

FCC MAIL SECTION

Federal Communications Commission

FCC 98-278

OCT 23 12 40 PM '98

DISP. 11
 Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)
 Federal-State Joint Board on) CC Docket No. 96-45
 Universal Service)

**MEMORANDUM OPINION AND ORDER AND
 FURTHER NOTICE OF PROPOSED RULEMAKING**

Adopted: October 22, 1998

Released: October 26, 1998

By the Commission: Commissioner Furchtgott-Roth approving in part, dissenting in part, and issuing a statement.

Comment Date: 30 days from publication in the Federal Register

Reply Comment Date: 45 days from publication in the Federal Register

Table of Contents

	Paragraph
I. Introduction	1
II. Memorandum Opinion and Order	5
A. Interim Guidelines for Separating Interstate and Intrastate Revenues	5
1. Background	5
2. Discussion	10
III. Further Notice of Proposed Rulemaking	16
A. Proposed Mechanisms for Separating Interstate and Intrastate Revenues ...	16
1. Background	16
2. Issues for Comment	17
B. Competitive Neutrality	42
1. Background	42
2. Issues for Comment	44
C. Definition of Basic Service Packages to be Provided by Eligible Telecommunications Carriers	46
1. Background	46
2. Issues for Comment	50

IV.	Procedural Matters and Ordering Clauses	54
A.	<i>Ex Parte</i> Presentations	54
B.	Initial Regulatory Flexibility Analysis	55
C.	Initial Paperwork Reduction Act Analysis	73
D.	Deadlines and Instructions for Filing Comments	74
E.	Ordering Clauses	78

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order) and Further Notice of Proposed Rulemaking (Further Notice), we consider four issues relating to the operation and administration of the new federal universal service support mechanisms. First, we provide wireless telecommunications providers with interim guidelines for reporting on FCC Form 457, the Universal Service Worksheet (Worksheet)¹ their percentage of interstate wireless telecommunications revenues. Specifically, until we issue final rules regarding the mechanisms that wireless telecommunications providers should use in allocating their wireless telecommunications revenues between the interstate and intrastate jurisdictions, we establish "safe-harbor" percentages that we believe reasonably approximate the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. These percentages can be used for purposes of calculating these providers' federal universal service contribution obligations. We conclude that wireless telecommunications providers that report on the Worksheet a percentage of interstate wireless telecommunications revenues that is less than the "safe harbor" percentage established for that category of provider should continue to document how they arrived at their reported percentage and make such information available to the Commission or the universal service Administrator upon request.

2. Second, we propose and seek comment on various mechanisms for allocating between the intrastate and interstate jurisdictions the end-user telecommunications revenues of universal service contributors that cannot derive this information readily from their books of account. We tentatively conclude that the Commission should establish a fixed percentage of interstate end-user wireless telecommunications revenues that these carriers must report on the Worksheet. With respect to cellular and broadband Personal Communications Service (PCS) providers, we seek comment on whether 15 percent represents a reasonable approximation of the percentage of wireless telecommunications traffic that is interstate.

3. Third, we seek comment on the extent to which the Commission's universal

¹ Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, CC Dockets No. 97-21, 96-45, FCC 97-253, 12 FCC Rcd 18400 (rel. July 18, 1997) (*NECA Order*), Appendix A.

service rules facilitate the provision of supported services by service providers, such as wireless telecommunications providers and cable operators, that historically have not provided services eligible for federal universal service support. In connection with this third issue, we seek comment on the extent to which such providers are, in fact, supplying services eligible for support under the federal universal service support mechanisms and what additional steps the Commission might take to facilitate the participation of new providers and promote competition in the universal service context.

4. Finally, we seek comment on the definition of the basic service packages that carriers must offer in order to be eligible to receive universal service support. Specifically, we seek comment on how much, if any, local usage we should require eligible telecommunications carriers to provide to customers as part of a "basic service" package if they desire to be eligible for universal service support for providing basic telecommunications service.

II. MEMORANDUM OPINION AND ORDER

A. Interim Guidelines for Separating Interstate and Intrastate Revenues

1. Background

5. Section 254(d) of the Communications Act of 1934, as amended (the Act) provides that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."² In the *Universal Service Order*, the Commission adopted rules requiring all telecommunications carriers that provide interstate telecommunication services, private service providers that offer interstate telecommunications to others for a fee, and payphone aggregators to contribute to the new federal universal service support mechanisms.³ The Commission concluded that contributions to the support mechanisms for high cost areas and low-income consumers will be based solely on the interstate and international revenues of providers of interstate telecommunications services.⁴ The Commission concluded that

² 47 U.S.C. § 254(d).

³ Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 9173, (rel. May 8, 1997) (*Universal Service Order*), para. 777.

⁴ *Universal Service Order*, 12 FCC Rcd at 9200, para. 831. We note that the Commission has requested that the Joint Board recommend whether this is the appropriate revenue base on which to assess contributions to the high cost and low-income universal service support mechanisms. See Federal-State Joint Board on Universal Service, *Order and Order on Reconsideration*, CC Docket No. 96-45, FCC 98-160 (rel. July 17, 1998) (*Joint*

contributions to the support mechanisms for schools, libraries, and rural health care providers will be based on intrastate, interstate, and international end-user telecommunications revenues.⁵

6. On July 18, 1997, the Commission released a draft copy of the Worksheet. The Worksheet requires contributors to list their revenues by certain categories, such as "fixed local service" and "mobile service." Contributors also must list the percentage of each revenue category that represents interstate and international revenues. In general, the jurisdictional nature of a call depends solely upon where the call originates and where it terminates, without regard to where or how the call is carried in between the origination and termination points. In response to the release of the draft Worksheet, several wireless telecommunications providers requested clarification on how, for purposes of completing the Worksheet, entities that cannot derive various revenue data directly from their books of account should calculate the requested revenue information.⁶ These parties asserted that wireless telecommunications providers cannot, without substantial difficulty, identify their revenues as interstate or intrastate. Commercial mobile radio service (CMRS) providers maintained that they operate without regard to state boundaries in that their service areas, and areas served by a particular antenna, do not correspond to state boundaries.⁷ Generally, calls made from a wireless phone are transmitted by a low-power radio signal from the antenna on the handset to an antenna site. From the antenna site, the calls are connected to a switch, which delivers the calls to the terminating point. CMRS providers explained that because they often use a single switch to serve areas located in more than one state, calls originating and terminating in one state may be transported to a switch in another state.⁸ These providers suggested that the mobile nature of CMRS makes it difficult to determine whether the calls

Board Referral Order).

⁵ *Universal Service Order*, 12 FCC Rcd at 9203, para. 837.

⁶ *See, e.g.*, Letter from Wendy Chow, Cellular Telecommunications Industry Association, to William F. Caton, FCC, dated July 11, 1997.

⁷ CTIA explained that the location of the antenna generally determines the origination point of a call. Because the area served by a particular antenna may extend beyond state boundaries, all calls made from within that service area will be recorded as having originated in the same state (the state in which the antenna is located) regardless of which state the caller was actually in when making the call. CTIA July 17 petition at 15.

⁸ CTIA July 17 petition at 15. CTIA also asserted that CMRS providers frequently alter the configuration of their networks to account for changing traffic volumes, which may make it difficult to track the precise course of each call. *See* CTIA July 17 petition at 16. CTIA cited the diversity of switches and billing systems utilized by CMRS providers, resulting in different CMRS providers receiving different amounts and types of data about calls. *See* CTIA July 17 petition at 18.

made by their customers should be classified as interstate or intrastate.⁹ Even if they were able to identify the jurisdictional nature of each call, CMRS providers noted that the jurisdictional nature of the call could change during the course of the call.¹⁰

7. In light of the concerns raised by wireless telecommunications providers regarding the difficulties associated with distinguishing their interstate and intrastate revenues, the Commission provided some guidance to such providers in the Commission's August 15, 1997 *NECA II Order*.¹¹ The Commission concluded that, on an interim basis, contributors that cannot derive interstate revenues from their books of account or that cannot derive the line-by-line revenue breakdowns from their books of account may provide on the Worksheet good faith estimates of these figures.¹² The Commission further stated that contributors could derive their estimates using a method that they, in good faith, believe will yield a reasonably accurate result. The Commission directed such contributors to document how they calculated their estimates and make such information available to the Commission or Administrator upon request.¹³

8. Several parties filed petitions for reconsideration opposing the Commission's decision.¹⁴ In their joint petition, Comcast and Vanguard maintained that an approach based only on good-faith estimates will result in inequities in payment obligations.¹⁵ CTIA argued that, despite good-faith efforts to comply with the universal service reporting requirements, CMRS providers may substantially over-report or under-report certain categories of their revenues, which may result in artificial distortions of rates.¹⁶

⁹ CTIA explained that when a customer crosses state boundaries during the course of a call, the location of the antenna in the state that the customer entered is not recorded for billing purposes. CTIA July 17 petition at 14. See also CTIA September 3 reply at 7.

¹⁰ AirTouch July 17 petition at 11.

¹¹ Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21, 96-45, *Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 12444 (Aug. 15, 1997) (*NECA II Order*), paras. 21-22.

¹² *NECA II Order*, 12 FCC Rcd at 12453, para. 21.

¹³ *NECA II Order*, 12 FCC Rcd at 12453, para. 21.

¹⁴ See, e.g., Comcast and Vanguard Sept. 2 petition at 8-11. See also CTIA Oct. 2 comments at 3-5.

¹⁵ Comcast and Vanguard Sept. 2 petition at 18.

¹⁶ CTIA Oct. 2 comments at 3-4.

9. Between September, 1997 and March, 1998, the Commission's Wireless Telecommunications Bureau and Common Carrier Bureau hosted a series of *ex parte* meetings with representatives of the wireless telecommunications industry.¹⁷ The Bureaus' primary objective in hosting those meetings was to solicit proposals on methods by which wireless telecommunications providers might allocate between the intrastate and interstate jurisdictions their end-user telecommunications revenues for purposes of the universal service reporting requirements.

2. Discussion

10. In this Order, we provide wireless telecommunications providers with additional interim guidance on reporting their wireless interstate telecommunications revenues for purposes of universal service contributions.¹⁸ We share the concern expressed by Comcast and Vanguard that some CMRS carriers presently may have an unreasonable advantage in the market as a result of either unintentional or purposeful under-reporting of their end-user interstate telecommunications revenues. To illustrate, some CMRS providers reported seven percent of their CMRS revenues as interstate, while others reported 28 percent as interstate. We anticipate that the interim safe harbor, in combination with our willingness to inquire about individual carriers' methods for calculating interstate revenues, will address this matter until we develop final rules.

11. As noted above, the *NECA II Order* permitted contributors that cannot readily derive interstate revenues from their books of account to provide on the Worksheet good faith estimates of these figures pending final Commission resolution of this issue.¹⁹ The *NECA II Order* also directed such contributors to document how they calculated their estimates and to make such information available to the Commission or Administrator upon request.²⁰ In this Order, we identify, on an interim basis, suggested, or "safe harbor," percentages that we believe reasonably approximate the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. We identify the safe harbor percentages set forth below in response to the requests of wireless telecommunications providers for specific guidance beyond that provided in the *NECA II*

¹⁷ Summaries of these meetings are in the record in this docket.

¹⁸ Note that in the Further Notice below, we seek comment on various mechanisms that wireless telecommunications providers could use in allocating their revenues between the interstate and intrastate jurisdictions.

¹⁹ *NECA II Order*, 12 FCC Rcd at 12453, para. 21.

²⁰ *NECA II Order*, 12 FCC Rcd at 12453, para. 21.

Order and for expeditious resolution of the issues raised by these providers.²¹ The safe harbor percentage suggested for each category of provider is set forth below. Wireless telecommunications providers that choose to avail themselves of these suggested percentages may assume that the Commission will not find it necessary to review or question the data underlying their reported percentages. Conversely, a provider that elects to report a percentage of interstate telecommunications revenues that is less than the "safe harbor" percentage established for that category of provider should document the method used to calculate its percentage and make that information available to the Commission or Administrator upon request.²² The Commission retains its authority to require carriers that report interstate revenues below the safe harbors to document, perhaps through traffic studies, the method by which they arrived at their reported percentage of interstate telecommunications revenues.

12. We emphasize that these percentages are intended only to provide guidance to carriers in reporting on the Worksheet their percentage of interstate wireless telecommunications revenues and are not prescriptive in nature. Upon review of the record developed in response to the Further Notice accompanying this Order, the Commission may elect to adopt final prospective rules that deviate from the interim guidance provided here. Accordingly, we note that our guidance here is an interim measure pending final Commission resolution of these issues.

13. *Cellular, broadband PCS, and digital SMR providers.*²³ We establish a safe harbor percentage of interstate revenues for cellular and broadband PCS providers of 15 percent of their total cellular and broadband PCS telecommunications revenues. The Commission, therefore, will not seek supporting data from cellular and broadband PCS providers regarding their reported percentage of interstate telecommunications revenues if they

²¹ See, e.g., Comcast May 22 comments at 4 (arguing that, without such guidance, Comcast is "effectively subsidizing its competitors who have taken advantage of the Commission's current approach which permits widely varying practices in any single market . . ."); CTIA May 22 comments at 4 (stating that "CMRS carriers who over-report (*i.e.*, pay more into the fund than [sic] required) will be at a competitive disadvantage *vis-a-vis* CMRS carriers who interpret the worksheet in a manner that results in under-reporting)."

²² See *NECA II Order*, 12 FCC Rcd at 12453, para. 21.

²³ When we refer to cellular and broadband PCS providers throughout the rest of this item, we intend for the discussion to also apply to digital SMR providers, such as NEXTEL. Digital SMR service, or "wide-area" SMR service, essentially operates more like a cellular provider than an SMR provider. Digital SMR service "offers consumers dispatch capabilities over much broader geographic areas, along with a unique combination of fully integrated services," such as cellular and broadband PCS service. See NEXTEL July 17 petition at 3. See also Telephone Number Portability, *Second Memorandum Opinion and Order on Reconsideration*, CC Docket No. 95-116, FCC 98-275 (rel. October 20, 1998), section III.D.

report at least 15 percent of their cellular and broadband PCS telecommunications revenues as interstate. We reach this determination based on the level of interstate traffic experienced by wireline providers. Several wireless telecommunications providers have suggested that the Commission consider establishing for cellular and broadband PCS providers a safe harbor percentage of interstate cellular and broadband PCS revenues based on the percentage of interstate wireline traffic reported for purposes of the Dial Equipment Minutes (DEM) weighting program, *i.e.*, approximately 15 percent.²⁴ Current Commission statistics indicate that the nationwide average percentage of interstate wireline traffic reported for purposes of the DEM weighting program is approximately 15 percent.²⁵ We believe it is reasonable to use this percentage as a proxy for the percentage of interstate wireline traffic as whole. Furthermore, we note that we do not have evidence before us to indicate that the level of interstate wireless traffic experienced by cellular and broadband PCS providers is less than the level experienced by wireline providers.²⁶ We find that establishing a safe harbor that assumes that wireless carriers receive interstate and intrastate revenues in similar proportions to wireline carriers represents a conservative estimate, and that such a conservative approach is reasonable as an interim safe harbor. Moreover, unlike paging and analog SMR providers, cellular and broadband PCS providers have not, as a group, reported on the Worksheet sufficiently similar percentages of interstate cellular and broadband PCS revenues.

14. *Paging providers.* We establish a safe harbor percentage of interstate revenues for paging providers of 12 percent of their total paging revenues. Therefore, paging providers that report at least 12 percent of their paging revenues as interstate will not be asked by the Commission to provide documentation supporting their reported level of interstate telecommunications revenues. Our determination is based on the fact that paging providers,

²⁴ See, *e.g.*, Letter from James R. Coltharp, Comcast, to Magalie Roman Salas, FCC, dated September 25, 1998 (*citing* Omnipoint Communications, Inc.'s Aug. 21 letter in noting that "the 15% percent factor apparently has been used in estimates by various wireless carriers") (Comcast Sept. 25 letter). See also Letter from Teresa M. Schmitz, Counsel for Omnipoint Communications, Inc., to William F. Caton, FCC, dated August 21, 1997 (Omnipoint Communications Aug. 21 letter).

²⁵ Indus. Analysis Div., *FCC Monitoring Report May 1997*, CC Docket No. 80-286 (1997). The DEM weighting program provides assistance to smaller telephone companies. Under the DEM weighting program prior to January 1, 1998, a carrier serving 50,000 or fewer access lines allocated a greater portion of its local switching costs to the interstate jurisdiction by multiplying its interstate minutes by a factor. Thus, in the past, the DEM weighting program shifted local switching costs from the intrastate jurisdiction to the interstate jurisdiction. See 47 C.F.R. § 36.125(b). Beginning January 1, 1998, a carrier's local switching access charges are set using measured interstate DEM, and the portion of the costs attributable to DEM weighting are recovered from the new universal service support system. See *Universal Service Order*, 12 FCC Rcd at 8940-41.

²⁶ The pricing strategies used by some wireline carriers, such as AT&T's "one-rate" plan, do not impose different rates for interstate service, and thus suggest that the portion of interstate revenues for at least some wireless carriers may be higher than they are for wireline carriers.

as a group, reported on the Worksheets due on March 31 that approximately 12 percent of their paging revenues generated in the 1997 calendar year was interstate.²⁷ We realize that the percentage of interstate telecommunications revenues derived from the provision of paging service may vary according to the amount of local service versus nationwide service that a paging carrier provides. Therefore, with regard to a paging carrier that reports less than 12 percent of their revenues as interstate, we will consider the amount of local service versus nationwide service that such a carrier provides. We believe that, until the Commission issues final rules regarding the mechanisms that paging providers should use to allocate their revenues between the interstate and intrastate jurisdictions, it is reasonable to establish a safe harbor based on the average percentage of interstate paging revenues reported by paging providers for 1997.

15. *SMR providers.* We establish a safe harbor percentage for analog Specialized Mobile Radio (SMR) providers of one percent of their total revenues derived from the provision of analog SMR service. Therefore, if analog SMR providers report at least one percent of their analog SMR revenues as interstate, the Commission will not seek supporting documentation from those analog SMR providers that indicate in Block 4 of the Worksheet that their principal communications business is "SMR/dispatch." We reach this determination based on the fact that these analog SMR providers, as a group, reported on the Worksheets due on March 31 that approximately one percent of their analog SMR revenues generated in the 1997 calendar year was interstate.²⁸ As with the safe harbor percentage we establish for paging providers, we believe that it is reasonable to establish an interim safe harbor percentage based on the average interstate revenues percentage reported by analog SMR providers for 1997.

III. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Proposed Mechanisms for Separating Interstate and Intrastate Revenues

1. Background

16. As stated above, between September, 1997 and March, 1998, the Commission's Wireless Telecommunications Bureau and Common Carrier Bureau hosted a series of *ex parte* meetings with representatives of the wireless telecommunications industry. The Bureaus' primary objective in hosting those meetings was to solicit proposals on methods by which wireless telecommunications providers might allocate between the intrastate and interstate jurisdictions their end-user telecommunications revenues for purposes of the universal service

²⁷ Letter from Lisa I. Harter, USAC, to Brad Wimmer, FCC, dated May 28, 1998.

²⁸ Letter from Lisa I. Harter, USAC, to Brad Wimmer, FCC, dated May 28, 1998.

reporting requirements.²⁹ In this Further Notice, we propose and seek comment on various mechanisms for allocating between the intrastate and interstate jurisdictions the end-user telecommunications revenues of universal service contributors that cannot derive this information readily from their books of account. This allocation will be used for purposes of calculating the federal universal service reporting and contribution obligations.

2. Issues for Comment

a. Good Faith Estimates

17. In this Further Notice, we tentatively conclude that we should provide specific guidance to wireless telecommunications providers in identifying their interstate revenues, as required on the Worksheet. Certain parties initially proposed that we adopt on a permanent basis the revenue reporting approach relied upon for purposes of the Telecommunications Relay Services (TRS) Fund Worksheet.³⁰ The Commission's TRS rules permit carriers that are not subject to the Uniform System of Accounts (USOA) in Part 32, such as CMRS providers, to rely on a special study to estimate their percentages of interstate and international traffic.³¹ Under this approach, contributors must document how they calculated their estimates and make such information available to the Commission or TRS Administrator upon request. Although the *NECA II Order* permitted certain universal service contributors, on an interim basis, to make good faith estimates of their interstate revenues along the lines of the special study method used for TRS,³² we tentatively conclude that we should not adopt this approach on a permanent basis. Given the greater impact universal service contributions have on carriers, we tentatively agree with CTIA and Comcast that allowing carriers to rely on good faith estimates on a permanent basis as a means of distinguishing contributors' interstate and intrastate revenues will not provide contributors with sufficient certainty as to the appropriate amount of their payment obligations and may result in inequities in payment

²⁹ See section II.A. for further background discussion on this issue.

³⁰ AirTouch July 17 petition at 10-12. The TRS Fund supports telephone transmission services that allow people with hearing or speech disabilities to communicate by wire or radio with hearing individuals. All carriers providing interstate telecommunications services must contribute to the TRS Fund. See 47 C.F.R. § 64.604.

³¹ See TRS Fund Worksheet, FCC Form 431 (rel. March 1997) at section III.B.2. The USOA is a historical financial accounting system that reports the results of operational and financial events in a manner that enables both management and regulators to assess these results within a specified accounting period. See 47 C.F.R., Part 32.

³² *NECA II Order*, 12 FCC Rcd at 12453, para. 21.

obligations.³³ Comcast contends that the Commission should provide specific guidance on this issue to minimize the "potential for systematic underreporting or underestimating of revenues, or, in some cases, overestimation of revenues."³⁴ Specifically, Comcast suggests that, without establishing relevant markets according to which carriers report their percentage of interstate telecommunications revenues, larger wireless carriers will "average down their interstate percentages by including [revenue information from] distant markets."³⁵ We seek comment on the merits of our tentative conclusions and on how we might amend our rules in a manner that would provide certainty and avoid substantial inequities in payment obligations.

b. Percentage of Interstate Revenues Estimates

18. We tentatively conclude that, as proposed by Comcast, the Commission should establish a fixed percentage of interstate end-user wireless telecommunications revenues that a wireless telecommunications provider must report on the Worksheet.³⁶ It appears that such an approach would eliminate competitive inequities that may be associated with the use of differing allocation assumptions and methodologies.³⁷ We invite parties to comment on the use of such an approach for determining the interstate wireless telecommunications revenues for wireless telecommunications providers.

19. Given that various categories of wireless providers may have substantially differing levels of interstate traffic, we also tentatively conclude that we should establish different percentages according to the type of provider (*e.g.*, cellular, broadband PCS, paging, and SMR). In section II.A.2. above, we adopt a similar approach for our interim guidelines for wireless providers' reporting on the Worksheet of their interstate wireless telecommunications revenues. Although this approach recognizes that interstate traffic levels may differ among differing classes of wireless providers, it assumes that such levels are generally similar among competing carriers with similar systems and operations. We seek

³³ CTIA Oct. 2 comments at 3-5; Comcast Report to Congress comments at 12

³⁴ Comcast Report to Congress comments at 12.

³⁵ Letter from James R. Coltharp, Comcast, to Magalie Roman Salas, FCC, dated February 19, 1998 (Comcast Feb. 19 ex parte) at 1.

³⁶ Letter from James R. Coltharp, Comcast, to Magalie Roman Salas, FCC, dated Feb. 23, 1998 (Comcast Feb. 23 ex parte).

³⁷ Comcast Feb. 23 ex parte at 2.

comment on whether this is a reasonable assumption.³⁸

20. With regard to broadband PCS and cellular services,³⁹ we seek comment on whether the fixed percentage of interstate telecommunications revenues that must be reported on the Worksheet should be based on the level of interstate traffic experienced by wireline providers. We seek comment on whether the similarities between broadband PCS, cellular, and traditional wireline services are sufficient to warrant such an outcome. For wireline services, current Commission statistics indicate that the nationwide average percentage of interstate wireline traffic reported for the DEM weighting program is approximately 15 percent.⁴⁰ We seek comment on whether cellular and broadband PCS providers should report 15 percent of their cellular and PCS revenues as interstate. We note that members of the wireless telecommunications industry have suggested that 15 percent represents a reasonable approximation of the percentage of cellular and PCS traffic that is interstate.⁴¹ We are not aware of evidence that cellular and broadband PCS providers experience substantially more or less interstate traffic than wireline providers, nor do we have evidence before us to indicate that the level of interstate traffic for wireline carriers reporting under the DEM weighting program differs substantially from wireline carriers as a whole. At the same time, we are cognizant that, due to the difference in pricing structures between wireline service and wireless service, the level of interstate telecommunications revenues generated by each type of service may vary from one to another.⁴² Moreover, some cellular and PCS carriers have reported as much as 28 percent of their revenues as interstate, which may represent a more accurate accounting given that carriers have incentives to underreport their interstate revenues for universal service reporting purposes. We therefore invite parties to comment on the appropriateness of using data submitted for purposes of the DEM weighting program to approximate the percentage of interstate cellular and PCS revenues generated by wireless telecommunications providers.

³⁸ Note that in para. 24, we seek comment on whether the Commission should establish different percentages within each category of provider.

³⁹ See para. 13, n. 23 *supra*, explaining that references to cellular and broadband PCS services are intended to include digital SMR service.

⁴⁰ See *supra* at para. 13.

⁴¹ See, e.g., Comcast Sept. 25 letter. See also Omnipoint Communications Aug. 21 letter. These carriers arrive at 15 percent based on the fact that the nationwide average percentage of interstate wireline traffic reported for purposes of DEM weighting is 15 percent.

⁴² For example, it is possible that for most residential customers, the relative marginal cost of local calls versus toll calls varies according to whether they are using wireless service or wireline service. Given demand elasticities, the difference in price for local calls versus toll calls within each category of service (i.e., either wireless or wireline) may produce significantly different percentages of interstate telecommunications revenues.

21. We recognize that analog SMR and paging services do not as closely resemble broadband PCS, cellular, or traditional wireline services, and therefore seek comment on an appropriate estimation of these providers' interstate analog SMR and paging revenues. In section II.A.2. above, we adopt interim guidelines for paging and analog SMR providers, based on the average interstate revenues percentage reported by those carriers in 1998. Paging providers and analog SMR providers reported, on average, interstate paging and analog SMR revenue levels at approximately 12 percent and one percent, respectively. Unlike our estimate for the interstate portion of cellular and PCS revenues, however, the DEM weighting reports do not provide the Commission with an independent source for estimating the portion of paging and analog SMR revenues that is interstate. We also note that these carriers may have incentives to underreport their interstate revenues for universal service reporting purposes. We seek comment on whether the 12 percent average reported by paging carriers and one percent reported by analog SMR providers should form the basis for the final fixed percentages, and, if not, what would be an appropriate allocation. We are interested in knowing of any other mechanisms that, like DEM weighting, could provide an independent basis for a permanent rule for analog SMR and paging carriers. Parties are encouraged to provide alternative estimations of the percentage of interstate traffic experienced by analog SMR and paging providers and a detailed basis for the estimation.

22. According to the American Mobile Telecommunications Association (AMTA), SMR providers, with the possible exception of NEXTEL, generate relatively low levels of interstate traffic.⁴³ We seek comment on this assertion and on whether any other categories of provider, such as paging providers, generate similarly low levels of interstate telecommunications traffic relative to other categories of providers. We also seek comment on how to treat providers, like NEXTEL, that may generate atypical levels of interstate traffic. Likewise, we seek comment on whether any category of provider experiences higher levels of interstate telecommunications traffic relative to other categories of providers.

23. We note that traffic studies may represent one possible mechanism wireless telecommunications carriers could use to determine their percentage of interstate telecommunications revenues. We believe that it would be reasonably simple for most wireless carriers to conduct traffic studies and extrapolate from the data the percentage of

⁴³ Letter from Jill M. Lyon, AMTA, to Lori E. Wright, FCC, dated February 20, 1998 (*AMTA Feb. 20 letter*) at 1-2. As discussed in section III.A.2.c.iii. below, AMTA states that, in a recent survey of its members, 63 percent of the respondents reported that their coverage areas are intrastate, and the remaining 37 percent reported the use of systems crossing state boundaries. AMTA excluded NEXTEL's responses from its survey results. In addition to providing traditional SMR services, consisting primarily of dispatch communications, NEXTEL provides "wide-area" SMR services. See NEXTEL July 17 petition at 3. As NEXTEL states, "wide-area" SMR services "offer consumers dispatch capabilities over much broader geographic areas, along with a unique combination of fully integrated services" such as cellular and PCS service. *Id.*

their revenues that should be attributed to the interstate jurisdiction. Some wireless carriers could conduct joint traffic studies, the results of which could be used by all similarly situated companies. We seek comment on these proposals. Furthermore, if the Commission elects not to use the data submitted for purposes of the DEM weighting program to estimate the percentage of broadband PCS and cellular revenues generated by broadband PCS and cellular providers (*i.e.*, 15 percent), as discussed above, one alternative would be to derive a fixed percentage for each category of provider based upon data reported on the 1997 TRS Fund Worksheets.⁴⁴ Given the impact that universal service contributions have on carriers, however, we believe that we should establish a percentage of interstate wireless telecommunications revenues that is based on data more certain and accurate than what may be obtained from TRS worksheets. Therefore, we tentatively conclude that we should not use the allocations made for the TRS Fund Worksheet to determine the proper portion of revenues derived from interstate calls. We seek comment on this tentative conclusion.

24. We also seek comment on whether the Commission should establish different percentages within each category of provider, rather than establishing a single percentage for each category of provider. For example, because the service areas of some wireless telecommunications providers may consist of many smaller states (*i.e.*, in the northeastern part of the United States) and thus experience a higher level of interstate traffic than service areas in, for example, the midwestern and western parts of the United States, the Commission could establish various percentages within each category of provider that take into consideration the area of the country being served. Comcast asserts that, in order to estimate accurately the percentage of broadband PCS providers' interstate broadband PCS revenues, the Commission must first establish an appropriate market size.⁴⁵ Comcast recommends that the level of interstate telecommunications revenues reported by wireless telecommunications providers whose license territories are established on the basis of Major Trading Areas (MTAs)⁴⁶ should

⁴⁴ See Indus. Analysis Div., Telecommunications Industry Revenue: TRS Fund Worksheet Data, November 1997 (1997) (*TRS Fund Worksheet Data*) at tbl. 16. As AirTouch points out, the TRS program requires contributions based on gross revenues, whereas the universal service program requires contributions based on end-user revenues. AirTouch therefore suggests that a cost-effective way to report revenues for universal service purposes based on information collected for TRS Fund reporting purposes would be to use the revenue separation calculated for TRS Fund purposes and subtract the wholesale (*i.e.*, non-end-user) telecommunications revenues from that calculation. AirTouch July 17 petition at 11-12.

⁴⁵ Comcast Feb. 23 ex parte.

⁴⁶ Comcast Feb. 23 ex parte at 2. The PCS Second Report and Order first established the use of MTAs and Basic Trading Areas (BTAs) for PCS providers. See Amendment of the Commission's Rules to Establish New Personal Communications Services, *Second Report and Order*, GEN Docket No. 90-314, 8 FCC Rcd 7700, 7729-34 (rel. Oct. 22, 1993).

be determined on an MTA-by-MTA basis.⁴⁷

Comcast, which serves markets in the northeastern part of the United States where there may be a relatively high number of interstate calls, contends that reporting the level of interstate revenues on an MTA-by-MTA basis would ensure consistent reporting of interstate revenues among wireless telecommunications providers. Comcast contends that this approach would minimize the possibility that larger carriers, that are likely to have a relatively larger proportion of interstate traffic, would report their interstate revenues on the basis of an average that includes markets with relatively low levels of interstate traffic.⁴⁸ Comcast maintains, therefore, that carriers in a single market would be less likely to impose widely varying charges on bills to recover their universal service contributions.⁴⁹ We seek comment on Comcast's proposal. If the Commission elects to establish a market-by-market approach, we seek comment on the appropriate market size for wireless telecommunications providers that are not licensed on the basis of MTAs.⁵⁰ We also seek comment on whether the Commission should establish different percentages within each category of provider according to other criteria.

25. We seek comment on whether wireless telecommunications providers should be given the option of using a Commission-established percentage of interstate wireless telecommunications revenues, as discussed above, or using their own data-collection procedures to demonstrate to the Commission the percentage of their wireless telecommunications revenues derived from interstate calls.⁵¹ Allowing carriers to choose between these two options, rather than requiring all wireless providers to use the Commission-established percentage, may be preferable for wireless providers that are able, without substantial difficulty, to distinguish their interstate revenues. We note that this approach may encourage providers that can derive accurate estimates of their revenues from their books of account nevertheless to use the Commission-established percentage if they determine that

⁴⁷ Comcast Report to Congress comments at 12. *See also* Comcast Feb. 23 ex parte.

⁴⁸ Comcast Report to Congress comments at 12.

⁴⁹ Comcast Feb. 19 ex parte at 1.

⁵⁰ For example, the license territories for cellular carriers are established on the basis of Metropolitan Statistical Areas (MSAs) or Rural Service Areas (RSAs), which are smaller than MTAs. Also, the D, E, and F frequency blocks for PCS providers are licensed on the basis of Basic Trading Areas (BTAs), which also are smaller than MTAs.

⁵¹ For example, as discussed more fully below in section III.A.2.d., AirTouch asserts that its billing systems allow it to determine, with a reasonable amount of accuracy, its percentage of revenues derived from interstate telecommunications. *See* Letter from Kathleen Q. Abernathy, AirTouch, to Magalie Roman Salas, FCC, dated February 11, 1998 (AirTouch Feb. 11 ex parte) at 1-2.

using the Commission established percentage provides a financial advantage. We seek comment on whether wireless telecommunications providers that wish to use their own data collection procedures to identify the percentage of their end-user wireless telecommunications revenues that is derived from interstate calls should be required to obtain a waiver from the Commission.⁵²

26. We also seek comment on whether we should adopt for wireless telecommunications providers a universal service contribution methodology that does not require these carriers to allocate their revenues as either interstate or intrastate. We seek comment on whether it would be competitively neutral, equitable, and economically efficient to require wireless telecommunications providers to contribute to the universal service support mechanisms on the basis of a flat fee per voice grade access line or voice grade equivalent, rather than as a percentage of their revenues.⁵³ We note that parties have generally sought reconsideration of the Commission's decision to assess carriers based on a percentage of their telecommunications revenues, and we seek further comment on this issue with regard to wireless carriers.⁵⁴ We seek comment on how we would determine the amount of such a flat charge. We are cognizant that the amount of a flat charge may need to vary according to the type of carrier on which it is assessed. If we were to assess different types of carriers differently, we seek comment on a how to accomplish this in a fair and equitable manner. In connection with this issue, we seek comment on how to establish for paging carriers a voice grade equivalent on which to assess a flat charge, *e.g.*, capacity level. We also seek comment on whether we should assess wireless carriers different amounts for business and residential subscribers. We also seek comment on whether a flat charge would be consistent with our prior determination that contributions to the federal high cost and low-income support mechanisms should be assessed only on interstate revenues.⁵⁵ We also invite parties

⁵² See Comcast Feb. 23 ex parte at 3 (suggesting that "[t]he Commission could permit carriers to seek waivers based upon significant and demonstrated deviations in traffic patterns").

⁵³ We note that the manner in which we assess universal service contribution obligations is one of several issues that may be addressed by the Joint Board in its upcoming Recommended Decision. See *Joint Board Referral Order* at para. 6.

⁵⁴ See *e.g.*, Comcast and Vanguard *Universal Service Order* reply at 9-12; AT&T *Universal Service Order* petition at 2-7; Bell South *Universal Service Order* comments at 7. See also Comcast Feb. 19 ex parte and letter from James R. Coltharp, Comcast, to Magalie Roman Salas, dated May 12, 1998 (Comcast May 12 ex parte) (suggesting that the Commission should consider imposing on wireless carriers a fixed charge per line or per "subscriber unit" in order to promote revenue reporting that is accurate and administratively simple).

⁵⁵ See Federal-State Joint Board on Universal Service, *Recommended Decision*, CC Docket No. 96-45, 12 FCC Rcd 87, 496 (1996) at para. 812 (rejecting proposals to collect contributions on non-revenue based measures, such as on a per-minute or per-line basis); *Universal Service Order*, 12 FCC Rcd at 9210, para. 852 (affirming the Joint Board's recommendation that contributions should not be calculated on non-revenue based

to comment on other methodologies that the Commission could adopt to assess universal service contribution obligations on wireless providers or other providers that generally do not operate with regard to state boundaries.

c. Simplifying Assumptions

27. In this section, we seek comment on a number of proposed simplifying assumptions that either the Commission or wireless telecommunications providers could use to determine the appropriate percentage of interstate wireless telecommunications revenues that should be reported on the Worksheet. These simplifying assumptions could be used in the event that the Commission declines to establish the percentage of interstate wireless telecommunications revenues that some or all categories of wireless telecommunications providers should report on the Worksheet. Additionally, in the event that the Commission decides to provide wireless telecommunications providers with the option of using either a Commission-established percentage or their own data-collection procedures to determine their percentage of interstate wireless telecommunications revenues, wireless telecommunications providers selecting the latter option could use these simplifying assumptions.

28. We seek comment on whether it would be appropriate for the Commission to adopt the following assumptions in light of the manner and extent to which wireless telecommunications providers maintain revenue data. These simplifying assumptions are set forth below according to various categories of wireless telecommunications providers. We note that certain simplifying assumptions may be relevant to more than one category of wireless telecommunications provider. Therefore, we invite comment on these simplifying assumptions as they may apply to any category of wireless telecommunications provider.

i. Cellular and broadband PCS providers⁵⁶

29. *Originating point of a call.* CTIA proposes that, in determining the jurisdictional nature of a call, cellular and broadband PCS providers should consider the originating point of a call to be the location of the antenna that first receives the call.⁵⁷ We understand that some wireless telecommunications providers use this approach for purposes of reporting their revenues on the TRS Fund Worksheet and recommend doing so for purposes

measures, such as a per-minute or per-line basis); *Id.* at 9206, paras. 843-850 (finding that contributions should be based on end-user telecommunications revenues); *Id.* at 9200, para. 831 (determining that contributions to the high cost and low-income universal service support mechanisms should be based only on interstate revenues).

⁵⁶ See para. 13, n.23 *supra*.

⁵⁷ CTIA July 17 petition at 19.

of universal service reporting.⁵⁸ We seek comment on this proposal. To account for the situation in which an antenna serves a region encompassing more than one state, a call would be considered to originate in the state in which the antenna that originally received the call is located, even though the customer may be located in a different state than the antenna and even if, during the course of a call, the customer enters another cell area served by an antenna located in another state. We seek comment on whether this would systematically understate the amount of revenues derived from interstate wireless telecommunications. We also seek comment on whether wireless telecommunications providers experience difficulty in determining the jurisdictional nature of revenues derived from calls that originate as wireline and terminate as wireless.⁵⁹

30. An assumption that a call originates in the state in which the antenna that first receives the call is located would address CTIA's concern that the billing systems of CMRS providers generally do not record the location of the antenna to which the call is transferred when the mobile customer enters a new cell area.⁶⁰ This proposed assumption also would address the situation described by CTIA in which calls originating and terminating in the same state are transported, during the course of the call, to a switch in another state.⁶¹ We note that, in the *Local Competition Order*, the Commission determined that, "[f]or administrative convenience, the location of the initial cell cite when a call begins shall be used as the determinant of the geographic location of the mobile customer."⁶² We seek comment on whether the originating call assumption discussed above adequately addresses the concerns identified by CTIA.

31. *Terminating point of a call.* In addition to the originating point of a call, the terminating point of a call must be identified in order to determine the jurisdictional nature of the call. We seek comment on whether a cellular or broadband PCS provider should assume

⁵⁸ See, e.g., CTIA July 17 petition at 14.

⁵⁹ We note that on October 23, 1997, the Commission released a Notice of Inquiry with the objective of exploring the subject of Calling Party Pays (CPP) and developing a record for determining whether the wider availability of CPP would enable CMRS providers to more readily compete with wireline services provided by LECs. See Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, *Notice of Inquiry*, 12 FCC Rcd 17693 (1997).

⁶⁰ CTIA July 17 petition at 15.

⁶¹ CTIA July 17 petition at 15.

⁶² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, CC Docket 96-98, 11 FCC Rcd 15499, 16017 (1996) (*Local Competition Order*), para. 1044. We note that although some portions of the *Local Competition Order* were overturned on appeal, the sections relating to wireless telecommunications providers were upheld.

that a call terminates in the state that corresponds to the area code to which the call was placed.⁶³ Because we have received no evidence indicating otherwise, we assume that this would be a reasonable approach for determining the terminating point of a call. We seek comment on our assumption that determining the terminating point of a cellular or broadband PCS call in this manner is reasonable and does not pose substantial difficulties for providers.

32. *Calls originating and terminating in a Major Trading Area.* Because many wireless telecommunications providers operate without regard to state boundaries, we seek comment on whether the Commission should consider using MTA boundaries as the basis on which CMRS providers might estimate the level of interstate wireless traffic for universal service reporting purposes. Specifically, we seek comment on whether CMRS traffic that originates and terminates within an MTA should be classified as intrastate and all other calls classified as interstate for purposes of the Worksheet. Because a single MTA can occupy more than one state, this approach would result in some calls that cross state boundaries being classified as intrastate. At the same time, because some states have more than one MTA, a call could be classified as interstate under this approach, even though the call originates and terminates in the same state. We seek comment on the significance of these observations. Because different types of wireless telecommunications providers use different Commission-authorized licensed territories, we also seek comment on whether we should use the boundaries of other types of wireless licensed territories (*e.g.*, Metropolitan Statistical Areas or Rural Service Areas) to differentiate between interstate and intrastate traffic.

33. *Roaming revenues.* We seek comment on how "roaming" revenues obtained by broadband PCS and cellular providers should be classified. "Roaming" occurs when customers located outside the scope of their provider's network use a different provider's network to place and receive calls. CTIA and AirTouch assert that when a customer is "roaming" on the system of another provider (the "serving provider"), the customer's principal provider, which is responsible for billing the customer, receives limited information about the calls made by the customer.⁶⁴ In determining how a principal provider should account for revenues generated while its customer "roams" on a serving provider's system, AirTouch suggests that the principal provider apply an established percentage to such revenues to approximate the level of interstate usage by "roaming" customers.⁶⁵ We seek comment on AirTouch's proposal, and, assuming we adopt AirTouch's proposal, the appropriate fixed

⁶³ Such a test would not be useful to determine the originating point of a wireless call, because an area code is assigned to each wireless handset, and thus all calls from a particular handset would be recorded as being from the same area code, regardless of the location from which the call was actually placed.

⁶⁴ CTIA July 17 petition at 17-18; AirTouch Feb. 11 *ex parte* at 2.

⁶⁵ AirTouch Feb. 11 *ex parte* at 2.

percentage that should be applied to such revenues. AirTouch explains that this option would eliminate the need for extensive information exchanges between the customer's principal provider and the serving provider.⁶⁶ AirTouch further notes that this approach would address the situation in which, because CMRS providers price air-time usage differently, the identical levels of usage do not generate uniform levels of revenues.⁶⁷ We seek comment on these assertions.

34. With regard to how "roaming" traffic should be treated for purposes of distinguishing interstate and intrastate revenues, CTIA notes that, some of its members have concluded that the principal provider should treat all roaming traffic as interstate.⁶⁸ CTIA further states that some of its members have taken the position that calls forwarded from the customer's principal provider to a serving provider in the area where the customer is located should be treated as interstate calls.⁶⁹ We seek comment on these proposed simplifying assumptions.

ii. Paging providers

35. Due to the technical design of a paging system, Airtouch claims that the information necessary to assess the jurisdictional nature of a paging call is unavailable.⁷⁰ AirTouch explains that a paging network terminates communications simultaneously at all locations in its service area, because the paging network cannot identify the location of the paging unit.⁷¹ Thus, the paging network cannot identify the area code of the location where the customer actually receives the page.⁷² In light of these difficulties, we seek comment on any simplifying assumptions that paging carriers may adopt in determining the percentage of interstate paging revenues that they should report on the Worksheet. For example, we seek comment on whether paging providers should estimate their level of interstate traffic based, at

⁶⁶ AirTouch Feb. 11 ex parte at 2.

⁶⁷ AirTouch Feb. 11 ex parte at 2. AirTouch suggests that the principal provider, as part of its competitive marketing strategy, may assess, based on the bill from the serving carrier showing the customer's usage, "roaming" charges for that customer at a rate lower than that of the serving carrier. *Id.*

⁶⁸ Letter from Randall S. Coleman, CTIA, to Jeanine Poltronieri, FCC, dated August 21, 1997 (*CTIA Aug. 21 letter*) at 4-5.

⁶⁹ CTIA Aug. 21 letter at 5.

⁷⁰ AirTouch Feb. 11 ex parte at 1.

⁷¹ AirTouch Feb. 11 ex parte at 2.

⁷² AirTouch Feb. 11 ex parte at 2.

least in part, on the percentage of customers whose service package includes toll-free number capabilities (e.g., 888-, 800-, and 877-numbers), with the assumption that these customers are more likely to receive interstate pages. If a paging provider is capable of distinguishing between the paging revenues derived from its customers who subscribe to local service and those who subscribe to nationwide service, we seek comment on whether paging carriers should assume that its nationwide customers generate more interstate traffic than the local customers. If we were to direct wireless carriers to use a Commission-established percentage of interstate wireless telecommunications revenues, we seek comment on whether we should establish two percentages, one for traffic to local paging customers and one for traffic to national paging customers.

iii. SMR providers

36. Analog SMR service provides land mobile communications and consists of at least one base station transmitter and antenna, as well as a mobile radio unit. Analog SMR service may be interconnected with the public switched telephone network, which allows mobile radio units to function essentially as a mobile telephone, or through a dispatch system, which allows two-way, over-the-air, voice communications only between two mobile radio units. We seek comment on an appropriate estimation of the percentage of interstate telecommunications revenues generated by analog SMR providers and on whether there are appropriate simplifying assumptions to estimate the percentage of analog SMR providers' interstate analog SMR revenues. AMTA states that some of the dispatch systems provide service exclusively within a state and others provide service across state boundaries.⁷³ AMTA states that, in a recent survey of its members, 63 percent of the respondents reported that their coverage areas are intrastate, while the remaining 37 percent reported the use of systems crossing state boundaries.⁷⁴ AMTA also reports that 90 percent of the survey respondents claimed to derive between zero and two percent of their revenues from interstate service.⁷⁵ AMTA further notes that 97 percent of the respondents maintain that they are exempt under

⁷³ AMTA Report to Congress comments at 1.

⁷⁴ AMTA Feb. 20 ex parte at 2. AMTA notes that its survey results do not include responses from NEXTEL. NEXTEL uses digital SMR technologies that allow it to compete in the mobile telecommunications market.

⁷⁵ AMTA states that seven percent of the respondents derive between three and five percent of their revenues from interstate service, and three percent of the respondents derive between six and ten percent of their revenues from interstate service. AMTA Feb. 20 ex parte at 2.

the *de minimis* standard from contributing to the universal service support mechanisms.⁷⁶ AMTA contends that "the survey results to date certainly indicate that SMR and related services bear little resemblance to mass-market mobile telephony such as broadband PCS and cellular."⁷⁷ We seek comment on whether, and how, AMTA's survey results may be used to help determine an appropriate percentage of analog SMR providers' interstate analog SMR revenues. We also seek comment on other ways to arrive at such an estimation.

iv. Point-to-point wireless providers

37. Unlike mobile service, which transmits a signal that may be received by any of the mobile units within a certain area, the signal that is transmitted as part of fixed, point-to-point wireless service is sent directly to a fixed location. We seek comment on whether any point-to-point wireless providers experience difficulty in reporting their percentage of interstate telecommunications revenues.⁷⁸ If so, we seek comment on ways to estimate such carriers' level of interstate telecommunications revenues derived from the provision of fixed, point-to-point service and on whether any simplifying assumptions should be applied to this type of provider. Because the service offered by entities that provide wireless telecommunications on a fixed, point-to-point basis is not mobile in nature, such entities' contribution compliance concerns may differ from those of broadband PCS and cellular providers.

d. AirTouch's Methodology

38. AirTouch states that its jurisdictional tracking system is able to determine, with a reasonable degree of accuracy, whether a particular cellular call is interstate or intrastate.⁷⁹

⁷⁶ AMTA Feb. 20 ex parte at 3. In the *Fourth Order on Reconsideration*, the Commission found that if a contributor's annual contribution would be less than \$10,000, it will not be required to contribute to universal service. Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, *Fourth Order on Reconsideration*, 13 FCC Rcd 5318 (1997), as corrected by Federal-State Joint Board on Universal Service, Errata, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, DA 98-158 (rel. Jan 29, 1998), appeal pending in *Alenco Communications, Inc., et al. v. FCC and USA*, No. 98-60213 (5th Cir. 1998) (*Fourth Order on Reconsideration*), para. 297.

⁷⁷ AMTA Feb. 20 ex parte at 3.

⁷⁸ We note that, pursuant to section 36.154(a) of the Commission's rules, if over 10 percent of the traffic carried on a private or WATS line is interstate, the revenues generated by the entire line are classified as interstate. See 47 C.F.R. § 36.154(a).

⁷⁹ AirTouch Feb. 11 ex parte at 1.

AirTouch explains that its tracking system initially was developed for state tax purposes.⁸⁰ According to AirTouch, this tracking system forwards data received from the originating switch to databases used for billing. The databases compiled from this data enable AirTouch to compare the originating switch location with the terminating area code. AirTouch uses this capability to estimate the percentage of interstate airtime usage and then applies this percentage to an estimated level of total end-user revenues, which yields the amount of interstate revenues.⁸¹ AirTouch explains that the total-revenues estimate includes charges for airtime revenues and monthly access charges, less non-telecommunications revenues. Revenues from long-distance resale, AirTouch further explains, are then included for purposes of determining the total interstate revenues figure reported on the Worksheet.⁸² We seek comment on the extent to which wireless telecommunications and other providers are capable of distinguishing their interstate and intrastate revenues using the method employed by AirTouch or could, without substantial difficulty, adopt such a method. We seek comment on whether wireless telecommunications carriers that use a method similar to that described by AirTouch to identify their interstate revenues should be allowed to do so, in the event that the Commission adopts, for universal service reporting purposes, a Commission-established percentage. In addition, we seek comment on whether, for purposes of assessing certain charges, such as state universal service charges or state taxes, wireless providers are already required to distinguish their revenues in a way that could be applied to their federal universal service reporting obligations.

39. AirTouch notes that its tracking system may yield inaccurate information to the extent that the interstate portion of a call is not recorded when the call originates as intrastate but terminates as interstate due to the customer crossing a state boundary.⁸³ Similarly, we note that a tracking system like the one employed by AirTouch also may yield inaccurate results when a call originates as interstate and terminates as intrastate due to the customer crossing a state boundary. We seek comment on whether the potential inaccuracies that may arise from these two scenarios would, when taken together, tend to cancel each other out and thus have no measurable effect.

⁸⁰ AirTouch Feb. 11 ex parte at 1. AirTouch billing systems rely on the jurisdictional nature of a call in determining whether to impose certain taxes. For example, AirTouch explains, the California universal service surcharge is a "separately identified charge calculated by imposing a set percentage on the total amount of in-state services listed in the bill." *Id.*

⁸¹ AirTouch Feb. 11 ex parte at 2.

⁸² AirTouch Feb. 11 ex parte at 2.

⁸³ AirTouch Feb. 11 ex parte at 2.

e. **Other Issues Surrounding Universal Service Reporting Requirements**

40. We seek comment on whether wireless telecommunications providers experience difficulty in complying with any universal service reporting requirements other than identifying their interstate and intrastate revenues, as described above. We also seek comment on any other actions that the Commission might take to ensure that wireless telecommunications providers are treated in an equitable and nondiscriminatory manner with respect to the universal service reporting and contribution obligations.

f. **Providers other than wireless telecommunications providers**

41. In the previous sections, we discuss possible mechanisms that wireless telecommunications providers could use in allocating their wireless telecommunications revenues between the interstate and intrastate jurisdictions for universal service reporting purposes. We also seek comment whether there are other types of providers, such as satellite providers, that may not be able to derive easily from their books of account their percentage of interstate and intrastate telecommunications revenues.⁸⁴ Parties are invited to address whether the proposals discussed in this Further Notice, such as the simplifying assumptions discussed in section III.A.2.c., might benefit other telecommunications providers that cannot readily distinguish their interstate and intrastate revenues for universal service reporting purposes.

B. Competitive Neutrality

1. Background

42. In the *Universal Service Order* the Commission adopted the Joint Board's recommendation to establish competitive neutrality as an additional principle upon which to base policies for the preservation and advancement of universal service.⁸⁵ While the

⁸⁴ We note that in the *Fourth Order on Reconsideration*, the Commission concluded that satellite providers are not required to contribute to universal service on the basis of revenues derived from the lease of bare transponder capacity. *Fourth Order on Reconsideration*, 13 FCC Rcd at 5479, para. 290.

⁸⁵ *Universal Service Order*, 12 FCC Rcd at 8801, para. 46. Consistent with the Joint Board's recommendation, the Commission adopted the following definition of competitive neutrality:

COMPETITIVE NEUTRALITY -- Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor

Commission recognized that strict competitive neutrality would be extremely difficult to achieve, it noted that competitively neutral rules would ensure that "no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers."⁸⁶ The Commission also noted that the principle of competitive neutrality would promote emerging technologies that may provide competitive alternatives for rural consumers.⁸⁷ The Commission agreed with the Joint Board that the principle of competitive neutrality is consistent with the 1996 Act's underlying goal of promoting competition and with the requirements of section 254(b)(7).⁸⁸

43. In the *Universal Service Order*, the Commission also concurred in the Joint Board's recommendation that the principle of competitive neutrality, in the context of universal service, should include technological neutrality.⁸⁹ The Commission anticipated that a policy of technological neutrality "will foster the development of competition and benefit certain providers, including wireless, cable, and small businesses, that may have been excluded from participation in universal service mechanisms if we had interpreted universal service eligibility criteria so as to favor particular technologies."⁹⁰ The Commission also agreed with the Joint Board's recommendation that competitive neutrality and technological neutrality should be considered when devising universal service policies "relating to each and every recipient and contributor to the universal service support mechanisms, regardless of size, status, or geographic location."⁹¹ In meetings with representatives of the wireless telecommunications industry,⁹² the Commission's Wireless Telecommunications Bureau and Common Carrier Bureau sought to determine whether the Commission's rules effectively

one technology over another.

Universal Service Order, 12 FCC Rcd at 8801, para. 47.

⁸⁶ *Universal Service Order*, 12 FCC Rcd at 8802, para. 48.

⁸⁷ *Universal Service Order*, 12 FCC Rcd at 8803, para. 50.

⁸⁸ *Universal Service Order*, 12 FCC Rcd at 8803, para. 51 (concluding that the principle of competitive neutrality is "necessary and appropriate for the protection of the public interest" and is "consistent with this Act" as required by section 254(b)(7)).

⁸⁹ *Universal Service Order*, 12 FCC Rcd at 8802, para. 49.

⁹⁰ *Universal Service Order*, 12 FCC Rcd at 8802, para. 49.

⁹¹ *Universal Service Order*, 12 FCC Rcd at 8802, para. 49.

⁹² See *supra* at para. 9.

achieve the goal of competitive neutrality.

2. Issues for Comment

44. As noted above, in the *Universal Service Order* the Commission sought to adopt rules that would facilitate the entry of new providers and promote competition in the context of universal service.⁹³ The Commission also sought to establish universal service rules that are competitively and technologically neutral. We seek comment here on the success of that goal. Specifically, we seek comment on the extent to which our rules, in application, are accomplishing that goal. We seek comment on the extent to which our rules facilitate the provision of services eligible for universal service support by providers, such as wireless telecommunications providers and cable operators, that historically have not supplied such services. We also seek comment on the extent to which such providers are supplying the services supported by the federal universal service support mechanisms to eligible beneficiaries. For example, we seek comment on the extent to which wireless service providers are supplying supported services to eligible schools and libraries. Similarly, we seek comment on the extent to which cable and other service providers are supplying supported services to entities eligible for universal service support.

45. We also seek comment on whether, in practice, any of our universal service rules discourage wireless service providers or cable service providers from offering supported services to low-income subscribers and rural, insular, and high cost subscribers. We also seek comment on whether, in practice, our universal service rules may favor unfairly one technology over another. If parties answer these statements affirmatively, we seek specific suggestions on how those rules could be amended, consistent with the Act, to facilitate the provision of services eligible for universal service support by all eligible providers.

C. Definition of Basic Service Packages to be Provided by Eligible Telecommunications Carriers

1. Background

46. In order to be designated as an "eligible telecommunications carrier" or "ETC" that is able to receive universal service support pursuant to section 254, a carrier must, among other things, offer throughout its service area "the services that are supported by Federal universal service support mechanisms under section 254(c) . . ."⁹⁴ In the *Universal Service Order*, the Commission agreed with the Joint Board that eligible telecommunications carriers

⁹³ *Universal Service Order*, 12 FCC Rcd at 8801-06.

⁹⁴ 47 U.S.C. § 214(e)(1)(A).

should provide some minimum amount of local usage as part of the "basic service" package of supported services.⁹⁵ The Commission also agreed with the Joint Board that the Commission should determine the level of local usage to be supported by federal universal service mechanisms.⁹⁶ The Commission stated in the *Universal Service Order* that it would subsequently quantify the amount of local usage that carriers receiving universal service support will be required to provide. In a Further Notice of Proposed Rulemaking, the Commission asked for comment on local usage requirements.⁹⁷ In this Further Notice, we seek additional comment on how much, if any, local usage we should require eligible telecommunications carriers to provide to customers as part of a "basic service" package if they desire to be eligible for universal service support for providing basic telecommunications service.

47. The Commission previously concluded that setting an appropriate minimum level of usage for local service is essential in order to uphold the principle of competitive neutrality.⁹⁸ Different technologies have different cost and rate structures, and, in particular, wireline and wireless carriers will be affected differently by the level of flat-rated local usage that a carrier must provide in order to be eligible to receive universal service support.⁹⁹ For wireline providers, a significant portion of the cost of local service is the cost of installing the dedicated transmission line (local loop) between a customer and the telephone company central office.¹⁰⁰ Moreover, that loop cost is a particularly large portion of the total cost of local service in the most rural areas, where population densities are lowest and the longest local loops are required.¹⁰¹ Once the loop is installed and activated, however, the incremental cost of using it for additional calls beyond the first is relatively insignificant. Thus, basic service packages offered by wireline carriers often include an option of unlimited local calling at no additional charge.

⁹⁵ *Universal Service Order*, 12 FCC Rcd at 8813, para. 67.

⁹⁶ *Universal Service Order*, 12 FCC Rcd at 8812, para. 65. The Commission also agreed with the Joint Board that the states should determine the local usage component for purposes of state universal service mechanisms. *Id.*

⁹⁷ Federal-State Joint Board on Universal Service Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Dockets No. 96-45 and 97-160, FCC 97-256 (rel. July 18, 1997).

⁹⁸ *Universal Service Order*, 12 FCC Rcd at 8814, para. 69. CTIA comments at 6-7, filed Oct. 17, 1997.

⁹⁹ We note, however, that some wireline carriers do not offer any flat-rated local usage in their basic service packages. See, e.g., Vermont PSC Tariff No. 1, § 4.13 at p. 21 (effective July 7, 1998). Thus, this issue is not exclusively one of concern for wireless providers.

¹⁰⁰ BellSouth comments at 11-12, filed Oct. 17, 1997.

¹⁰¹ In some cases the loop costs are so high that carriers require subscribers to pay a portion of that cost in addition to the regular tariffed basic service rate.

48. Fixed wireless service providers may have cost structures similar to wireline carriers, because they may need to install relatively expensive equipment on a subscriber's residence to serve as a network interface device (NID).¹⁰² Thus, dedicated facilities would represent a significant portion of the carrier's cost of providing local service. For mobile wireless providers, however, the dedicated costs of providing local service appear to be only a small portion of the total cost of providing service. The largest portion of the cost of providing mobile wireless service appears to be the cost of shared facilities, such as towers.

49. The Joint Board determined that, "in order for consumers in rural, insular, and high cost areas to realize the full benefits of affordable voice grade access, usage of, and not merely access to, the local network should be supported."¹⁰³ The Commission stated in the *Universal Service Order* that, absent a requirement to provide some specified amount of local usage, a carrier might be able to receive universal service support, which is designed to promote affordable use of the network, without in turn reducing its per-minute rates. We are cognizant, however, that a local usage requirement has the potential to affect different types of carriers differently. Setting an unreasonably high or low level of local usage can significantly affect competition among different technologies. In general, establishing a very high level of local usage would give a competitive advantage to wireline carriers, and establishing a very low level of local usage would give a competitive advantage to mobile wireless carriers.

2. Issues for Comment

50. We seek comment on whether some amount of minimum local usage should be included in the basic service packages, and if so, how to determine that local usage requirement. In light of the cost characteristics of mobile wireless service, we seek comment on how to define a basic service package with a local usage requirement that presents a realistic option to wireless customers. For example, the obligation to provide some local usage would be rendered meaningless if a wireless carrier could satisfy that obligation by offering, among other service options, a basic service package containing local usage that was priced hundreds of dollars higher than options offered by that wireless carrier or competing carriers, so that no one selected it. Thus we seek comment on how to ensure that a local usage requirement is included as part of an option that represents a viable choice for

¹⁰² A network interface device (NID) is the hardware at the end point of the network connection to an end-user customer. While the carrier is responsible for maintaining the network on its side of the NID, the customer is responsible for maintaining any inside wiring on the customer side of the NID, as well as the customer premises equipment (CPE), such as the telephone itself.

¹⁰³ *Universal Service Order*, 12 FCC Rcd at 8812, para. 65.

minutes of use per month.¹⁰⁷ The cellular and broadband PCS numbers are expected to increase in the future.¹⁰⁸ We seek comment on whether we should base the amount of local usage that a carrier must offer, at least in part, on average usage rates. Commenters that argue that no level of local usage should be required should explain why such a requirement would not be necessary to meet the goals of universal service. We encourage such commenters to suggest alternative approaches that will promote universal service goals.

53. We also seek comment on how we should determine what constitutes local usage. We note that wireless and wireline carriers may treat different sets of calls as "local."¹⁰⁹ The boundaries of the local calling areas for wireline carriers and service areas for eligible telecommunications carriers are set by the states, and the value of a particular local usage requirement will depend in part on the size of the area encompassed by the local calling area, which may vary from state to state.¹¹⁰ We seek comment on whether, and how, to account for differences in the size of local calling areas. We seek comment on whether we should vary the amount of local usage that carriers must offer depending on the size of their local calling areas. We note that the California PUC suggested in the initial rulemaking that we include a minimum of three dollars worth of local usage.¹⁰⁰ We seek guidance from the states on the level of local usage that we should require from eligible carriers serving their residents, given the size of the local calling areas and the basic service packages that they have established, recognizing that local calling areas may be different for customers of wireline and wireless carriers. We further seek comment on whether the local usage requirement we establish should be the same for business and residential users.¹⁰¹

IV. PROCEDURAL MATTERS AND ORDERING CLAUSES

A. *Ex Parte* Presentations

¹⁰⁷ These are baseline assumptions used by Donaldson, Lufkin & Jenrette, "Wireless Communications Industry" (Spring 1998) survey at pages 20 and 24 (Tables 5, 6).

¹⁰⁸ *Id.*

¹⁰⁹ TDS comments at 16, filed Oct. 17, 1997.

¹¹⁰ *Cf.* GTE comments at 40, filed Oct. 17, 1997.

¹⁰⁰ California PUC comments at 4, filed Oct. 17, 1997.

¹⁰¹ We note that, in the initial rulemaking proceeding, the California PUC advocated that business users not be allowed any local usage as part of the basic package, because business users can recover their costs through the price of their goods. California PUC comments at 5, filed Oct. 17, 1997.

54. This is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.¹⁰²

B. Initial Regulatory Flexibility Analysis

55. As required by the Regulatory Flexibility Act (RFA),¹⁰³ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Order and Further Notice. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of this Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA. See 5 U.S.C. § 603(a). In addition, the Order and Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.

56. *Need for and Objectives of the Proposed Rules.* In light of the concerns raised by wireless telecommunications providers regarding the difficulties associated with distinguishing their interstate and intrastate revenues for universal service reporting purposes, the Commission tentatively concludes that it should provide such providers with specific guidance on how to separate their interstate and intrastate revenues. Therefore, the Commission seeks comment in this Further Notice on how wireless telecommunications providers should separate their interstate and intrastate revenues for purposes of universal service reporting. The Commission sets forth and seeks comment on proposed methodologies and simplifying assumptions that could be used by wireless telecommunications providers to distinguish between their interstate and intrastate revenues. Until we issue final rules regarding the mechanisms that wireless telecommunications providers should use in allocating their revenues between the interstate and intrastate jurisdictions, we provide such providers with interim guidelines for reporting on the Worksheet their percentage of interstate telecommunications revenues. The Commission also seeks comment on whether, from the perspective of wireless providers, which historically have not supplied services eligible for universal service support, our universal service rules are competitively neutral, especially with regard to the schools and libraries program. Finally, we seek comment on the definition of the basic service packages that carriers must offer in order to be eligible to receive universal

¹⁰² See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

¹⁰³ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

service support.

57. *Legal Basis.* The proposed action is supported by sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403.

58. *Description and Estimate of the Number of Small Entities to which the Further Notice will Apply.*

59. Radiotelephone (Wireless) Carriers. The SBA has developed a definition of small entities for radiotelephone (wireless) companies. According to the SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons.¹⁰⁴ The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.¹⁰⁵ The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. We do not have information on the number of carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the proposals included in this Further Notice.

60. Cellular Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware is the data that the Commission collects annually in connection with the *TRS Worksheet*. According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services.¹⁰⁶ We have no information on the number of carriers that are not independently owned and operated, nor on those that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792

¹⁰⁴ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

¹⁰⁵ *1992 Census* at Firm Size 1-123.

¹⁰⁶ *TRS Worksheet* at Tbl. 1.

small entity cellular service carriers that may be affected by the proposals included in this Further Notice.

61. Paging Providers. The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to *Telecommunications Industry Revenue* data, there were 172 "paging and other mobile" carriers reporting that they engage in these services.¹⁰⁷ Consequently, the Commission estimates that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

62. Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than \$40 million in the three previous calendar years.¹⁰⁸ This definition of "small entity" in the context of broadband PCS auctions has been approved by the SBA.¹⁰⁹ The Commission has auctioned broadband PCS licenses in blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs. Entrepreneurs was defined for these auctions as entities, together with affiliates, having gross revenues of less than \$125 million and total assets of less than \$500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block reauction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

¹⁰⁷ FCC, *Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier)* (Nov. 1997).

¹⁰⁸ See 47 C.F.R. § 24.720(b)(1).

¹⁰⁹ See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (1994).

63. Narrowband PCS Licensees. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the MTA and BTA narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

64. 220 MHz radio services. Since the Commission has not yet defined a small business with respect to 220 MHz radio services, it will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than \$6 million for the preceding three years; and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than \$15 million for the preceding three years. Given that nearly all radiotelephone companies employ no more than 1,500 employees, for purposes of this IRFA the Commission will consider the approximately 3,800 incumbent licensees as small businesses under the SBA definition.

65. Rural Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules.¹¹⁰ A subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems.¹¹¹ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA's definition of a small business.¹¹²

66. Specialized Mobile Radio (SMR) Licensees. Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less

¹¹⁰ 47 C.F.R. § 22.99.

¹¹¹ See 47 C.F.R. §§ 22.757 - 22.759.

¹¹² 13 C.F.R. § 121.201, SIC 4812.

than \$15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.¹¹³ The proposals included in this Further Notice may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million.

67. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Order includes these 60 small entities. In the 800 MHz SMR auction, there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small entities.

68. Wireless Communications Services (WCS). WCS is a wireless service, which can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the WCS auction as an entity with average gross revenues of \$40 million for each of the three preceding years.¹¹⁴ The Commission auctioned geographic area licenses in the WCS service. There were seven winning bidders who qualified as very small business entities and one small business entity in the WCS auction. Based on this information, the Commission concludes that the number of geographic area WCS licensees affected include these eight entities.

69. *Description of Projected Reporting, Record keeping, and Other Compliance Requirements.* Section 254(d) states "that all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions" toward the preservation and advancement of universal service. Under the Commission's rules, all telecommunications carriers that provide interstate telecommunications services and some providers of interstate telecommunications are required to contribute to the universal service support mechanisms. Contributions for support for programs for high cost areas and low-income consumers are assessed on the basis of interstate and international end-

¹¹³ See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995).

¹¹⁴ See Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), GN Docket 96-228, *Report and Order*, 12 FCC Rcd 10785 (1997).

user telecommunications revenues. Contributions for support for programs for schools, libraries, and rural health care providers are assessed on the basis of interstate, intrastate, and international end-user telecommunications revenues. Contributors are required to submit information on the Universal Service Worksheet regarding their end-user telecommunications revenues. Contributors are required to distinguish between their interstate and intrastate revenues. In the Order, we provide interim safe harbor percentages that carriers may use in reporting their interstate telecommunications revenues. Under our interim guidance, those carriers that choose not to report the safe harbor percentage may be required to perform reporting and record keeping assignments in order to use a different percentage. This task may require some administrative, accounting, and legal skills.

70. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* Throughout this Further Notice, we seek comment on alternatives that will reduce the impact on entities affected by these proposals. We tentatively conclude that we should adopt a surrogate percentage that would represent the percentage of interstate telecommunications revenues reported by certain carriers. We believe that this tentative conclusion greatly minimizes the administrative burden on those small carriers that experience difficulty in identifying their interstate and intrastate revenues. We also seek comment on a number of other simplifying assumptions that certain carriers would apply in estimating their percentage of interstate telecommunications revenues. Some of these proposals may impose more administrative burdens on certain carriers than others. We therefore seek comment on the level of administrative burden that these proposals would impose and, in the event that such proposals were adopted, on ways in which to reduce the level of administrative burden that they may impose. We particularly encourage parties to submit proposals that will reduce the administrative burden on carriers in separating their interstate and intrastate revenues.

71. *Federal Rules That May Overlap, Duplicate or Conflict with the Proposed Rule.* None.

72. It is FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Initial Paperwork Reduction Act Analysis

73. This Further Notice contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of

1995, Pub. L. No. 104-13.¹¹⁵ Public and agency comments are due at the same time as other comments on this Further Notice; OMB comments are due 60 days from date of publication of this Further Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other form of information technology.

D. Deadlines and Instructions for Filing Comments

74. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before 30 days from the Federal Register publication date, and reply comments on or before 45 days from the Federal Register publication date. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

75. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

76. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St. N.W., Room 222, Washington, D.C. 20554.

¹¹⁵ A supporting statement, prepared in accordance with the Paperwork Reduction Act, that details the Commission's estimates with respect to the burdens imposed by the proposals in this Further Notice is available from the Commission or from the Office of Management and Budget.

77. Parties must also send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, 2100 M St., N.W., 8th Floor, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

E. Ordering Clauses

78. IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 218-222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 218-222, 254, and 403 that this Memorandum Opinion and Order IS HEREBY ADOPTED

79. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 218-222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 218-222, 254, and 403 that this Further Notice of Proposed Rulemaking IS HEREBY ADOPTED and comments ARE REQUESTED as described above.

80. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

**STATEMENT OF COMMISSIONER
HAROLD FURCHTGOTT-ROTH DISSENTING IN PART**

Re: Federal-State Joint Board on Universal Service; (CC Docket Nos. 96-45) .

I dissent in part from this Order and Further Notice of Proposed Rulemaking because I fear that it is a missed opportunity to simplify the universal service contribution scheme for wireless carriers and to experiment with the adoption of a flat federally mandated universal service fee. Under our regulations, wireless carriers must allocate their revenues, and thus their wireless calls, between the interstate and intrastate jurisdictions for purposes of calculating the appropriate revenues for their universal service contribution. But wireless calls are difficult to classify as interstate or intrastate, and wireless carriers' books are not traditionally kept in that fashion. Thus, wireless carriers have adopted a variety of different methodologies for calculating such revenues, resulting in widely divergent estimates by wireless companies serving the same MTA.

I support the Commission's decision to revisit this issue, and agree that some form of safe harbor should be adopted so that no carrier that is honestly estimating its interstate revenues is placed at a competitive disadvantage. I would have preferred, however, to either adopt an interim fixed federal charge for wireless carriers, or to have adopted an interim percentage safe-harbor but to have also expressly indicated the Commission's intent to adopt a fixed federal charge as the ultimate solution. I do not support the Commission's decision to continue to seek comment on the ultimate methodology that should be used by wireless carriers to estimate interstate revenues.

I believe that the Commission must begin moving to fixed explicit federal charges for the recovery of universal service contributions. Such charges have the benefit of being competitively neutral, of not discouraging use of the underlying service (not being usage-sensitive charges), and of being easily portable. As one commenter argued, "[b]y permitting more competitively neutral and fair administration than the existing process, and ensuring greater certainty, a fixed charge would promote the continued development of competition in wireless markets."¹ Instead of adopting an interim safe-harbor while the Commission expends additional resources on determining the appropriate method of approximating the number of wireless service calls or revenues that are "interstate," I would have preferred to adopt a flat fixed federal fee per wireless "line" or equivalent, at least as an interim solution if not the ultimate resolution.

I appreciate the majority's inclusion of this proposal as one of the possible contribution methodologies, and I encourage carriers to comment on the benefits of such an approach and on the easiest method of determining the amount of such a charge. In addition, I encourage parties to comment on the appropriateness of this Commission versus the relevant state commission establishing a minimum local use package that must be offered at a specific *price* to qualify for universal service support.

¹ February 23, 1998 letter from James R. Coltharp, Comcast Corporation, to Magalie Salas.

**STATEMENT OF COMMISSIONER
HAROLD FURCHTGOTT-ROTH DISSENTING IN PART**

Re: Federal-State Joint Board on Universal Service; (CC Docket Nos. 96-45) .

I dissent in part from this Order and Further Notice of Proposed Rulemaking because I fear that it is a missed opportunity to simplify the universal service contribution scheme for wireless carriers and to experiment with the adoption of a flat federally mandated universal service fee. Under our regulations, wireless carriers must allocate their revenues, and thus their wireless calls, between the interstate and intrastate jurisdictions for purposes of calculating the appropriate revenues for their universal service contribution. But wireless calls are difficult to classify as interstate or intrastate, and wireless carriers' books are not traditionally kept in that fashion. Thus, wireless carriers have adopted a variety of different methodologies for calculating such revenues, resulting in widely divergent estimates by wireless companies serving the same MTA.

I support the Commission's decision to revisit this issue, and agree that some form of safe harbor should be adopted so that no carrier that is honestly estimating its interstate revenues is placed at a competitive disadvantage. I would have preferred, however, to either adopt an interim fixed federal charge for wireless carriers, or to have adopted an interim percentage safe-harbor but to have also expressly indicated the Commission's intent to adopt a fixed federal charge as the ultimate solution. I do not support the Commission's decision to continue to seek comment on the ultimate methodology that should be used by wireless carriers to estimate interstate revenues.

I believe that the Commission must begin moving to fixed explicit federal charges for the recovery of universal service contributions. Such charges have the benefit of being competitively neutral, of not discouraging use of the underlying service (not being usage-sensitive charges), and of being easily portable. As one commenter argued, "[b]y permitting more competitively neutral and fair administration than the existing process, and ensuring greater certainty, a fixed charge would promote the continued development of competition in wireless markets."¹ Instead of adopting an interim safe-harbor while the Commission expends additional resources on determining the appropriate method of approximating the number of wireless service calls or revenues that are "interstate," I would have preferred to adopt a flat fixed federal fee per wireless "line" or equivalent, at least as an interim solution if not the ultimate resolution.

I appreciate the majority's inclusion of this proposal as one of the possible contribution methodologies, and I encourage carriers to comment on the benefits of such an approach and on the easiest method of determining the amount of such a charge. In addition, I encourage parties to comment on the appropriateness of this Commission versus the relevant state commission establishing a minimum local use package that must be offered at a specific *price* to qualify for universal service support.

¹ February 23, 1998 letter from James R. Coltharp, Comcast Corporation, to Magalie Salas.