choose among various telecommunications providers. We are unpersuaded by the arguments of GVNW and Montana Indep. Telecom., which contend that the Commission should institute specific standards to ensure that competitors provide the same quality service as the incumbent. We believe that most competitors will strive to attain a level of service quality at least equal to the level currently provided by incumbents in order to attract and maintain subscribers. In addition, to the extent quality is readily observable to potential customers, competitive carriers will have an incentive to maintain service quality even in the absence of competition.

G. Revisiting the Definition of Universal Service

1. Background

107. Section 254(c)(2) states that "[t]he Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms."³¹⁹ Accordingly, the NPRM provided that the Commission will periodically review, after obtaining Joint Board recommendations, the definition of services supported by universal service mechanisms.³²⁰ The NPRM suggested that the Joint Board and the Commission may wish to revisit the definition of universal service at fixed intervals such as five-year periods,³²¹ but stated that, contingent upon the information collected in a Commission proceeding mandated by section 706 of the 1996 Act, the topic may be reconsidered even sooner.³²² The NPRM stated that, in order to apply the criteria set forth in section 254(c)(1), additional information -- specifically, the extent to which particular services "are being deployed in public telecommunications networks" and "have been subscribed to . . . by a substantial majority of residential customers" -- must be obtained.³²³ The NPRM recognized that, although periodic review could help to ensure that the definition does not remain static, it could also entail the

³¹⁹ 47 U.S.C. § 254(c)(2).

³²⁰ NPRM at para. 2.

³²¹ NPRM at para. 67 (citing Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643, R.95-01-020; and Investigation on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643, I.95-01-020, *Interim Opinion* (Cal. Pub. Utils. Comm'n, filed Jan. 24, 1995)).

³²² NPRM at para. 67 n.147 (citing 47 U.S.C. § 706(b) which states "[t]he Commission shall, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans. . . . The Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.").

³²³ NPRM at para. 67 (citing 47 U.S.C. § 254(c)(1)).

expenditure of resources on unnecessary proceedings.³²⁴ Therefore, the NPRM proposed to rely on information sources that already exist and to initiate additional data collection efforts only if existing information is inadequate to assess proposed changes to the definition of universal service and a cost/benefit analysis demonstrates that the burden of collection would not outweigh the value of the information requested.³²⁵

2. Comments

108. Periodic Reassessment. GTE proposes adopting the California PUC's plan for reviewing the definition of universal service.³²⁶ Under the California PUC plan, a review is made no more frequently than every three years.³²⁷ According to GTE, the California plan avoids too-frequent review, which can entail "unnecessary expenditure of resources"³²⁸ and allows eligible carriers to plan their network investments efficiently over time.³²⁹ GTE and California PUC propose a system whereby parties wishing to amend the definition can petition the Commission to add a new element if three years have passed since the last review.³³⁰ GTE also recommends that the Commission could set a maximum interval, such as five years, after which it would undertake a review if no petition has been acted upon.³³¹

109. Harris advocates allowing NARUC to decide when to reconsider the definition of universal service.³³² North Dakota PSC suggests that the list of services supported should be revisited each year for the first five years after implementation, and, thereafter, considered every two years, with a monitoring report filed during the "off" years.³³³ New York DPS

³²⁴ NPRM at para. 67.

³²⁵ NPRM at para. 67.

³²⁶ GTE comments at 3.

³²⁷ California PUC comments at 17; GTE comments at 3.

³²⁸ GTE comments at 3 (citing NPRM at para. 67).

³²⁹ GTE comments at 3.

³³⁰ California PUC comments at 18; GTE comments at 3.

³³¹ GTE comments at 3.

³³² Harris comments at 6.

³³³ North Dakota PSC comments at 3.

recommends a triennial review.³³⁴ Ohio Consumers' Council suggests a review no later than two years after the Commission's rules are issued and no less often than every two years thereafter.³³⁵ USTA recommends implementing a review at least every five years, but not more frequently than every three years.³³⁶ Telec Consulting recommends a periodic review set at fixed intervals such as every two or three years.³³⁷ Wisconsin PSC advocates a biennial review, but believes that public comment and a Joint Board recommendation on the issue of reporting conditions should not be addressed until after new universal service programs are in place, so that the effectiveness of any new programs can be measured.³³⁸

3. Discussion

110. We recommend that the Commission convene a Joint Board no later than January 1, 2001, to revisit the definition of universal service. We find that the Joint Board's and Commission's approach to revisiting the definition of universal service must strike a reasonable balance between too frequent reviews, which could result in an unnecessary expenditure of resources, and sporadic evaluation, which may not produce a definition of universal service that is consistent with the principles enumerated in section 254(b) and reflect the definitional criteria of section 254(c). In addition, the Commission may institute a review at any time upon its own motion or in response to petitions by interested parties.³³⁹

111. We find the record to be insufficient at this time to support our recommending that the Commission adopt reporting requirements in order to collect data that may assist the Commission in reevaluating the definition of universal service. We recognize that, in order to apply the criteria set forth by Congress in section 254(c)(1), the Commission will need information regarding, for example, whether a proposed service has "been subscribed to by a substantial majority of residential customers" and is "being deployed in public telecommunications networks by telecommunications carriers." Nevertheless, we recommend that the Commission base future analyses of the definition of universal service, *inter alia*, on

³³⁴ New York DPS comments at 16.

³³⁵ Ohio Consumers' Council comments at 18.

³³⁶ USTA comments at 13.

³³⁷ Telec Consulting comments at 15.

³³⁸ Wisconsin PSC comments at 12-13.

³³⁹ We note that, in complying with the statutory mandate of section 706(b) of the 1996 Act, the Commission may take additional steps to determine whether advanced telecommunications capability is being deployed to all Americans. See 1996 Act, § 706(b).

data derived from the Commission's existing data collection mechanisms such as those collected through ARMIS.

V. AFFORDABILITY

A. Overview

112. The 1996 Act states that "quality services should be available at just, reasonable, and *affordable* rates."³⁴⁰ This section examines the various ways the term "affordable" may be defined. In addition, it considers what factors should be considered in examining affordability including subscribership levels and other non-rate factors that may influence a consumer's decision to subscribe to local telephone service. Finally, in this section, the Joint Board considers the roles the Commission and state commissions should play in ensuring rates are affordable.

B. Affordability

1. Background

113. Section 254(b)(1) provides that "[q]uality services should be available at just, reasonable and affordable rates."³⁴¹ In addition, section 254(i) requires that "[t]he Commission and the states should ensure that universal service is available at rates that are just, reasonable and affordable."³⁴² The NPRM, noting that the "affordable" criterion has not previously been addressed in the context of universal service, requested comment on how the Joint Board can assess whether affordable service is being provided to all Americans.³⁴³ To facilitate discussion of the concept of affordability, the NPRM cited a dictionary definition of the term "afford."³⁴⁴ The NPRM also sought comment proposing standards for evaluating the

³⁴⁰ 47 U.S.C. § 254(b)(1) (emphasis added).

³⁴¹ 47 U.S.C. § 254(b)(1).

³⁴² 47 U.S.C. § 254(i). *See also* S. Rep. No. 230, 104th Cong., 2d Sess. 134 (1996) (Joint Explanatory Statement).

³⁴³ NPRM at para. 4.

³⁴⁴ NPRM at para. 4 (citing *Webster's New World Dictionary* at 23 (William Collins, Second College ed. 1980) ("afford" is defined as follows: "to have enough or the means for; bear the cost of without serious inconvenience").

affordability of all telecommunications, not merely telephone exchange, services.³⁴⁵ Specifically, the NPRM asked commenters to identify the criteria or principles that should be used to determine "affordable" rates, and whether there should be procedures to recalibrate these rates to reflect changes in inflation or other factors that may make periodic readjustment necessary.³⁴⁶

114. In addition to seeking public comment in the NPRM, on July 3, 1996 the Commission's Common Carrier Bureau released a Public Notice to supplement the NPRM's requests for comment ("Public Notice").³⁴⁷ The Public Notice asked, *inter alia*, whether it is appropriate to assume that current rates for services included within the definition of universal service are affordable, despite variations among companies and service areas.³⁴⁸ In addition, the Public Notice requested comment on the extent to which factors other than rate levels, such as subscribership levels, telephone expenditures as a percentage of income, cost of living, or local calling area size, should be considered in determining the affordability and reasonable comparability of rates.³⁴⁹

2. Comments

115. In General. As a preliminary matter, a few parties address how the word "affordable" should be defined. Texas OPUC, for example, maintains that "affordable" is not determined by whether one can pay a certain rate, but whether that price causes a serious detriment, consequence, or inconvenience.³⁵⁰ United Church of Christ opposes defining "affordability" as "acceptable harm."³⁵¹ Michigan Consumer Federation argues that the Webster definition cited in the NPRM is misplaced because, it argues, the concept of affordability "clearly means rates that are at or below the true and reasonable cost of providing service."³⁵² AARP asserts that the relative concept of affordability, i.e., "to bear the cost of without serious inconvenience." must be given equal emphasis as the absolute concept,

³⁴⁵ NPRM at para. 14 (citing 47 U.S.C. § 254(c), (i)).

³⁴⁶ NPRM at para. 25.

³⁴⁷ Public Notice (DA-96-1078) (rel. July 3, 1996).

³⁴⁸ Public Notice (DA-96-1078) (released July 3, 1996) at question 1.

³⁴⁹ Public Notice at question 2. The Public Notice also asked for comment on whether a specific national benchmark rate for core services should be established. This issue is discussed *infra* in section IV.

³⁵⁰ Texas OPUC comments at 12.

³⁵¹ United Church of Christ comments at 5.

³⁵² Michigan Consumer Federation comments at 18.

"to have enough or the means for."³⁵³ Specifically, AARP avers that the concept of affordability should be defined to mean that people are not forced to pay so much for a necessity that it causes serious inconvenience or detriment.³⁵⁴ America's Carriers warns against defining "affordability" so that it equates with "free" and creates an entitlement to telecommunications services.³⁵⁵

116. Current Rates. Many commenters believe it is appropriate to conclude that current rates are affordable.³⁵⁶ Time Warner contends that there is a high rate of acceptance of prevailing prices which indicates that rates are within an affordable range.³⁵⁷ BellSouth, AirTouch, and TCI argue that rates could be raised without significantly affecting affordability.³⁵⁸ Other parties conclude that urban rates may be considered affordable, but that rural rates must be equivalent to urban rates in order to be deemed affordable.³⁵⁹ A few parties argue that the Commission cannot make a determination that existing rates are affordable without explicitly defining "affordable."³⁶⁰

117. Several commenters argue that the Commission may not conclude that current rates are affordable.³⁶¹ For example, Maine PUC cites "formidable measurement problems"

³⁵³ AARP comments at 6; CPI reply comments at 8; Ohio Consumer's Council reply comments at 10.

³⁵⁴ AARP comments at 7.

³⁵⁵ America's Carriers comments at 3.

³⁵⁶ See, e.g., AT&T comments at 16; BellSouth comments at 1; MCI comments at 4 n.4; Missouri PSC comments at 4; NCTA comments at 3-4; Time Warner comments at 6; Sprint comments at 9; West Virginia Consumer Advocate comments at 8; CPI reply comments at 8; AT&T further comments at 3; AirTouch further comments at 2; Ameritech further comments at 4; Bell Atlantic further comments at 1; Century further comments at 6; NYNEX further comments at 1; PacTel further comments at 5-7; Time Warner further comments at 2; Vanguard further comments at 2-3.

³⁵⁷ Time Warner further comments at 2.

³⁵⁸ AirTouch further comments at 2-3; BellSouth further comments at 1-2; TCI further comments at 5.

³⁵⁹ Pennsylvania RDC comments at 2; Sprint comments at 9.

³⁶⁰ See, e.g., Media Access Project further comments at 2.

³⁶¹ See, e.g., Alliance for Public Technology further comments at 2 (stating that "a rate is not affordable unless it is the lowest rate that would be possible if the least cost transmission mode were used for that bandwidth"); ITC further comments at 1 (stating that local rates are often "subject to political considerations, the target of contributions, the product of 'value of service' pricing, subject to concurrence in other Exchange Carrier local tariffs and often [set] absent any knowledge of true costs"); Maine PUC further comments at 1-3 (arguing that rates set by states are influenced by a variety of factors); Media Access Project further comments at 1

that must be overcome before any conclusion regarding the effect of rates on universal service for a particular area can be made, including differences among state policies on which rates are based.³⁶² In addition, ITC contends that rates are "far from being usable as a measure of affordability" because they are often subject to political considerations and other variable factors.³⁶³

118. Subscribership Levels and Other Non-Rate Factors. Some parties oppose considering affordability in terms of factors other than rates, such as subscribership and household income levels.³⁶⁴ Ameritech argues that any relationship that may exist between non-rate factors and affordability has not been established.³⁶⁵ Similarly, Sprint asserts that rates have little to do with subscribership levels.³⁶⁶ Time Warner maintains that, before mandating that non-rate factors be considered when determining affordability, the Commission should consider whether data reflecting these non-rate factors are readily available, whether it will be difficult to obtain any necessary data, and what costs are associated with gathering and processing the requested data with respect to individual consumers or groups.³⁶⁷ United Church of Christ opposes linking affordability to subscribership levels because, it argues, in some markets consumers have no choice but to pay rate increases or do without telecommunications services.³⁶⁸ PacTel asserts that affordability is not necessarily correlated with income because, it argues, "affordability is a very personal decision based on many different factors for each individual."³⁶⁹

(arguing that current rates are likely to be artificially high as telecommunications providers are operating in a monopoly market); Vitelco further comments at 1-2 (stating that a company's existing rates must be measured against service areas and subscribers' income levels); Washington UTC further comments at 2 (arguing that affordability of current rates depends on the relationship between a serving company's costs and prices and non-rate factors).

³⁶² Maine PUC further comments at 2.

³⁶³ ITC further comments at 1-2.

³⁶⁴ AT&T further comments at 3; Ameritech further comments at 7; CompTel further comments at 6; GTE further comments at 5.

³⁶⁵ Ameritech further comments at 7 (arguing that the Commission should undertake an empirical study on impediments to subscribership before considering non-rate factors).

³⁶⁶ Sprint further comments at 2.

³⁶⁷ Time Warner further comments at 6.

³⁶⁸ United Church of Christ comments at 6. *See also* Edgemont reply comments at 3.

³⁶⁹ PacTel comments at 23.

119. Many parties contend that the present subscribership level indicates that current rates are affordable.³⁷⁰ Vanguard argues that the Commission should take official notice of its own subscribership reports as demonstrating that current rates are sufficiently low to promote widespread subscribership.³⁷¹ Ameritech asserts that, even considering the lowest penetration rate in the various states -- referring to an 85 percent subscribership rate in New Mexico -- it is not unreasonable to conclude that telephone services are generally available when at least 85 percent of households subscribe to "core" services.³⁷²

120. Other commenters argue that current subscribership levels demonstrate that rates are not affordable to all Americans.³⁷³ For example, New Mexico AG contends that the difference in subscribership rates between households with incomes above \$50,000.00 and those below that amount indicate that affordable service is not currently available to all Americans.³⁷⁴ Similarly, Idaho PUC argues that although prices could probably rise without a drastic reduction in subscribership, this does not mean that rates should be allowed to rise, as affordability is a question of consumers' priorities, not just service prices.³⁷⁵

121. Some commenters contend that affordability should be linked to subscriber incomes.³⁷⁶ For example, some parties view the percentage of a subscriber's income that is spent on telecommunications expenditures as an appropriate way to assess affordability.³⁷⁷ SWBT and USTA support identifying the "affordable rate" for local service as 1 percent of

³⁷⁰ NTIA reply comments at 12; AT&T further comments at 3; Ameritech further comments at 4-6; Citizens Utilities further comments at 2; GTE further comments at 5; MCI further comments at 1-2; MFS further comments at 2; Minnesota Indep. Coalition further comments at 1; NECA further comments at 1; NCTA further comments at 2; NYNEX further comments at 1; SWBT further comments at 2; TCI further comments at 5; Teleport further comments at 1-2; U S West further comments at 1-2; Vanguard further comments at 2-3.

³⁷¹ Vanguard further comments at 2 (citing "Telephone Subscribership in the United States," Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission (released June 1996) (estimating that 93.8 percent of all households in the United States have telephone service).

³⁷² Ameritech further comments at 4.

³⁷³ Maine PUC comments at 3; Benton further comments at 2; CFA further comments at 1; Puerto Rico Tel. Co. further comments at 1-2.

³⁷⁴ New Mexico AG comments at 2. *See also* Benton further comments at 2.

³⁷⁵ Idaho PUC comments at 8-9.

³⁷⁶ Ad Hoc Telecom. Users. comments at 20; California Dept. of Consumer Affairs' comments at 18; Puerto Rico Tel. Co. comments at 10; SWBT comments at 10; AirTouch further comments at 3; Bell South further comments at 3. *See also* GTE comments at 8.

³⁷⁷ *See, e.g.*, CFA further comments at 2.

the statewide and national median household income, respectively.³⁷⁸ AARP, however, arguing that residential rates would increase because residential customers currently spend less than this amount on basic services on average, opposes these approaches.³⁷⁹ Other parties favor measuring affordability by considering consumers' disposable income.³⁸⁰ U S West, for example, supports comparing telephone service expenditures to expenditures for cable television services, entertainment services, other communication services, or other discretionary household expenditures.³⁸¹ BellSouth argues that the affordability criteria should be based on what subscribers or households on the margins of the poverty level, specifically at 125 percent of the poverty level, consider to be affordable.³⁸²

122. Some commenters argue that the concept of affordability must account for a consumer's entire telecommunications expenditure, and not just include the cost of local service.³⁸³ For example, PULP recommends considering the costs to a consumer of connection charges, deposits, advanced payments, late payment charges, and other costs needed to obtain or reinstate service.³⁸⁴ Similarly, OPC-DC argues that affordability might be measured by the number of terminations or suspensions for nonpayment.³⁸⁵ In addition, ITC argues that underlying costs such as access charges and wholesale rates for resold services must also be affordable so that carriers can offer affordable services to end users.³⁸⁶ Several parties argue that calling scope must be factored into a determination of affordability, as rural consumers must often place toll calls outside their local calling areas.³⁸⁷ For example, Rural

³⁷⁸ SWBT comments at 10-11; USTA comments at 15 n.21. *See also* BellSouth further comments at 2.

³⁷⁹ AARP reply comments at 7-8.

³⁸⁰ PULP comments at 7; Puerto Rico Tel. Co. comments at 6.

³⁸¹ U S West further comments at 2.

³⁸² BellSouth comments at 31-32.

³⁸³ Century comments at 4-5; Minnesota Indep. Coalition comments at 7-9; USTA comments at 14-15; Virginia CC reply comments at 2; AirTouch further comments at 3; Minnesota Indep. Coalition further comments at 3.

³⁸⁴ PULP comments at 9.

³⁸⁵ PULP comments at 8-9; OPC-DC reply comments at 7.

³⁸⁶ ITC comments at 5-6.

³⁸⁷ *See, e.g.* AARP comments at 18; Century comments at 4-6; Keystone comments at 8; Rural Iowa Indep. Tel. Ass'n comments at 3; Telec Consulting Resources comments at 5; Minnesota Indep. Coalition reply comments at 3-4; Alaska Tel. further comments at 5; CFA further comments at 2-3; Western Alliance further comments at 2.

Iowa Indep. Tel. Ass'n asserts that rural subscribers may have to place toll calls to reach schools, health care providers, and other institutions.³⁸⁸ NECA contends that calling scope and total amount of bills should be considered, but subscribership levels, consumer income, and cost of living should not be presumed to affect affordability.³⁸⁹

123. State and Federal Determination of Affordability. A substantial number of commenters advocate permitting the states to define affordable rates, because of the unique circumstances of consumers in each state.³⁹⁰ PacTel argues that states, in their rate-making capacities, should determine what is affordable.³⁹¹ Other parties favor the establishment of a nationwide affordability rate.³⁹² Citizens Utilities suggests that a national price affordability standard be created, but that states be permitted to create their own affordability standards and create their own support mechanism to fund the difference between federal support levels and carrier costs that are above the state standard.³⁹³ ITC believes that national subscribership goals should be established and affordability should then be determined at the local level.³⁹⁴

124. Readjustment of Affordability. Texas OPUC opposes recalibrating rates to reflect changes in inflation because, it argues, the real cost of providing services is declining.³⁹⁵ Ohio Consumer's Council argues that any recalibration should be based on the growth or decline in consumers' incomes, but that declining industry costs should also be considered.³⁹⁶ Citizens Utilities argues that periodic adjustments to national price affordability

³⁸⁸ Rural Iowa Indep. Tel. Ass'n comments at 3.

³⁸⁹ NECA further comments at 3.

³⁹⁰ See, e.g., AARP comments at 18; California Dept. of Consumer Affairs comments at 17; NARUC comments at 5; New York DPS comments at 5; Ohio Consumer's Council comments at 11; PacTel comments at 20; Pennsylvania PUC comments at 9; Texas PUC comments at 5; Washington UTC comments at 7; Fred Williamson comments at 6, 12; CPI reply comments at 8-9; Virginia CC reply comments at 2; Bell Atlantic further comments at 1; GTE further comments at 8; NYNEX further comments at 2.

³⁹¹ PacTel further comments at 7.

³⁹² See, e.g., AT&T comments at 17; Time Warner comments at 7. The comments of additional parties who advocate a nationwide affordability benchmark for purposes of establishing high cost support are discussed *infra*, section VII.C.

³⁹³ Citizens Utilities comments at 11-12.

³⁹⁴ ITC further comments at 2.

³⁹⁵ Texas OPUC comments at 14.

³⁹⁶ Ohio Consumer's Council comments at 11.

standards are necessary to account for inflation and pricing changes.³⁹⁷ Similarly, GTE supports an automatic adjustment for inflation to prevent support from being diluted over time and to avoid future concerns regarding the growth of funding levels.³⁹⁸

3. Discussion

125. In the 1996 Act, Congress not only reaffirmed the continued applicability of the principle of "just and reasonable" rates, but also introduced the concept of "affordability."³⁹⁹ Although we believe an increasingly refined understanding of the term affordability will evolve over time,⁴⁰⁰ we find that the Webster Dictionary definition is instructive in determining how to interpret the concept for purposes of crafting universal service policies consistent with the congressional intent underlying section 254. As AARP and other commenters appropriately note, the definition of affordable contains both an absolute component ("to have enough or the means for") and a relative component ("to bear the cost of without serious detriment"). Therefore, we conclude that both the absolute and relative components must be considered in making the affordability determination required under the statute. We find that an evaluation that considers price alone does not effectively address either component of affordability.

126. In general, we find that factors other than rates, such as local calling area size, income levels, cost of living, population density, and other socio-economic indicators may affect affordability.⁴⁰¹ Washington UTC and other commenters observe that these other factors may vary by region. We conclude that the concept of affordability should encompass a consideration of factors other than rates.

127. Although subscribership levels can be influenced by many factors,⁴⁰² we agree with the many commenters finding a general correlation between subscribership level and

³⁹⁷ Citizens Utilities comments at 11.

³⁹⁸ GTE comments at 8 n.16.

³⁹⁹ 47 U.S.C. §§ 254(b)(1), 254(i).

⁴⁰⁰ The principle of "just and reasonable" has been interpreted in numerous judicial and administrative proceedings. See, e.g., *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n of West Virginia*, 262 U.S. 679, 693 (1923) (finding just and reasonable rate "depends on circumstances, locality and risk"); *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (holding "fixing of 'just and reasonable' rates involves a balancing of the investor and the consumer interests").

⁴⁰¹ We note that the specific needs of low income consumers are addressed in section VIII, *infra*.

⁴⁰² Subscribership levels may also be influenced by such factors as the level of toll charges or service connection charges.

affordability. We find that a relatively high penetration rate suggests, but does not ensure, that rate levels are affordable.⁴⁰³ We further conclude, however, that a low or declining penetration rate may be an indicator that rate levels in a jurisdiction are not affordable. In general, we find subscribership levels provide relevant information addressing the basic question of whether consumers have the means to subscribe to telephone service. We find monitoring subscribership to be a tool in evaluating the affordability of rates. It should not, however, be the exclusive tool in measuring affordability.⁴⁰⁴ Subscribership levels do not address the second component of the definition of affordability, namely, whether paying the rates charged for services imposes a hardship for those who subscribe.

128. We also find, consistent with the arguments of Montana PSC and other parties, that the scope of the local calling area directly and significantly impacts affordability. The rate design described by Puerto Rico Tel. Co. illustrates the correlation between scope of calling area and rate.⁴⁰⁵ According to Puerto Rico Tel. Co., its rates for unlimited basic residential calling range from \$18.80 in the densely populated San Juan area with access to more than 340,000 access lines to \$6.45 in an area with access to 200 or fewer access lines.⁴⁰⁶ Implicit in the Puerto Rico Tel. Co. rate design is recognition that, with more limited local calling areas, subscribers may have to incur greater toll charges to reach an equivalent number of lines. If rates charged for local service were the only consideration, the \$6.45 rate would be considered "more affordable" than the \$18.80 rate. Yet consideration of the scope of the calling area suggests that rates disparate on their face may in fact be similarly affordable for a given level of toll charges. Conversely, identical rates may not be equally affordable when the extent of their associated local calling areas differ. Therefore, the Joint Board concludes that the scope of the local calling area should be considered as another factor to be weighed when determining the affordability of rates. In addition, we find that in considering this last factor, examining the number of subscribers to which one has access for local service in a local calling area alone is not sufficient. A determination should be made that the calling area reflects the pertinent "community of interest," allowing subscribers to call hospitals, schools, and other essential services without incurring a toll charge.

⁴⁰³ See PULP comments at 6 (arguing that subscription data do not reveal whether a particular service can be afforded without hardship). As a number of commenters noted, because telephone service is considered a modern necessity, some consumers subscribe irrespective of whether the rate causes serious inconvenience. See, e.g., CFA further comments, (App. I) at 12.

⁴⁰⁴ See Alaska Tel. further comments at 4.

⁴⁰⁵ Puerto Rico Tel. Co. comments at 9-10.

⁴⁰⁶ Puerto Rico Tel. Co. subscribers with access to between 10,000 and 40,000 callers in their local calling area pay \$15.10; with access to 5,001 to 10,000, the rate is \$14.00; and with access to 201 to 1,000, the rate is \$7.60. *Id.* See also Alaska Tel. further comments at 5; Minnesota Indep. Coalition further comments at 3-4; RTC further comments at 7.

129. Customer income level also is a factor that should be examined when addressing affordability. While a specific rate may be affordable to most customers in an affluent area, the same rate may not be affordable to lower income customers. We agree with the conclusions of many commenters regarding the nexus between income level and ability to afford telephone service.⁴⁰⁷ We reject, however, SWBT's proposal to define affordability based on a percentage of national median income. Such an approach would be inequitable because of the significant disparity in income levels throughout the country. For example, a rate equal to 1 percent of the national median income level would equal 7 percent of the average annual income level for a household in Birch Creek, Alaska.⁴⁰⁸ Therefore, we conclude that per capita income of a local or regional area, and not a national median, should be considered in determining affordability. In addition to income level, we agree with CNMI and other commenters that conclude that the cost of living in an area may affect the affordability of a given rate.

129A. We also agree with Maine PUC when it recognizes that many variations in a state's rates reflect "legitimate local variations in rate design." Such variations include the proportion of fixed costs allocated between local services and intrastate toll services; proportions of local service revenue derived from per-minute charges and monthly recurring charges; and the imposition of mileage charges to recover additional revenues from customers located a significant distance from the wire center.⁴⁰⁹ We find that these factors too should be considered in making the determination of affordability of rates.

130. In summary, we find that a determination of affordability must take into consideration both rates and other factors.⁴¹⁰ In addition, we agree with commenters that argue that scope of local calling area should be considered in determining whether rates are affordable. We also find that customer income level and cost of living are factors that should be considered on a local rather than nationwide basis in order to accurately capture the effects of local circumstances on affordability. Finally, we conclude that, because a variety of factors contribute to the establishment of local rates, these factors should also be considered when determining whether rates are affordable.

131. In light of our conclusions regarding the importance of the particular factors other than rates identified in the preceding paragraphs, we recommend that the states exercise primary responsibility, consistent with the standard enumerated above, for determining the

⁴⁰⁷ See, e.g., Benton reply comments at 10.

⁴⁰⁸ Alaska PUC comments at 3-4. See also Florida PSC further comments at 3.

⁴⁰⁹ Maine PUC comments at 11-12.

⁴¹⁰ See *supra* for a list of those factors.

affordability of rates. As many commenters note, the characteristics of each jurisdiction are unique, and the states possess both the knowledge and expertise to understand and evaluate these factors and to determine ultimately how they affect rate affordability. In finding that states should assume the primary responsibility in ensuring affordability, we expressly reject the approach favored by some commenters that the Commission designate a nationwide affordable rate. A nationwide affordable rate would ignore the vast differences within and between regions that can affect what constitutes affordable service. Because, as commenters have noted, various factors contribute to the establishment of rates, we further reject the assertion that an average of current unadjusted rates would accurately reflect an affordable rate. To the extent that consumers wish to challenge whether a rate is truly "affordable," we find the state commissions, in light of their rate-setting roles, are the appropriate forums for raising such issues. Additionally, we conclude that the Commission will continue to oversee the development of the concept of affordability, and may take action to ensure rates are affordable, where necessary and appropriate.

132. Although we recommend that the states should make the primary determination of rate affordability, we recognize that Congress, through the 1996 Act, gave the Commission a role in ensuring universal service affordability. Subscriberhip levels, while not dispositive on the issue of affordability, provide an objective criterion to assess the overall success of state and federal universal service policies in maintaining affordable rates. Therefore, we recommend that, to the extent that subscriberhip levels fall from the current levels on a statewide basis, the Commission and affected state work together informally to determine the cause of the decrease and the implications for rate affordability in that state. If necessary and appropriate, the Commission may open a formal inquiry on such matters and, in concert with the affected state, take such action as is necessary to fulfill the requirements of section 254. We find that this proposed dual approach in which both the states and the Commission play roles in ensuring affordable rates is consistent with the statutory mandate embodied in section 254(i).

133. While we view local rates as generally affordable throughout the nation based on subscriberhip levels, a formal determination that current rates are affordable is unnecessary at this time given the recommended decisions we reach in the paragraph above. Each state will continue to have the primary responsibility for making the finding that rates for local service are affordable based upon its consideration of the rates in question in light of the above-described non-rate factors.

VI. Carriers Eligible for Universal Service Support

A. Overview

134. In this section of the Recommended Decision, we discuss which

telecommunications carriers will be eligible to receive support from the federal universal service support mechanisms. We recommend that the statutory criteria set out in section 214(e) be used to determine which carriers are designated eligible telecommunications carriers. Pursuant to section 214(e), carriers must offer all the services supported by the federal universal service support mechanism throughout their service areas to be eligible for universal service support, except that only carriers with the technical capability to offer toll limitation services should be required to offer such services to qualifying low-income consumers, as discussed *infra* in section VIII. Specifically, section 214(e) requires that, throughout its designated service area, an eligible carrier: (1) offer all of the services that are supported by the federal universal service mechanism; (2) offer such services using its own facilities or a combination of its own facilities and resale of another carrier's services; and (3) advertise the availability and charges for such services. In the case of areas served by rural telephone companies, we recommend that such a company's existing study area be used as the designated service area. With respect to areas served by non-rural carriers, the states have primary responsibility for designating the service area. We recommend, however, that the service areas chosen by the states not be unreasonably large.

B. Eligible Telecommunications Carriers

1. Background

135. Section 254(e) provides that, after the effective date of the Commission's regulations implementing section 254, "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."⁴¹¹ Section 254(e) further prescribes that a carrier receiving universal service support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁴¹² Additionally, section 254(k) prohibits a carrier from using non-competitive services to subsidize services that are subject to competition.⁴¹³

136. Section 214(e)(1) of the 1996 Act provides that:

"A common carrier designated as an eligible telecommunications carrier under paragraph [214(e)(2)] or [214(e)(3)] shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received-

(A) offer the services that are supported by Federal universal

⁴¹¹ 47 U.S.C. § 254(e).

⁴¹² 47 U.S.C. § 254(e).

⁴¹³ 47 U.S.C. § 254(k).

service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
(B) advertise the availability of such services and the charges therefor using media of general distribution."⁴¹⁴

137. Pursuant to section 214(e)(2), state commissions must, either upon their own motion or upon a carrier's request, designate a common carrier that meets the requirements of section 214(e)(1) "as an eligible telecommunications carrier for a service area designated by the State commission."⁴¹⁵ Section 214(e)(2) also provides for the designation of more than one carrier as an eligible telecommunications carrier. It states:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company,⁴¹⁶ and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in

⁴¹⁴ 47 U.S.C. § 214(e)(1).

⁴¹⁵ 47 U.S.C. § 214(e)(2).

⁴¹⁶ The term "rural telephone company" is defined at 47 U.S.C. § 153(37) as follows:
"The term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity-

(A) provides common carrier service to any local exchange carrier study area that does not include either-

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in a urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996."

the public interest.⁴¹⁷

138. The NPRM sought comment and the Joint Board's recommendation on various issues raised by the provisions of sections 214(e) and 254(e). It sought comment regarding the need for any measures to ensure that universal service support is used for its intended purpose, as required by section 254(e).⁴¹⁸ The Commission also invited commenters to propose means to ensure that all eligible carriers -- and no ineligible carriers-- receive the appropriate amount of universal service support.⁴¹⁹ The Commission sought comment on the need to ensure that telecommunications carriers do not use services that are not competitive to subsidize competitive services, which is barred by section 254(k).⁴²⁰ The NPRM further sought comment regarding standards for compliance with the requirement in section 214(e)(1) that eligible telecommunications carriers provide universal service using their own facilities or a combination of their own facilities and resale.⁴²¹ The Commission also stated its belief that it may be useful to develop guidelines defining the steps that would be sufficient to meet the 1996 Act's requirement that carriers advertise the availability of universal services and the rates charged for those services throughout the service area. The NPRM invited parties to suggest guidelines for such advertising.⁴²²

139. In its Public Notice seeking further comment in this proceeding, the Common Carrier Bureau raised specific questions relating to the provision of high cost support to companies subject to price cap regulation. The Bureau asked whether companies subject to price cap regulation should be eligible for high cost support, and if not, whether the exclusion of price cap carriers would be consistent with the provisions of section 214(e).⁴²³

⁴¹⁷ 47 U.S.C. § 214(e)(2). Section 214(e) also contains provisions governing a carrier's relinquishment of its eligible carrier designation in areas served by more than one eligible carrier. The statute requires states to permit eligible carriers to relinquish their designation after giving the state notice. The statute requires remaining eligible carriers to serve the relinquishing carrier's customers and requires the state to give remaining carriers time to construct or purchase facilities if necessary. 47 U.S.C. § 214(e)(4). The NPRM noted that section 214(e)(4) reserves to the states the consideration of requests from designated eligible carriers to relinquish their designation. The Commission invited commenters to identify any of the Commission's regulations that may be inconsistent with that reservation of authority to the states. NPRM at para. 49.

⁴¹⁸ NPRM at para. 41.

⁴¹⁹ NPRM at para. 41.

⁴²⁰ NPRM at para. 41.

⁴²¹ NPRM at para. 43.

⁴²² NPRM at para. 46.

⁴²³ Public Notice at 5.

Alternatively, the Bureau asked if high cost support should be structured differently for price cap carriers than for other carriers. The Public Notice also solicited comment on how a price cap company should be defined, assuming that such companies are treated differently. It asked whether a company participating in a state, but not a federal price cap plan, should be deemed a price cap company.⁴²⁴ Finally, the Bureau asked if there should be a distinction between carriers operating under price caps and carriers that have agreed, for a specified period of time, to limit increases in some or all rates as part of a "social contract" regulatory approach.⁴²⁵

2. Comments

140. Eligibility in general. Most commenters argue that any telecommunications carrier that meets the eligibility criteria contained in section 214(e)(1) (e.g., offers and advertises universal services throughout the service area) should be eligible to receive universal service support.⁴²⁶ Commenters specifically argue that the definition of eligible carriers must be technologically neutral, so that CMRS providers, for example, can become eligible for universal service support, particularly since such companies must contribute to universal service support mechanisms and can be cost efficient providers of services in rural areas.⁴²⁷ As discussed in section IV above, some commenters suggest that carriers should be eligible to receive support even if they provide only some of the defined core services, at least during a transition period, but that any such carrier's support would be reduced.⁴²⁸ Bell Atlantic argues that eligibility should be determined by which states are high cost, not which carriers are high cost. Funds would then be distributed by eligible states to eligible carriers that provide universal service over their own loops.⁴²⁹

⁴²⁴ Public Notice at 5.

⁴²⁵ Public Notice at 5.

⁴²⁶ See, e.g., 360 comments at 4; ALTS comments at 12-13; Colorado PUC comments at 6-7; CompTel comments at 16; LCI comments at 5; LDDS comments at 4-7; NASUCA comments at 22-23; NCTA comments at 12; PacTel comments at 13; Sprint comments at 15-16; WinStar comments at 10; MFS reply comments at 6; Ohio Consumers' Council reply comments at 17-18. See also California PUC comments at 10 (arguing that all carriers of last resort, defined as those willing to serve all customers in a census block group either with their own facilities or on a resale basis, should be eligible.)

⁴²⁷ See, e.g., 360 comments at 3-5; CTIA comments at 3-4; Vanguard comments at 7-8; Western comments at 14; AT&T reply comments at 15-16; Comnet Cellular reply comments at 6; MCI reply comments at 15-16; MFS reply comments at 6.

⁴²⁸ New Jersey Advocate comments at 16. See also Missouri PSC comments 7-8 (proposing a five-year transition period during which carriers could offer some, but not all, core services).

⁴²⁹ Bell Atlantic comments at 10.

141. Some commenters maintain that the Commission should issue guidelines to aid the states in determining which carriers are eligible.⁴³⁰ Several commenters assert that such guidelines should include requiring carriers to provide the core universal services on a stand-alone basis.⁴³¹ NECA argues that the Commission's rules should emphasize that support would be available only to carriers who actually serve the entire service area, not simply portions thereof or selected high-volume customers.⁴³² Some states, however, contend that the designation of eligible carriers should be left entirely to them, perhaps as an adjunct of their certification process.⁴³³

142. Other commenters contend that additional requirements must be imposed on carriers before they may receive universal service support. For example, some commenters argue that, as a condition of eligibility, new entrants must meet the same regulatory obligations as are imposed by the states on the incumbent.⁴³⁴ Certain commenters contend that these requirements specifically include carrier of last resort (COLR) obligations.⁴³⁵ GTE argues that universal service support can be competitively neutral only if all carriers receiving such support are subject to the same obligations.⁴³⁶ GTE contends that, without symmetrical regulation of all carriers receiving universal support, new entrants may offer the core services throughout the service area in theory only, while in fact targeting low cost customers by

⁴³⁰ See, e.g., AT&T comments at 21; GTE comments at 6; Pennsylvania PUC comments at 22; CompTel reply comments at 13; LDDS reply comments at 6.

⁴³¹ AT&T comments at 21; Lincoln reply comments at 6-7; Ohio Consumers' Council reply comments at 18. See also NASUCA comments at 22-23 (proposing that, to receive funds, carriers must agree to provide basic telephone service on an unbundled basis at prescribed rates); NYNEX reply comments at 2 (arguing that services must be provided as a single package).

⁴³² NECA comments at 8. See also SDITC reply comments at 6 (supporting NECA's comments).

⁴³³ See, e.g., Florida PSC comments at 13; Ohio Consumers' Council comments at 6. See also SWBT comments at 18 (contending that statute expressly leaves to states to certify eligible carriers and Commission has no role in this process).

⁴³⁴ See, e.g., Ameritech comments at 12; BellSouth comments at 14 n.26; GTE comments at 6-7; USTA comments at 2-3; Tel. Assoc. of Michigan reply comments at 5.

⁴³⁵ See, e.g., California PUC comments at 13; Telec Consulting comments at 14. See also ICORE comments at 8-9 (viewing section 214 requirements as establishing carrier of last resort requirement for rural LECs); Ameritech reply comments at 4-5. GTE defines a COLR as a carrier eligible for universal support that undertakes the obligations established by a state agency, within federal guidelines, as a condition of receipt of federal universal service support. GTE comments at 8 n.19. GTE suggests that such obligations might include a ceiling on the rate the COLR can charge, terms and conditions of service and quality standards, limits on the carrier's ability to exit, and an obligation to serve all customer in the area. GTE further comments at 46-48.

⁴³⁶ See, e.g., GTE reply comments at 4-5.

quoting them far better prices than it would charge high cost customers.⁴³⁷ GTE further maintains that, unless new entrants are subject to the same exit barriers imposed on incumbents, new entrants would race to flee an area, rather than become the sole remaining eligible carrier once any other carrier announced its intention to relinquish its eligibility designation pursuant to section 214(e)(4).⁴³⁸ Ameritech expresses concern that new entrants that are not required to meet COLR obligations, which it defines as a requirement to serve all customers in an area and a barrier to exit, could nevertheless receive the same level of universal service support as the incumbent, which is subject to such obligations.⁴³⁹ Ameritech argues that such a situation would threaten the incumbent COLR because the new entrant would receive the same level of compensation but with lesser obligations and therefore a lower financial burden.⁴⁴⁰ Commenters also propose that carriers be required to meet service quality standards as a condition of eligibility.⁴⁴¹ WinStar argues that telecommunications carriers, to be eligible, must meet the minimum broadband capability standards set forth in the Rural Electrification Loan Restructuring Act.⁴⁴²

143. Some commenters would exclude certain classes of carriers from eligibility. Certain rural carriers contend that only state-certified carriers should be eligible for support and that, for the foreseeable future, the incumbent LEC will continue to be the carrier of last resort for rural areas and should be the proper recipient for such support.⁴⁴³ Cincinnati Bell asserts that the new entrants should not be eligible for support because their decisions to enter new markets should be based on market forces, not the availability of subsidies, and because new entrants do not have any of the obligations from past regulatory decisions, such as average pricing, implicit cross-product subsidies, and depreciation rates that do not reflect a competitive environment.⁴⁴⁴ Rural Iowa Indep. Tel. Ass'n argues that only private sector entities should receive universal service support because of Congress's expressed goal of

⁴³⁷ GTE comments at 6-7. *See also* Tel. Assoc. of Michigan reply comments at 5.

⁴³⁸ Letter from Whitney Hatch, GTE, to Mr. William Caton, FCC, September 18, 1996, at 4 (GTE *ex parte*).

⁴³⁹ Ameritech Ex Parte Materials Regarding Competitive Bidding Process, July 31, 1996 at 8-9.

⁴⁴⁰ Ameritech Ex Parte Materials Regarding Competitive Bidding Process, July 31, 1996 at 8-9.

⁴⁴¹ Alaska PUC comments at 17; CWA comments at 6; GTE comments at 7 n.15; Texas PUC comments at 3.

⁴⁴² WinStar reply comments at 4.

⁴⁴³ *See, e.g.*, Alabama-Mississippi Tel. Ass'n comments at 6; Farmers Tel. comments at 4; Mon-Cre comments at 4; New Hope Tel. comments at 4.

⁴⁴⁴ Cincinnati Bell comments at 10-11.

rapidly accelerating private sector deployment of advanced telecommunications.⁴⁴⁵ Frontier argues that only small companies -- defined as those with less than 50,000 access lines in a state -- should be eligible for support.⁴⁴⁶ Alliance for Public Technology, on the other hand, suggests that small telephone companies should not receive support because they are "uneconomic business enterprises."⁴⁴⁷ GVNW responds that excluding small telephone companies from support would discourage the development of advanced telecommunications since small companies provide advanced services to consumers that larger companies traditionally have not served well.⁴⁴⁸

144. Exclusion of price cap companies. Several commenters argue that carriers subject to price cap regulation should not be eligible for universal service support.⁴⁴⁹ Time Warner, for example, asserts that carriers subject to incentive regulation, such as price caps, have flexibility and increased earnings opportunities and are expected to accept and anticipate risks from which rate-of-return regulated companies have been insulated. Time Warner argues that price cap regulated companies, having been given the opportunity for increased earnings, should not have increased earnings guaranteed through universal service support.⁴⁵⁰ Teleport maintains that price cap companies should not be eligible because they have agreed that they have full responsibility for their costs. It further contends that permitting universal service subsidies would undermine the incentive of price caps. To retain competitive neutrality, Teleport proposes to exclude any carrier from receiving support in an area where the incumbent is a price cap carrier and for that reason is excluded from eligibility.⁴⁵¹

145. Some commenters maintain that, while price cap companies should be eligible for universal service support, such companies should receive different treatment. Some commenters argue price cap companies should not receive high cost support unless they can

⁴⁴⁵ Rural Iowa Indep. Tel. Ass'n comments at 2.

⁴⁴⁶ Frontier comments at 6. Frontier achieves this result by proposing that, in determining the service areas that a designated eligible carrier must serve, the states include in that area all of an incumbent LEC's access lines in the state. Any area that is served by an incumbent LEC that serves more than 50,000 access lines would not qualify for high cost support. Frontier comments at 7.

⁴⁴⁷ Alliance for Public Technology comments at 14 n.11.

⁴⁴⁸ GVNW reply comments at 3-4.

⁴⁴⁹ See, e.g., Time Warner comments at 11-12; Staurulakis comments at 11-12; NCTA further comments at 8; Teleport further comments at 7-8.

⁴⁵⁰ Time Warner comments at 11-12.

⁴⁵¹ Teleport further comments at 7-8.