

necessary to achieve the various goals of section 254. As noted above, we have attempted to set a benchmark level that provides sufficient support to enable reasonably comparable rates, as the statute requires. To do so, we have relied on the Joint Board's recommendations, the existing mechanism, and commenters' proposals to arrive at a benchmark level that reasonably balances the roles of the states and the federal mechanism to meet the statutory goals.

3. Support for Costs Above the National Benchmark

a. Background

60. In the *Seventh Report and Order*, the Commission recognized that there is a tension between the goal of preventing the fund from growing substantially and the goal of ensuring that support is targeted directly to the high-cost areas that need it most.¹⁸⁰ In light of the Joint Board's recommendations and commenters' suggestions, the Commission proposed five methods for resolving this tension.¹⁸¹ Four of those proposals sought to average costs over a relatively small area (the wire center or UNE cost zone level), while limiting the size of the fund by providing less than 100 percent of the support for costs above the national benchmark. The remaining proposal sought to average costs over a larger area (the study area level), while targeting the resulting support amount to the highest cost areas within that large area.¹⁸² In this section, we address the four proposals to limit the size of the fund by: (1) providing only a uniform percentage of the support otherwise indicated by costs exceeding the benchmark level; (2) capping the amount of support available to any particular state at a fixed percentage of the overall fund; (3) raising the benchmark; or (4) employing incremental funding levels for costs above the selected benchmark similar to the existing high-cost loop support mechanism (i.e., a step function benchmark).¹⁸³ Commenters offered varying degrees of support for each of these methods.¹⁸⁴

b. Discussion

61. All of the proposals to limit the size of the high-cost support mechanism assume that costs will be averaged at the wire center or UNE cost zone level. As discussed above in section IV.C.1., however, we have concluded that averaging costs below the statewide level is not the most appropriate means for the federal support mechanism to

¹⁸⁰ *Seventh Report and Order*, 14 FCC Rcd at 8129, para. 107.

¹⁸¹ *Seventh Report and Order*, 14 FCC Rcd at 8129-30, paras. 108-09. Although the Commission described these methods as "four proposals," the fourth proposal consisted of two separate proposals.

¹⁸² That proposal is addressed *infra* at section IV.C.5.

¹⁸³ *Seventh Report and Order*, 14 FCC Rcd at 8129-30, paras. 108-09.

¹⁸⁴ California comments at 13-14; CBT comments at 3-4; GTE comments at 28-30; SBC comments at 5-6; US West comments at 22-24; West Virginia comments at 8-9; Western Alliance comments at 16; Western Wireless comments at 9; Florida reply comments 10-11; USCC reply comments at 7.

achieve the goals of the Act. We recognize that our primary mission in this proceeding is to construct a federal mechanism that provides sufficient support,¹⁸⁵ and we conclude that using one of the proposals described above to limit the amount of support available to states from the federal mechanism would not provide sufficient support and would be contrary to Congress's goals and the Fifth Circuit's decision. Therefore, we reject all four of these proposals.

62. We observe, however, that providing support for all loop costs that exceed the federal benchmark would not properly take account of our separations rules.¹⁸⁶ Pursuant to the separations process, incumbent carriers currently recover, through interstate access rates, a portion of their book costs for all components necessary to provide supported services, e.g., loop costs, switching costs, etc. Our separations rules specify the percentage of costs that will be recovered through interstate rates.¹⁸⁷ In producing cost estimates, the cost model estimates only the forward-looking *intrastate* (i.e., separated) costs for all of the components necessary to provide supported services, with three important exceptions: loop costs, port costs, and local number portability (LNP) costs. The model's estimates for loop and port costs consist of both the *intrastate and interstate* (i.e., unseparated) costs of the loop and port. The model's estimates of LNP costs consist solely of interstate costs. In this Order, we are addressing support to enable the reasonable comparability of *intrastate* rates. It would therefore be inappropriate for us to address costs in this Order that are recovered through interstate rates, as these costs, or their recovery, will not directly affect intrastate rates. Our methodology must therefore account for the percentage of costs that are recovered in the interstate jurisdiction in determining how much support should be provided to enable the reasonable comparability of intrastate rates.

63. Our current separations rules allow carriers to recover 25 percent of their book loop costs through interstate rates. Carriers also recover 15 percent of their book port costs, on average, through interstate rates, and 100 percent of their LNP costs through the federal LNP cost recovery mechanism.¹⁸⁸ We therefore conclude that the forward-looking mechanism will calculate support based on 75 percent of forward-looking loop costs, 85 percent of forward-looking port costs, and 0 percent of forward-looking LNP costs, as well as 100 percent of all other forward-looking costs determined by the cost model. Based on the percentage of forward-looking costs that the intrastate portion of each of these items

¹⁸⁵ See *supra* section IV.C.1.

¹⁸⁶ See Sprint comments at 16; Vermont comments at 10 (arguing that providing 100 percent of the difference between cost and the benchmark would lead to double-recovery because a portion of cost is recovered in the interstate jurisdiction pursuant to the separations process).

¹⁸⁷ The separations rules have historically operated on carriers' book costs. See 47 C.F.R. Part 36. In addition, most carriers' actual access charge recovery is determined by our price cap rules. See 47 C.F.R. Part 69, Subpart C.

¹⁸⁸ See 47 C.F.R. Part 52, Subpart C.

represents, we have determined that together they represent 76 percent of total forward-looking costs.¹⁸⁹ Therefore, we conclude that the federal mechanism should provide 76 percent of the portion of the forward-looking cost of providing the supported services that exceeds the national benchmark.¹⁹⁰ We emphasize that this will not undermine the federal mechanism's ability to provide sufficient support.¹⁹¹ Rather, it is merely a safeguard to ensure that our mechanism adequately takes account of our separations rules and the division of cost recovery responsibility set forth in those rules. If necessary, we will adjust this support amount in light of further developments in our ongoing separations and access charge reform proceedings.

4. Elimination of the State Share Requirement from the Forward-Looking Support Methodology

a. Background

64. In the *Second Recommended Decision*, the Joint Board recommended that the methodology for determining federal high-cost support amounts should take into account the states' ability to support their own universal service needs internally through their own resources.¹⁹² The Joint Board recommended that federal support be provided only for costs that exceed both the national benchmark and the states' ability to support their own universal service needs.¹⁹³ Several members of the Joint Board, however, believed that the federal support methodology should not account for the states' ability to support their own universal

¹⁸⁹ To arrive at 76 percent, we begin with the national average cost per line generated by the model, which is \$23.836. This amount consists of \$20.813 in loop costs, \$0.861 in port costs, \$0.320 in LNP costs, and \$1.842 in all other costs. Under our separations rules, 75 percent of loop costs and, on average, 85 percent of port costs are allocated to the intrastate jurisdiction. Thus, \$15.610 ($\$20.813 \times 75\%$) of the total forward-looking loop cost, and \$0.732 ($\$0.861 \times 85\%$) of the total forward-looking port cost, represent the intrastate loop and port costs the forward-looking mechanism will support. Under our LNP rules, 100 percent of LNP costs are recovered through the federal LNP cost recovery mechanism. Thus, 0 percent of LNP costs will be supported by the forward-looking mechanism. Combining intrastate loop costs (\$15.610), intrastate port costs (\$0.732), intrastate LNP costs (\$0), and all other intrastate costs (\$1.842) equals \$18.184, which represents the total forward-looking *intrastate* costs produced by the cost model. We then divide the total forward-looking intrastate costs produced by the cost model (\$18.184) by the total forward-looking intrastate and interstate costs produced by the cost model (\$23.836), and arrive at 76 percent.

¹⁹⁰ The remaining 24 percent of forward-looking costs estimated by the cost model are already recovered through the interstate jurisdiction.

¹⁹¹ We recognize that, although the national average forward-looking loop, port, and LNP costs are \$20.813, \$0.861, and \$0.320 per month, respectively, the loop, port, and LNP costs in a particular wire center may be higher or lower than those amounts. Theoretically, it would be possible to calculate a different level of support for costs above the benchmark, i.e., other than 76 percent, in each wire center. We conclude, however, that the administrative burdens of such an approach would outweigh any of its benefits.

¹⁹² *Second Recommended Decision*, 13 FCC Rcd at 24761-62, paras. 42, 44-45.

¹⁹³ *Second Recommended Decision*, 13 FCC Rcd at 24761-62, paras. 42, 44-45.

service needs because doing so would be inconsistent with the rest of the methodology proposed by the Joint Board.¹⁹⁴

65. In the *Seventh Report and Order*, the Commission adopted the Joint Board's recommendation that the federal support mechanism take into account the states' ability to support universal service internally, i.e., the state share requirement.¹⁹⁵ Specifically, the Commission concluded that a set dollar amount per line would be an appropriate method by which to ascertain a state's internal ability to achieve reasonable comparability of rates.¹⁹⁶ The Commission then sought comment on the level of that set dollar amount per line.¹⁹⁷

b. Discussion

66. After further consultation with the Joint Board, we conclude that determining support amounts for non-rural carriers in each state based on statewide averaged costs will, under these specific circumstances, more accurately reflect each state's ability to support universal service with its own resources than would imputing a per-line amount to each state to support universal service internally. Therefore, we reconsider and eliminate the state share requirement from the methodology adopted in the *Seventh Report and Order*.¹⁹⁸

67. We find that this result is consistent with both section 254 and the Joint Board's overarching recommendation that federal support not be dependent on any particular state action and that "no state can or should be required by the Commission to establish an intrastate universal service fund."¹⁹⁹ We conclude that the Joint Board's general recommendation, namely that the Commission abstain from requiring any state action as a condition for receiving federal high-cost universal service support (other than state certifications),²⁰⁰ represents the best policy choice at this time.²⁰¹ Furthermore, we conclude

¹⁹⁴ Dissenting Statement of Commissioner Harold Furchtgott-Roth, 13 FCC Rcd at 24791 ("[A] State contribution level seems to conflict with other recommendations in the report. . . . In any event, I do not support either an explicit or an implicit federal requirement that States establish intrastate universal service funds."); Separate Statement of Commissioner Laska Schoenfelder Dissenting, 13 FCC Rcd at 24801 ("This approach is inconsistent with language contained in the recommended decision that federal support may not be made contingent upon any actions taken, or not taken, by the states.").

¹⁹⁵ *Seventh Report and Order*, 14 FCC Rcd at 8109, para. 63.

¹⁹⁶ *Seventh Report and Order*, 14 FCC Rcd at 8109, para. 63.

¹⁹⁷ *Seventh Report and Order*, 14 FCC Rcd at 8109, para. 63.

¹⁹⁸ Several commenters are generally opposed to any state share requirement. See, e.g., GTE comments at 30-33; PRTC comments at 6; SBC comments at 6; USTA comments at 6.

¹⁹⁹ *Second Recommended Decision*, 13 FCC Rcd at 24760, para. 38.

²⁰⁰ See *infra*, section IV.F.

that, together with the statewide averaging approach discussed above in section IV.C.1., the elimination of the state share requirement better fosters the Joint Board's goal of ensuring that the states' ability to provide for universal service needs within their borders is reflected in the federal mechanism. Thus, we reconsider and eliminate the state share requirement from the methodology for the forward-looking high-cost support mechanism for non-rural carriers.

5. Targeting Statewide Support Amounts

a. Background

68. Under the methodology that we have adopted above, the forward-looking federal mechanism determines the amount of support to be provided to each state by comparing the average statewide cost per line for non-rural carriers to the national benchmark of 135 percent of the national average cost per line for non-rural carriers. The mechanism then provides support for 76 percent of the costs per line that exceed the benchmark. The statewide average amount of support per line indicated for a particular state, multiplied by the number of lines in that state within non-rural carriers' study areas, equals the total amount of support provided to non-rural carriers in the state.²⁰²

69. In the *Seventh Report and Order*, the Commission proposed that, instead of taking the total amount of support provided and making it available to all carriers in a uniform amount per line, the total amount of support should be targeted so that more support is available in high-cost wire centers.²⁰³ The Commission observed that this approach would ensure that support reaches the areas that need it the most, and "would not significantly increase the size of the fund."²⁰⁴ The Commission also tentatively concluded that, if the federal support amount based on forward-looking costs provides only a portion of the support for a carrier's wire centers, then support should be allocated among all lines in those high-cost wire centers in a *pro rata* manner.²⁰⁵

b. Discussion

²⁰¹ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 444.

²⁰² If, however, a non-rural carrier would receive less support under the forward-looking mechanism than it receives under the current mechanisms, then the carrier will receive interim hold-harmless support. See *infra*, section IV.D.

²⁰³ *Seventh Report and Order*, 14 FCC Rcd at 8129, para. 108.

²⁰⁴ *Seventh Report and Order*, 14 FCC Rcd at 8129, para. 108. In fact, targeting support has no effect on the overall size of the fund. Rather, as discussed above, the fund size is dependent on the area over which costs are averaged, the level of the national benchmark, and the amount of support provided for costs above the benchmark.

²⁰⁵ *Seventh Report and Order*, 14 FCC Rcd at 8133, para. 116.

70. We conclude that, after the total amount of forward-looking support provided to carriers in a particular state has been determined in accordance with the methodology set forth above, which is based on statewide average costs, the total support amount will then be targeted so that support is only available to carriers serving those wire centers with forward-looking costs in excess of the benchmark, and so that the amount available per line in a particular wire center depends on the relative cost of providing service in that wire center.²⁰⁶ This targeting approach has two main effects. First, once the forward-looking mechanism calculates the total amount of support available within a state, the targeting approach determines which carriers receive support, and how much support is provided to each carrier. Second, the targeting approach determines the amount of support that is available to a competitive carrier that captures lines from an incumbent carrier.²⁰⁷

71. As discussed above in section IV.B., the primary role of the federal mechanism is to transfer funds among states, while states are primarily responsible for transferring funds within their borders. Our targeting approach is consistent with this determination. The total amount of support available within the state is based, as discussed above, on statewide costs – not wire center costs – relative to the federal benchmark. If we did not target support, then the same amount of federal support would be available for any line served by a competitor within the state. Thus, support would be available, for example, to competitors that serve only low-cost, urban lines, regardless of whether the cost of any of the lines served exceeds the benchmark. This result would create uneconomic incentives for competitive entry,²⁰⁸ and could result in support not being used for the purposes for which it was intended, in contravention of section 254(e).²⁰⁹

72. In the *Seventh Report and Order*, the Commission described this targeting process as follows: "if we were to determine total support amounts in each study area by running the model to estimate costs at the study area level, [we propose] to distribute support by running the model again at the wire center level in order to target support to high-cost wire centers within the study area."²¹⁰ We clarify that this process does *not* involve running the model more than once. The cost model, by design, calculates costs at the wire center level. The wire center costs generated by the model can then be averaged together, as desired, at higher levels of aggregation, such as the UNE cost zone level (assuming UNE cost

²⁰⁶ See, e.g., California comments at 12; SBC comments at 5; AT&T reply comments at 8. In section IV.D., *infra*, we adopt a slightly different approach for targeting the amount of hold-harmless support provided to a particular carrier.

²⁰⁷ The targeting approach does not affect a state's ability to direct or approve how carriers use their federal support, so long as the use is consistent with section 254(e). See *infra* section IV.F.

²⁰⁸ See *infra*, para. 74.

²⁰⁹ We also note that this targeting does not affect states' authority in connection with their certifications to the Commission that support is being used in a manner consistent with section 254(e). See *infra* section IV.F.

²¹⁰ *Seventh Report and Order*, 14 FCC Rcd 8129, para. 108.

zones are composed of wire centers), the study area level, or the statewide level. Thus, the model only needs to be run once to determine forward-looking costs for whatever methodology is selected.

73. Under the methodology we adopt today, the model's wire center costs are averaged at the statewide level and a total statewide support amount is determined. That total statewide support amount is then targeted, based on the individual high-cost wire center costs in the state, as previously determined by the cost model, that are above the benchmark. For example, assume that a state has three wire centers with ten lines in each wire center. Assume that the average forward-looking cost per line in each wire center is as follows: Wire Center 1 - \$20, Wire Center 2 - \$30, Wire Center 3 - \$40. Thus, the statewide average cost per line is \$30 ($((\$20 \times 10) + (\$30 \times 10) + (\$40 \times 10)) / 30$ lines). Assume further that the national benchmark equates to \$25 per line. Using the statewide methodology adopted above, the total amount of support provided to the carriers in the state would be \$114.00 ($(\$30 - \$25) \times 30$ lines $\times 76\%$), or \$3.80 per line per month of untargeted support. Under the targeting approach, however, this support is distributed to carriers serving lines in the highest-cost wire centers, based on the difference between costs in that wire center and the benchmark, the number of lines served, and a pro rata factor. Any carrier serving customers in the low-cost wire center receives no support. Targeting support to high-cost wire centers requires three calculations. First, support is calculated separately for each wire center (wc-scale support). Wire Center 1 is not entitled to any support because its cost is below the benchmark. Wire Center 2's wc-scale support would be \$38.00 ($(\$30 - \$25) \times 10$ lines $\times 76\%$). Wire Center 3's wc-scale support would be \$114.00 ($(\$40 - \$25) \times 10$ lines $\times 76\%$). Second, a pro-rating factor is calculated for the state. Total wc-scale support for both wire centers is \$152 ($\$38.00 + \114.00). Because only \$114.00 of support is available in the state, each wire center will receive 75 percent ($\$114 / \152) of its wc-scale support. Third, the pro-rating factor is applied to each wire center eligible for support. In Wire Center 2, support will be \$2.85 per line ($\$38.00 \times 75\% / 10$). In Wire Center 3, support will be \$8.55 per line ($\$114.00 \times 75\% / 10$). Total support in the state, distributed in this way, is \$114.00 ($(\$2.85 \times 10) + (\$8.55 \times 10)$). The targeting mechanism, therefore, provides support to carriers serving the highest cost customers, but within the overall limit on the state's support amount from the federal mechanism.

74. By comparison, a uniform distribution in the hypothetical state described above would result in all lines in the state receiving \$3.80. Thus, even though a carrier serving lines in Wire Center 1 has costs (\$20) below the benchmark (\$25), it would receive a substantial amount of support (\$3.80) for those lines, resulting in a windfall for the carrier and an artificial incentive for other carriers to compete in that wire center. At the same time, although the carrier serving lines in Wire Center 3 has costs (\$40) above the benchmark (\$25), it would receive a support amount (\$3.80) substantially below its costs, thereby discouraging competitive entry in that wire center and placing increased pressure on the state to provide additional support.

75. By targeting the total amount of support to high-cost wire centers, the federal mechanism avoids the inefficiencies and potential market distortions that could be caused by

distributing federal support on a uniform statewide basis. We believe that this distribution methodology ensures that federal high-cost support provided by state-to-state transfers will flow to carriers serving the high-cost areas within each state.

76. After further consultation with the Joint Board, we recognize that some states may wish to have federal support targeted to an area different than the wire center, e.g., the UNE cost zone, in order to achieve the individual state ratemaking goals unique to a particular state.²¹¹ We believe that such an approach is consistent with the states' primary role in ensuring reasonable comparability within their borders and would give the states a degree of flexibility in reaching that goal. Therefore, we conclude that a state may file a petition for waiver of our targeting rules, asking the Commission to target federal support to an area different than the wire center. Such a petition should include a description of the particular geographic level to which the state wishes federal support to be targeted, and an explanation of how that approach furthers the preservation and advancement of universal service within the state.²¹²

D. Interim Hold-Harmless Provision

1. Background

77. In the *Seventh Report and Order*, the Commission concluded that, consistent with the Joint Board's recommendations, a hold-harmless provision should be included with the new federal high-cost support mechanism for non-rural carriers to ensure that the amount of support provided under the new mechanism is no less than the amount provided under the existing mechanism.²¹³ The Commission found that this hold-harmless provision was necessary to prevent substantial reductions of federal support and any rate shock that may occur when the new federal mechanism goes into effect.²¹⁴ While the Commission agreed in principle that a hold-harmless provision should be adopted, it sought further comment in the *Seventh Report and Order* on the exact operation of the hold-harmless provision.²¹⁵ Specifically, the Commission sought comment on whether the hold-harmless provision should be implemented on a state-by-state basis or on a carrier-by-carrier basis (i.e., on whether the hold-harmless provision should ensure that no *state* receives less support than it receives under

²¹¹ See also AT&T reply comments at 8 (support should be distributed to UNE cost zones).

²¹² As a prerequisite to filing a waiver petition of this nature, the state must first comply with the certification requirements regarding section 254(e) of the 1996 Act that are described in section IV.F., *infra*.

²¹³ *Seventh Report and Order*, 14 FCC Rcd at 8111, para. 68. Rural carriers have been held harmless by the Commission's conclusion in the *First Report and Order* that the support mechanism for rural carriers should not change until the Rural Task Force and the Joint Board have made recommendations to the Commission, but in no event before January 1, 2001. See *First Report and Order*, 12 FCC Rcd at 8934-42, paras. 291-306.

²¹⁴ *Seventh Report and Order*, 14 FCC Rcd at 8111, para. 68.

²¹⁵ *Seventh Report and Order*, 14 FCC Rcd at 8111, para. 68, 8133-36, paras. 117-122.

the current mechanism, or that no *carrier* should receive less than it receives under the current mechanism).²¹⁶ If a state-by-state hold-harmless approach were adopted, the Commission sought comment on how such a provision would allocate support among non-rural carriers in a state if the state hold-harmless amount was not sufficient to fully hold each carrier harmless.²¹⁷ Assuming a state-by-state approach, the Commission also asked whether federal support should be distributed directly to state commissions.²¹⁸

2. Discussion

78. We conclude that the new federal high-cost support mechanism will contain an interim hold-harmless provision that provides hold-harmless support on a carrier-by-carrier basis. That is, no carrier will receive less support, on a per-line basis,²¹⁹ than it would have received if we had continued to provide support under the existing high-cost support mechanism. To accomplish this result, we shall calculate interim hold-harmless support pursuant to the existing high-cost support mechanism for non-rural carriers in Part 36 of our rules for the duration of the interim hold-harmless provision.²²⁰ Interim hold-harmless support also shall include LTS under section 54.303 of our rules for those non-rural carriers that would otherwise be eligible for LTS if we had continued to provide support under our existing high-cost support mechanism.²²¹ To the extent that a carrier qualifies for forward-looking support, in an amount greater than it would receive pursuant to the existing mechanism, the carrier shall receive support based solely on the forward-looking methodology. To the extent that a carrier does not qualify for forward-looking support, or qualifies for forward-looking support in an amount less than it would receive pursuant to the existing mechanism, the carrier shall receive interim hold-harmless support based solely on the existing support mechanism in Part 36 of our rules, and, if applicable, LTS under section 54.303 of our rules. Thus, we will ensure that no non-rural carrier will receive less support on a per line basis than it receives under the current mechanism.

79. Existing federal high-cost support under Part 36 and section 54.303 is calculated on a carrier-by-carrier basis and is reflected in the recipient carrier's rates. Our continuation of the high-cost support mechanism under Part 36 and section 54.303, as an interim hold-harmless provision, therefore, effectively adopts a carrier-by-carrier hold-harmless approach. The majority of commenters supporting a hold-harmless provision are in

²¹⁶ *Seventh Report and Order*, 14 FCC Rcd at 8133-36, paras. 117-122.

²¹⁷ *Seventh Report and Order*, 14 FCC Rcd at 8134-35, para. 120.

²¹⁸ *Seventh Report and Order*, 14 FCC Rcd at 8135, para. 121.

²¹⁹ Support under the existing mechanism is calculated on a per-line basis in each study area.

²²⁰ *See* 47 C.F.R. Part 36, Subpart F. As discussed, *infra*, the Commission will re-examine the need for the hold-harmless provision no later than January 1, 2003.

²²¹ *See* 47 U.S.C. § 54.303.

favor of a carrier-by-carrier approach.²²² We believe that a carrier-by-carrier hold-harmless provision is necessary to ensure that no sudden or undue disruption in consumer rates occurs during the transition to the new federal high-cost support mechanism based on forward-looking economic costs. Moreover, as discussed above in section IV.C.1., an interim carrier-by-carrier hold-harmless provision ensures that states will not have to take immediate action to transfer funds among carriers within their borders as a result of our decision to average costs at the statewide level.

80. We emphasize, however, that we do not intend for the continuation of high-cost support under Part 36 and section 54.303 as an interim hold-harmless provision, to insulate carriers from changes in their support amounts due to changed circumstances unrelated to the rules adopted in this Order. If a carrier becomes ineligible for high-cost universal service support after January 1, 2000, then the carrier shall not continue to receive hold-harmless support under Part 36 or section 54.303 of our rules. In addition, our continuation of support under Part 36 and section 54.303 as an interim hold-harmless provision ensures that, if the carrier's high-cost universal service support would have changed under the existing mechanism after December 31, 1999, then the carrier's hold-harmless support will be adjusted to reflect that change. We believe that computing hold-harmless support under Part 36 and section 54.303 of our rules on an ongoing basis is a better policy choice than simply "freezing" support levels as of a certain date.²²³ Freezing hold-harmless support could provide windfalls, or create hardships, for carriers that should have experienced changes in their support amounts through the normal operation of Part 36 and section 54.303. Therefore, we reject the frozen hold-harmless approach.

81. We recognize that an interim carrier-by-carrier hold-harmless provision may increase the size of the federal high-cost fund slightly when compared to a state-by-state hold-harmless provision.²²⁴ Nonetheless, we agree with commenters that this concern is outweighed by the potential for rate shock in high-cost areas during the transition to a forward-looking mechanism if carriers are not fully held harmless.²²⁵ Under the interim carrier-by-carrier hold-harmless provision that we adopt today, the amount of federal high-cost support provided to each non-rural carrier will be the greater of the amount indicated by the

²²² BellSouth comments at 9-10; CenturyTel comments at 4-8; CBT comments at 2; GTE comments at 36; Sprint comments at 7; TDS comments at 10; USTA comments at 5; US West comments at 29; Western Alliance comments at 15. *But see* AT&T comments at 15; California comments at 5; PCIA comments at 7-8; Western Wireless comments at 10.

²²³ *See, e.g.* USTA comments at 5 (support should be frozen at the level received in the quarter prior to adoption of the new mechanism, and that frozen amount would be multiplied by 4 to determine the amount of support the carrier would receive upon implementation of the new mechanism).

²²⁴ *See* CenturyTel comments at 7-8; Sprint reply comments at 5-6 (increases in the fund from a carrier-by-carrier hold-harmless approach, as opposed to a state-by-state approach, are likely to be small).

²²⁵ *See* BellSouth comments at 10; CenturyTel comments at 4-7; GTE comments at 36; Western Alliance comments at 15.

new forward-looking support mechanism, or the explicit amount of federal high-cost support that the carrier would receive, on a per-line basis, under the operation of the existing high-cost support mechanism at Part 36 and section 54.303 of the Commission's rules.²²⁶ Specifically, all carriers will continue to report cost and loop count data pursuant to Part 36.²²⁷ In the event that carriers in a particular state do not qualify for forward-looking support pursuant to Part 54²²⁸ of our rules because the statewide average forward-looking cost per line is below the national cost benchmark, or the amount determined pursuant to section 54.309 of our rules is less than the amount that would be determined under Part 36 and section 54.303, then those carriers shall receive interim hold-harmless support pursuant to Part 36 and, if applicable, section 54.303.²²⁹ This provision will ensure that no non-rural carrier receives less federal high-cost universal service support per line under the new mechanism than it receives under the current mechanism.

82. Rather than simply making available a uniform hold-harmless amount to each non-rural carrier, however, we conclude that hold-harmless support must be targeted for competitive purposes to the high-cost wire centers served by a non-rural carrier. We believe that targeting hold-harmless support to individual wire centers is necessary for many of the same reasons that we chose to target forward-looking support to individual wire centers. By targeting hold-harmless support to individual wire centers, we can encourage competitive entry in high-cost wire centers. Targeting also avoids the economic inefficiencies that could be caused by making hold-harmless support available to competitors on a uniform basis among all of the wire centers served by a carrier, such as arbitrage between deaveraged UNE rates and averaged support in low-cost wire centers.

83. Because the interim hold-harmless support provided pursuant to Part 36 and section 54.303 of our rules, unlike forward-looking support, will be based on carriers' book costs rather than the forward-looking methodology, the amount of hold-harmless support provided is not related to the level of the national benchmark. Thus, during the limited period for which hold-harmless support is available, certain carriers may receive support for costs that are below the national benchmark for forward-looking support. To ensure that hold-harmless support is available in the highest cost wire centers, we adopt a method for targeting hold-harmless support that is slightly different than the method we adopted for targeting forward-looking support.²³⁰ Specifically, as discussed in the following paragraph, we adopt a cascading approach to target hold-harmless support, so that a carrier's highest-cost wire

²²⁶ See *Seventh Report and Order*, 14 FCC Rcd at 8134, para. 119.

²²⁷ See *infra* para. 87.

²²⁸ See 47 C.F.R. Part 54, Subpart D.

²²⁹ The provision of federal support to non-rural carriers is contingent upon compliance with the state certification requirements discussed *infra* in section IV.F.

²³⁰ See *supra* section IV.C.5.

centers receive support before its lower-cost wire centers receive support. Thus, while the total amount of interim hold-harmless support available to a carrier is determined pursuant to Part 36 and section 54.303, that amount is targeted to the carrier's individual wire centers based on the forward-looking costs of providing supported services in those wire centers as determined pursuant to section 54.309 of our rules. As we explained above in section IV.C.5., carriers will receive lump sum support payments, and the states can direct carriers to spend the federal support in a manner consistent with section 254(e), though not necessarily in the wire center to which the support was targeted. By targeting hold-harmless support, however, the federal mechanism ensures that, in a wire center where the incumbent is receiving hold-harmless support, a competitor will receive an amount of support that is related to the costs in that wire center.²³¹

84. For example, assume a state has a single carrier with three wire centers in the state and ten lines in each wire center. Assume that the average forward-looking cost per line in each wire center is as follows: Wire Center 1 - \$15, Wire Center 2 - \$20, Wire Center 3 - \$25. Thus, the statewide average cost per line is \$20 $((\$150 + \$200 + \$250) / 30 \text{ lines} = \$20 / \text{line})$. Assume further that the national benchmark equates to \$22 per line, and therefore the carrier receives no forward-looking support under the forward-looking methodology in Part 54 of our rules, which averages costs at the statewide level. Also assume that the carrier receives a total of \$90 of interim hold-harmless support as determined pursuant to Part 36 of our rules. Under our targeting approach, the hold-harmless support is distributed first to the wire center with the highest costs until that wire center's costs, net of support, equal the costs in the next most expensive wire center. This process continues in a cascading fashion until all support has been distributed. In this example, the first \$50 of hold-harmless support (\$5 per line) would be distributed to Wire Center 3, so that the average forward-looking cost in Wire Center 3, net of hold-harmless support, is reduced to \$20 per line. This places Wire Center 3 on equal footing with Wire Center 2, which also has average costs of \$20 per line. The remaining \$40 of hold-harmless support would be divided equally on a per-line basis between Wire Center 2 and Wire Center 3. Thus, both wire centers would receive an additional \$2 per line $(\$40 / 20 \text{ lines})$, so that the average forward-looking costs, net of hold-harmless support, in Wire Center 2 and Wire Center 3 would be \$18 per line.

85. Moreover, because we have decided that a competitor that captures a customer from an incumbent is entitled to any per line hold-harmless support that the incumbent is receiving,²³² the distribution described above is necessary to prevent uneconomic incentives for competitive entry, potential for arbitrage with UNE rates, and to ensure that support reaches the areas where it is needed most. If hold-harmless support were not targeted to high-cost wire centers, then a uniform hold-harmless amount would be available for a competitor serving any line in the state, including low-cost lines. For example, in the hypothetical situation described above, a uniform distribution would result in all lines being eligible for \$3

²³¹ See *infra* section IV.E.

²³² See *infra* section IV.E.

(\$90 / 30 lines) of hold-harmless support. Thus, even though the cost of providing service is relatively low in Wire Center 1 (\$15), competitors serving lines in that wire center would receive a significant amount of support for those lines, creating an artificial incentive for other carriers to compete in that wire center. At the same time, the cost of providing service is relatively high in Wire Center 3 (\$25), but this would not be reflected in the amount of support available to competitors, thereby discouraging competitive entry in that wire center. Accordingly, we conclude that targeting forward-looking support to high-cost wire centers is an appropriate means for achieving Congress's goal of promoting competition in the marketplace.

86. In section IV.C.5., above, we decided to allow individual states to petition the Commission to have federal forward-looking support targeted for competitive purposes to an area different from the wire center. We concluded that such an approach is consistent with the states' primary role in achieving the goal of reasonable comparability within their borders and would allow states greater flexibility to reach that goal. We conclude that the same rationale applies with equal force in the context of targeting interim hold-harmless support. Accordingly, we conclude that a state may file a petition for waiver of our targeting rules, asking the Commission to target interim hold-harmless support to an area different than the wire center. Such a petition should include a description of the particular geographic level to which the state wishes interim hold-harmless support to be targeted, and an explanation of how that approach furthers the preservation and advancement of universal service within the state.²³³

87. As discussed below in section IV.E., we are adopting several amendments to the current data reporting requirements to ensure that cost and loop count data submitted by non-rural carriers under Part 36 will conform with loop count data submitted under our Part 54 rules for forward-looking support. All carriers serving customers in areas served by non-rural incumbent LECs will be required to file data on a quarterly schedule, instead of the present annual schedule with voluntary quarterly updates. The filing of quarterly data for rural carriers, however, shall remain voluntary. By synchronizing the reporting requirements for non-rural high-cost support, we can ensure that all non-rural carriers receive support based on data from the same time periods. We conclude that this synchronization will result in a high-cost support mechanism that is easier to administer and is more equitable, non-discriminatory, and competitively neutral.

88. We stress that the interim carrier-by-carrier hold-harmless provision that we adopt today is a *transitional* provision intended to protect consumers in high-cost areas during the shift to the new federal support mechanism that will provide support based on statewide-averaged forward-looking costs of providing the supported services.²³⁴ We agree with

²³³ As a prerequisite to filing a waiver petition of this nature, the state must first comply with the certification requirements regarding section 254(e) of the 1996 Act that are described in section IV.F., *infra*.

²³⁴ The method for ensuring that carriers use hold-harmless support in accordance with the 1996 Act is discussed below in section IV.F.

commenters that the hold-harmless provision should not be a perpetual entitlement, and should be phased out as carriers and states adapt to the new forward-looking mechanism.²³⁵ Accordingly, we request that, on or before July 1, 2000, the Joint Board provide the Commission with a recommendation on how the interim hold-harmless provision can be phased out or eliminated without causing undue disruption to consumer rates in high-cost areas. In addition, we reaffirm our original conclusion in the *Seventh Report and Order* that the Commission and the Joint Board shall, no later than January 1, 2003, comprehensively examine the operation of the revised high-cost universal service support mechanism.²³⁶

E. Portability of Support

1. Background

89. In the *Seventh Report and Order*, the Commission reaffirmed its commitment to the policy established in the *First Report and Order* that federal universal service high-cost support should be made available to all eligible telecommunications carriers that provide the supported services, including wireless carriers, regardless of the technology used.²³⁷ The Commission also reiterated its belief that competitive neutrality is a fundamental principle of universal service reform, and that portability is necessary to ensure that universal service funds are distributed in a competitively neutral manner.²³⁸ The Commission sought comment on the amount of support to be ported in the event a competitor wins a customer from an incumbent receiving hold-harmless support.²³⁹ Specifically, the Commission asked whether the competitor should receive the forward-looking amount or the incumbent's hold-harmless amount.²⁴⁰

²³⁵ See, e.g., Bell Atlantic Comments at 6; BellSouth comments at 10; California comments at 5-6; CompTel comments at 7; NY DPS comments at 13; Western Wireless comments at 11.

²³⁶ *Seventh Report and Order*, 14 FCC Rcd at 8123-24, para. 94. Furthermore, since we are adopting a carrier-by-carrier hold-harmless mechanism and not a state-by-state mechanism, we do not address issues raised in the *Seventh Report and Order* that were specific to the use of a state-by-state hold-harmless mechanism, including how support should be allocated if the state-by-state amount were insufficient to hold each carrier in the state harmless, and whether universal service high-cost support should be distributed directly to state commissions. See *Seventh Report and Order*, 14 FCC Rcd at 8134-35, paras. 120-121. We further note that commenters addressing this issue are unanimously opposed to distributing federal high-cost support directly to state commissions. GTE comments at 36-37; Omnipoint comments at 3-4; RTC comments at 14-15; SBC comments at 10; Sprint comments at 8-10; USTA comments at 5; US West comments at 30; Western Wireless comments at 12-13; Roseville reply comments at 11.

²³⁷ *Seventh Report and Order*, 14 FCC Rcd at 8113-14, paras. 72-74. See also *First Report and Order*, 12 FCC Rcd at 8861-62, paras 151-152.

²³⁸ *Seventh Report and Order*, 14 FCC Rcd at 8113, para. 72.

²³⁹ *Seventh Report and Order*, 14 FCC Rcd at 8131-33, paras. 113-116, 8135-36, para. 122.

²⁴⁰ *Seventh Report and Order*, 14 FCC Rcd at 8135-36, para. 122.

2. Discussion

90. We reiterate that federal universal service high-cost support should be available and portable to all eligible telecommunications carriers, and conclude that the same amount of support (i.e., either the forward-looking high-cost support amount or any interim hold-harmless amount) received by an incumbent LEC should be fully portable to competitive providers.²⁴¹ A competitive eligible telecommunications carrier, when support is available, shall receive per-line high-cost support for lines that it captures from an incumbent LEC, as well as for any "new" lines that the competitive eligible telecommunications carrier serves in high-cost areas. To ensure competitive neutrality, we believe that a competitor that wins a high-cost customer from an incumbent LEC should be entitled to the same amount of support that the incumbent would have received for the line, including any interim hold-harmless amount. While hold-harmless amounts do not necessarily reflect the forward-looking cost of serving customers in a particular area, we believe this concern is outweighed by the competitive harm that could be caused by providing unequal support amounts to incumbents and competitors.²⁴² Unequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent.

91. We reiterate our finding in the *First Report and Order* that, where a competitive eligible telecommunications carrier is providing service to a high-cost line exclusively through unbundled network elements (UNEs), that carrier will receive the universal service support for that high-cost line, not to exceed the cost of the unbundled network elements used to provide the supported services.²⁴³ The remainder of the support associated with that element, if any, will go to the incumbent LEC.²⁴⁴

92. As discussed above in section IV.D., we are modifying our reporting requirements to synchronize non-rural carrier submissions under Part 36 and Part 54 of our rules.²⁴⁵ Under our current Part 36 rules, incumbent LECs are required to report cost and

²⁴¹ See AT&T comments at 16; BellSouth comments at 10; California comments at 7; GTE comments at 38; Western Wireless comments at 12. Some commenters believe, however, that a competitor should receive only the forward-looking amount of support. See PRTC comments at 8; RTC comments at 15; US West comments at 30.

²⁴² See, e.g., California comments at 7.

²⁴³ See *First Report and Order*, 12 FCC Rcd. at 8932-33, para. 287. We also remind parties of our finding in the *First Report and Order* that carriers that provide service to lines solely through resale are not eligible for support for those lines, and the underlying carrier should receive the support. *First Report and Order*, 12 FCC Rcd. at 8933-34, para. 290.

²⁴⁴ *First Report and Order*, 12 FCC Rcd. at 8932-33, para. 287.

²⁴⁵ See also Western Wireless Corporation Petition for Clarification or Rulemaking, CC Docket No. 96-45 (filed Oct. 15, 1998).

loop-count data on July 31st of each year.²⁴⁶ If they so choose, incumbent LECs may update the July 31st data on a quarterly basis.²⁴⁷ Part 54 of the Commission's rules, on the other hand, requires competitive eligible telecommunications carriers to report loop-count data on July 31st of each year.²⁴⁸ Unlike the rules applicable to incumbent LECs, however, Part 54 of the Commission's rules does not currently allow competitive eligible telecommunications carriers to update their loop-count data on a quarterly basis. To ensure that forward-looking support provided under Part 54 and interim hold-harmless support provided under Part 36 and section 54.303 are based on data from the same reporting periods, and to ensure equitable, non-discriminatory, and competitively neutral treatment of incumbent LECs and competitive eligible telecommunications carriers, we shall require mandatory quarterly reporting for non-rural carriers under both Part 54 and Part 36 of our rules.²⁴⁹ By allowing incumbent LECs and competitive eligible telecommunications carriers to obtain support for high-cost lines on a regular quarterly basis, our rules will facilitate portability of support among carriers. In addition, the quarterly filing requirement is consistent with the Universal Service Administrative Company's (USAC) quarterly submission of program demand projections,²⁵⁰ and should allow more accurate projections based on regular quarterly loop counts.

F. Use of Federal High-Cost Support by Carriers

1. Background

93. Section 254(e) of the Act states that carriers must use universal service support "only for the provision, maintenance and upgrading of facilities and services for which the support is intended."²⁵¹ In the *Seventh Report and Order*, the Commission concluded that carriers receiving federal universal service high-cost support must apply that support in a

²⁴⁶ 47 C.F.R. § 36.611.

²⁴⁷ 47 C.F.R. § 36.611.

²⁴⁸ 47 C.F.R. § 54.307(b). Because the forward-looking support mechanism provides support based on costs estimated by the Commission's cost model, non-rural carriers will be required to file loop-count data, but not cost data, in order to receive forward-looking support under Part 54. Because the interim hold-harmless provision provides support based on Part 36 and section 54.303 of the Commission's rules, which rely on book costs, non-rural incumbent LECs will be required to file cost data, in addition to loop-count data, in order to receive interim hold-harmless support. Interim hold-harmless support for non-rural competitive eligible telecommunications carriers in a particular wire center is based on the amount of interim hold-harmless support available to the incumbent LEC, and thus non-rural competitive eligible telecommunications carriers need only file loop-count data under Part 54 in order to receive interim hold-harmless support.

²⁴⁹ Quarterly filing shall remain voluntary for rural carriers.

²⁵⁰ See 47 C.F.R. § 54.709(a).

²⁵¹ 47 U.S.C. § 254(e).

manner consistent with section 254(e).²⁵² The Commission also concluded that, if it finds that a carrier has not applied its high-cost support in a manner consistent with section 254, the Commission has the authority to take appropriate enforcement action.²⁵³

94. The Commission sought further comment in the *Seventh Report and Order* on ways in which it could ensure that carriers use federal high-cost support for its intended purpose.²⁵⁴ Specifically, the Commission sought comment on whether making high-cost support available as carrier revenue, to be accounted for in the state rate-setting process, will sufficiently fulfill the requirements of section 254(e) of the Act, and whether state commissions have the jurisdiction and resources to take the actions this approach would require.²⁵⁵ The Commission asked whether carriers should be required to notify high-cost customers that their lines have been identified as "high-cost" and that federal high-cost support is being provided to their carrier.²⁵⁶ The Commission also sought comment on what further restrictions, if any, could be imposed to ensure that carriers use federal high-cost support in a manner consistent with section 254. Specifically, the Commission tentatively concluded that state oversight may not in every case ensure that the goals of section 254(e) are met, and asked whether the receipt of federal support should be conditioned on any state action, including adjustments to local rate schedules.²⁵⁷ The Commission tentatively concluded that even states that lack the direct regulatory authority to ensure that federal funds are used appropriately would be able to certify to the Commission that a carrier within the state had accounted for its receipt of federal support in its rates or otherwise used the support in a manner consistent with section 254(e).²⁵⁸ Finally, the Commission sought comment on the carrier or state commission actions, if any, that may be necessary to prevent double-recovery of universal service support at both the federal and state levels.²⁵⁹

2. Discussion

95. We conclude that providing federal universal service high-cost support in the form of carrier revenue, to be accounted for by states in their ratemaking process, is an appropriate mechanism by which to ensure that non-rural carriers use high-cost support only

²⁵² *Seventh Report and Order*, 14 FCC Rcd at 8115, para. 77.

²⁵³ *Seventh Report and Order*, 14 FCC Rcd at 8115-16, para. 78.

²⁵⁴ *Seventh Report and Order*, 14 FCC Rcd at 8131-33, paras. 113-116.

²⁵⁵ *Seventh Report and Order*, 14 FCC Rcd at 8131-32, para. 114.

²⁵⁶ *Seventh Report and Order*, 14 FCC Rcd at 8131-32, para. 114.

²⁵⁷ *Seventh Report and Order*, 14 FCC Rcd at 8132-33, para. 115.

²⁵⁸ *Seventh Report and Order*, 14 FCC Rcd at 8132-33, para. 115.

²⁵⁹ *Seventh Report and Order*, 14 FCC Rcd at 8132-33, para. 115.

for the "provision, maintenance and upgrading of facilities and services for which the support is intended," in accordance with section 254(e) of the Act.²⁶⁰ We note, however, that we are not attempting to direct the manner in which states incorporate federal high-cost support into their ratemaking processes, nor are we setting forth elaborate rules for compliance with section 254(e).²⁶¹ Rather, we anticipate that states will take the appropriate steps to account for the receipt of federal high-cost support and ensure that the federal support is being applied in a manner consistent with section 254, and then certify to the Commission that federal high-cost support received by non-rural carriers in their states is being used appropriately. Because the support that will be provided by the methodology described in this Order is intended to enable the reasonable comparability of *intrastate* rates, and states have primary jurisdiction over intrastate rates, we find that it is most appropriate for states to determine how the support is used to advance the goals set out in section 254(e).

96. For example, a state could adjust intrastate rates, or otherwise direct carriers to use the federal support to replace implicit intrastate universal service support to high-cost rural areas, which was formerly generated by above-cost rates in low-cost urban areas, that has been eroded through competition. A state could also require carriers to use the federal support to upgrade facilities in rural areas to ensure that services provided in those areas are reasonably comparable to services provided in urban areas of the state. These examples are intended to be illustrative, not exhaustive. As long as the uses prescribed by the state are consistent with section 254(e), we believe that the states should have the flexibility to decide how carriers use support provided by the federal mechanism.

97. As a regulatory safeguard, however, we adopt rules in this Order requiring states that wish to receive federal universal service high-cost support for non-rural carriers within their territory to file a certification with the Commission stating that all federal high-cost funds flowing to non-rural carriers in that state will be used in a manner consistent with section 254(e). This certification requirement is applicable to non-rural incumbent LECs, and competitive eligible telecommunications carriers seeking high-cost support in the service area of a non-rural LEC. The certification shall be filed annually and shall be applicable to all non-rural carriers that the state certifies as eligible to receive federal universal service high-cost support during that annual period.²⁶² A state may file a supplemental certification for carriers not subject to the state's annual certification. A certification may be filed in the form of a letter from the appropriate state regulatory authority, and shall be filed with (1) the Commission and (2) USAC. Each certification shall become part of the public record maintained by the Commission. We note that some state commissions, including Wisconsin, may lack direct regulatory oversight to ensure that federal support is reflected in intrastate

²⁶⁰ 47 U.S.C. § 254(e).

²⁶¹ See Bell Atlantic comments at 7-8; BellSouth comments at 8-9; RTC comments at 23.

²⁶² The timing and effectiveness of these annual certifications are discussed *infra* in paragraphs 98-104.

rates.²⁶³ We believe, nonetheless, that states that lack direct authority over rates in their jurisdictions would still be able to certify to the Commission that a non-rural carrier in the state had accounted to the state commission for its receipt of federal support, and that such support had been used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.²⁶⁴ Indeed, in states with limited jurisdiction over carriers, the state need not initiate the certification process itself. Instead, in such states, non-rural LECs, and competitive eligible telecommunications carriers serving lines in the service area of a non-rural LEC, may formulate plans to ensure compliance with section 254(e), and present those plans to the state, so that the state may make the appropriate certification to the Commission. Under our rules, a state shall also have the authority to revoke a certification in the event that it determines that a carrier has not complied with section 254(e). Because states are responsible for making section 254(e) certifications to the Commission, challenges to the propriety of the certifications, or revocation of the certifications, should be brought at the state level.

98. To ensure that non-rural carriers comply with section 254(e), we do not believe that a non-rural carrier in a particular state should receive federal forward-looking support until the Commission receives an appropriate certification from the state. Absent such a certification, the Commission has no reliable way of knowing whether the forward-looking support is being used properly, because of the Commission's limited authority over carriers' intrastate activities. Therefore, we conclude that, during the first year of operation of the new federal forward-looking support mechanism (January 1, 2000 - December 31, 2000), a non-rural carrier in a particular state will not receive forward-looking support until the state files an appropriate certification with the Commission. The carrier will, however, receive interim hold-harmless support during the first year in the event that the state does not make the required certification. Given the short time before implementation of the new mechanism, we believe that providing interim hold-harmless support in the absence of a state certification is necessary to prevent possible rate shocks that might occur absent such support.

99. After further consultation with the Joint Board, we conclude that all federal high-cost support flowing to non-rural carriers in the second year of operation and thereafter, including both forward-looking support and interim hold-harmless support (to the extent that this measure is still in place), should be contingent upon the state's filing the section 254(e) certification described above. Although we recognize that some states will need more time than others to produce a certification, we must have a reliable way of knowing that federal support is being used in a manner consistent with section 254(e). We believe that the certification requirement is not an overly burdensome means of effectuating Congress's goals, and we conclude that a year is a sufficient period of time for states to file the required certification with the Commission.

²⁶³ See, e.g., Wisconsin comments at 2-3 (Wisconsin PSC does not have authority to require rate actions by price cap regulated utilities in the state).

²⁶⁴ 47 U.S.C. § 254(e).

100. Under our existing rules, USAC submits estimated universal service support requirements, including high-cost support, to the Commission two months before the beginning of each quarter.²⁶⁵ Thus, for the first quarter of 2000, USAC will submit estimated universal service support requirements on or before November 1, 1999. The Commission uses those support requirements to establish a contribution factor for the upcoming quarter.²⁶⁶ USAC then uses the contribution factor to bill carriers and collect the appropriate amount of support to fund the universal service programs.²⁶⁷ In order for USAC to submit an accurate estimate of high-cost demand, it will need to know which carriers have been certified by states pursuant to the section 254(e) certification process before it files its estimate. To allow USAC sufficient time to process section 254(e) certifications and estimate demand, we conclude that states should file such certifications one month before USAC's filing is due. For a given program year of the new forward-looking high-cost support mechanism, this would mean that section 254(e) certifications would be due on October 1.

101. We recognize that the timing of the adoption of this Order will not give states sufficient time to file section 254(e) certifications for the first program year 2000 under this approach. Therefore, for the first and second quarters of 2000 only, non-rural carriers in a state shall be entitled to retroactive forward-looking high-cost support for those quarters. Specifically, if the state files its certification on or before January 1, 2000, then carriers subject to that certification shall receive forward-looking support for the first quarter of 2000 in the second quarter of 2000,²⁶⁸ and forward-looking support for the second quarter of 2000 in that quarter. If the state files its certification on or before April 1, 2000, and certifies carriers for the first and second quarters of 2000, then carriers subject to that certification shall receive forward-looking support for the first quarter of 2000 in the third quarter of 2000, together with forward-looking support for the third quarter of 2000.²⁶⁹ Such carriers shall receive forward-looking support for the second quarter of 2000 in the fourth quarter of 2000, together with forward-looking support for the fourth quarter of 2000.²⁷⁰

102. Under this approach, some carriers may receive two quarters worth of support in a single quarter. To prevent fluctuations in the contribution factor and ensure a uniform collection of contributions, we direct USAC to collect contributions in the first quarter of

²⁶⁵ 47 C.F.R. § 54.709(a)(3).

²⁶⁶ See 47 C.F.R. § 54.709(a).

²⁶⁷ See 47 C.F.R. § 54.709(a).

²⁶⁸ Such forward-looking support shall be net of any hold-harmless support provided to the carrier in the first quarter of 2000.

²⁶⁹ Such forward-looking support shall be net of any hold-harmless support provided to the carrier in the first quarter of 2000.

²⁷⁰ Such forward-looking support shall be net of any hold-harmless support provided to the carrier in the second quarter of 2000.

2000 as if all carriers potentially eligible for forward-looking support were certified to receive such support beginning in the first quarter of 2000, and as if support were actually provided beginning in the first quarter of 2000.²⁷¹ In the event that not all potentially eligible carriers are certified to receive support for the first and second quarters of 2000, USAC shall apply any surplus contributions to reduce future collection requirements.

103. In order for non-rural carriers in a state to receive any high-cost support, either forward-looking or hold-harmless support, for the second program year beginning on January 1, 2001, the state must file its section 254(e) certification no later than one month before USAC's filing is due (i.e., October 1, 2000). In order for non-rural carriers in a state to receive any high-cost support, either forward-looking or hold-harmless support, for subsequent program years beginning on January 1, of each year, the state must file its section 254(e) certification no later than one month before USAC's filing is due (i.e., October 1 of the preceding year).

104. In the event that a state files an untimely certification, the carriers subject to that certification will not be eligible for support until the quarter for which USAC's subsequent filing is due. For example, if a state files a section 254(e) certification for the first program year, after April 1, 2000, but on or before July 1, 2000, then carriers subject to that certification will not receive forward-looking support until the fourth quarter of 2000. If a state files a section 254(e) certification for the first program year after July 1, 2000, then carriers subject to that certification will not receive forward-looking support in the first program year. If a state files a section 254(e) certification for the second program year, after October 1, 2000, but on or before January 1, 2001, then carriers subject to that certification will not receive any support, either forward-looking or hold-harmless support, until the second quarter of 2001.²⁷²

105. Because support from the federal methodology described in this Order will be used to maintain reasonably comparable *intrastate* rates, we must decide how to apply the federal support in the intrastate jurisdiction. The current federal support mechanism operates through the jurisdictional separations rules, shifting additional carrier book costs into the interstate jurisdiction so that they can be recovered through the federal mechanism.

106. We conclude that support amounts provided to incumbent non-rural carriers as a result of the hold-harmless provision should continue to operate through the jurisdictional separations process to reduce book costs to be recovered in the intrastate jurisdiction. The hold-harmless amounts are based on the existing system, which is based on carriers' book

²⁷¹ To the extent that USAC is unable to provide an estimate of first quarter 2000 demand for high-cost support based on this directive before its November 1 filing is due, USAC may submit a supplemental filing in November containing this information.

²⁷² See Appendix C for the relevant rules. The Commission does not intend to grant requests for retroactive application of state certifications, except for state certifications filed before April 1, 2000, as discussed above.

costs. Moreover, these amounts have generally been accounted for in intrastate ratemaking, so treating them differently could result in a need for states to take further action to ensure the proper application of the support.

107. As noted above, forward-looking support will be provided to non-rural carriers once states have certified that such support will be used in the intrastate jurisdiction in a manner consistent with section 254(e). In light of this provision, we conclude that we do not need to take further action to specify how such support will be applied in the intrastate jurisdiction. Before forward-looking support begins flowing to non-rural carriers, the state commission will have specified or reached agreement with that carrier on how the support will be used in the intrastate jurisdiction, in a manner consistent with section 254(e). Thus, there is no reason for further federal requirements for the application of the support.

108. We are not adopting any rules in this Order that, as a means to ensure compliance with section 254(e), would require that non-rural carriers receiving federal high-cost support offer an affordable basic local service package to their customers.²⁷³ GTE, for example, argues that each state should be required to determine the rate it considers "affordable" and then certify to the federal fund administrator that each carrier seeking high-cost funding for areas within that state provide at least one service package that meets the Commission's definition of the supported services, and is offered at a rate no greater than the state-determined affordable rate.²⁷⁴ We decline to condition support on such extensive state actions. We believe that the less onerous certification requirements described above allow states an appropriate amount of flexibility to determine how to ensure that carriers comply with section 254(e). Furthermore, as we found in the *First Report and Order*, even assuming that section 214(e) allowed the Commission to impose such a "basic service package" requirement, it is not necessary to adopt such a requirement because, in areas where there is no competition, states are charged with setting rates for local services, and where competing carriers offer the supported services, consumers will be able to choose the carrier that offers the service package best suited to the consumer's needs.²⁷⁵

109. We also decline to adopt rules in this Order that would require incumbent non-rural carriers to notify their customers that the incumbent has received federal support for their lines and that such support is portable to the carrier of the customer's choice.²⁷⁶ We agree with commenters that the issue of whether or not to require non-rural incumbent LECs to provide notification or display high-cost support credits on customer bills or inserts is best

²⁷³ See GTE comments at 34; USTA comments at 7.

²⁷⁴ GTE comments at 35.

²⁷⁵ *First Report and Order*, 12 FCC Rcd at 8824, para. 86.

²⁷⁶ See AT&T comments at 14.

left to the individual state jurisdictions to decide.²⁷⁷

110. Finally, we re-emphasize our conclusion in the *Seventh Report and Order* that, if we find that a carrier has not applied its universal service high-cost support in a manner consistent with section 254(e), we have the authority to take appropriate enforcement actions against that carrier.²⁷⁸ We remind parties that they may petition the Commission, under section 208 of the Act, if they believe a carrier has misapplied its high-cost support, and may also fully avail themselves of the Commission's formal complaint procedures to bring any alleged misapplication of federal high-cost support before the Commission.²⁷⁹ Moreover, although we have given states the flexibility to determine how carriers may use federal support in a manner consistent with section 254(e), we may revisit this issue if we find that a more prescriptive approach is necessary to ensure compliance with section 254(e).

G. Assessment and Recovery Bases for Contributions to the High-Cost Support Mechanism

111. Pursuant to the *First Report and Order*, the Commission currently assesses contributions to the high-cost universal service support mechanism on the basis of carriers' interstate and international end-user telecommunications revenues, and carriers recover their contributions through their rates for interstate services.²⁸⁰ In the *Second Recommended Decision*, the Joint Board stated that the Commission may wish to consider adding intrastate revenues to the assessment and recovery bases for the high-cost support mechanism.²⁸¹ In the *Seventh Report and Order*, the Commission took the Joint Board's recommendation under advisement, pending resolution of challenges to the Commission's assessment and recovery rules in the Fifth Circuit.²⁸²

112. As discussed above in section III.D., a three judge panel of the Fifth Circuit ruled that the Commission could not assess carriers' intrastate revenues to fund its universal service support mechanisms.²⁸³ The court also reversed and remanded for further

²⁷⁷ US West comments at 27; RTC comments at 23.

²⁷⁸ *Seventh Report and Order*, 14 FCC Rcd at 8115-16, para. 78.

²⁷⁹ 47 U.S.C. § 208. The Commission's procedures for complaints involving common carriers are codified at 47 C.F.R. § 1.720 *et seq.*

²⁸⁰ *See First Report and Order*, 12 FCC Rcd at 9200-01, paras. 825-36.

²⁸¹ *Second Recommended Decision*, 13 FCC Rcd at 24767-68, para. 63. By "assessment base," we mean the basis on which carriers' contributions to the universal service mechanisms are assessed. By "recovery base," we mean the basis on which carriers recover their contributions.

²⁸² *Seventh Report and Order*, 14 FCC Rcd at 8122, para. 90.

²⁸³ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 446-48.

consideration the Commission's decision to assess the international revenues of carriers with interstate revenues.²⁸⁴ In addition, the court reversed the Commission's "decision to require ILECs to recover universal service contributions from their interstate access charges."²⁸⁵ In response to the court's decision, the Commission removed intrastate revenues from the contribution base;²⁸⁶ exempted from the contribution base the international revenues of interstate carriers whose interstate revenues account for less than 8 percent of their combined interstate and international revenues;²⁸⁷ and revised its rules to allow incumbent LECs to recover their contributions through access charges or through end-user charges.²⁸⁸ In light of the court's decision, and the Commission's response to it, the assessment base for contributions to the high-cost support mechanism shall remain interstate and international end-user telecommunications revenues, and the recovery base shall remain rates for interstate services.

H. Adjusting Interstate Access Charges to Account for Explicit Support

113. In the *Seventh Report and Order*, the Commission agreed with the Joint Board that the Commission has the jurisdiction and responsibility to identify any universal service support that is implicit in interstate access charges.²⁸⁹ If such implicit support does exist, the Commission concluded that, to the extent possible, it should make that support explicit.²⁹⁰ Thus, in order to supplement the record in the ongoing companion access charge reform proceeding, the Commission sought comment in the *Seventh Report and Order* on how interstate access charges should be adjusted to account for implicit high-cost universal service support that may, in the future, be identified in access rates.²⁹¹ Specifically, the Commission sought further comment on a number of proposals and tentative conclusions regarding the adjustment of interstate access charges to account for explicit support, including: (1) whether price cap LECs should reduce their interstate access rates to reflect any increase in explicit federal high-cost support they receive; (2) whether the Commission should require price cap

²⁸⁴ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 433-35.

²⁸⁵ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 425.

²⁸⁶ *Universal Service Remand Order*, FCC 99-290 at paras. 15, 17.

²⁸⁷ *Universal Service Remand Order*, FCC 99-290 at paras. 15, 19-29.

²⁸⁸ *Universal Service Remand Order*, FCC 99-290 at paras. 30-33. To the extent they choose to implement an interstate end-user charge, incumbent LECs that are currently recovering their universal service contributions in interstate access charges must make corresponding reductions in their interstate access charges to avoid any double recovery. *Universal Service Remand Order*, FCC 99-290 at para 33.

²⁸⁹ *Seventh Report and Order*, 14 FCC Rcd at 8098-8100, paras. 41-43.

²⁹⁰ *Seventh Report and Order*, 14 FCC Rcd at 8098-8100, para. 43.

²⁹¹ *See Seventh Report and Order*, 14 FCC Rcd at 8136-41, paras. 123-135.

LECs to make a downward exogenous adjustment to their common line basket price cap indexes (PCIs); (3) whether price cap carriers should reduce their base factor portion (BFP); (4) whether the Commission should reduce the subscriber line charge (SLC) on primary residential or single-line business lines; and (5) whether non-rural rate-of-return LECs should apply additional interstate explicit high-cost support revenues to the CCL element.²⁹² The Commission received numerous comments addressing these issues. As we stated in the *Seventh Report and Order*, we intend to move ahead with access reform in tandem with the implementation of the revised federal high-cost support methodology.²⁹³ Accordingly, we anticipate that the Commission's final determinations regarding adjustments to interstate access charges to account for explicit universal service support will be issued in the separate *Access Charge Reform* proceeding. We re-emphasize that the support provided through the methodology described in this Order will be used to enable the reasonable comparability of *intrastate* rates, and thus will not be used to replace implicit support in interstate access rates.

I. High-Cost Loop Support For Rural Carriers

1. Background

114. Under current Commission rules, high-cost loop support for all carriers is restricted by an "interim cap" that limits the growth of the current fund each year to the annual growth in nationwide loops.²⁹⁴ The cap on total funds available for high-cost loop support is determined by applying the total growth rate in industry working loops to the prior year funding level.²⁹⁵ The loop costs of all incumbent LECs, both rural and non-rural, are used to calculate the national average cost per loop.²⁹⁶ The growth rate in working loops for non-rural carriers historically has been faster than the growth rate in working loops for rural carriers. Under our current rules, non-rural carriers are scheduled to be removed from the existing rules, and thus from the interim cap, on January 1, 2000.²⁹⁷ Thus, because the growth rate in rural working loops is slower than the growth rate in non-rural working loops, support for rural carriers will increase at a slower rate if non-rural carriers are removed from the existing system.

115. The Rural Telephone Coalition (RTC) and Western Alliance argue that rural carriers may be harmed when non-rural carriers move to the new forward-looking high-cost

²⁹² *Seventh Report and Order*, 14 FCC Rcd at 8136-41, paras. 123-135.

²⁹³ *Seventh Report and Order*, 14 FCC Rcd at 8099-8100, para. 43.

²⁹⁴ See 47 C.F.R. § 36.601(c).

²⁹⁵ See generally 36 C.F.R. Part 36, Subpart F.

²⁹⁶ See 47 C.F.R. § 36.601(c).

²⁹⁷ See 47 C.F.R. § 36.601(c).

support methodology due to the operation of the interim cap, which will remain applicable to rural carriers.²⁹⁸ NECA asserts that removing non-rural carrier loop growth data from the interim cap calculations will slow the total growth rate in industry loops, so that the growth in support levels for rural carriers will slow when the interim cap is applied solely to the smaller universe of rural carriers with lower growth levels.²⁹⁹ NECA asserts that, under the current mechanism, the "cap reduction" amount (i.e., the amount by which universal service support is reduced to avoid exceeding the cap) actually increases when non-rural carriers are removed from the current funding mechanism, and, as this larger reduction is applied solely to non-rural carriers, the overall result is a significant reduction in the annual growth rate in support for rural carriers.³⁰⁰

2. Discussion

116. Initially, we emphasize that, under our current rules, removing the non-rural carriers from the existing system does *not* result in a decrease in support for rural carriers. Rather, rural carriers would receive a smaller annual increase in support when non-rural carriers are removed from the interim cap.

117. There are three general options available to address this issue. First, we could take no action and, pursuant to our existing rules, calculate rural support under the interim cap using only the total growth in rural carrier loops. Second, as proposed by Western Alliance, we could remove the interim cap in its entirety. Finally, as proposed by NECA, we could calculate support for rural carriers as if all carriers, rural and non-rural, continued to participate in the existing fund.³⁰¹

118. Consistent with our commitment not to consider significant changes in rural carriers' support until after the Rural Task Force and the Joint Board have made their recommendations, we conclude that we should amend our Part 36 rules to calculate universal service funding for rural carriers as if all carriers continued to participate in the fund. This approach will avoid significant and immediate changes in support for rural carriers, and is similar to the interim hold-harmless provision that we adopted for non-rural carriers. We also believe that it would be inconsistent with the intent of section 254 if we allowed the growth rate of high-cost universal service support for rural carriers to be significantly and unintentionally reduced because of the overall slowdown in loop growth caused by the removal of non-rural carriers. Contrary to the suggestions of Western Alliance, however, we do not believe that removing the cap from the calculation is an appropriate remedy for this situation. The cap is designed to prevent excessive growth in the existing high-cost fund, and

²⁹⁸ See RTC comments at 16-21; Western Alliance comments at 4-7.

²⁹⁹ NECA reply comments at 4.

³⁰⁰ NECA reply comments at 6.

³⁰¹ NECA reply comments at 6.

we believe it should remain in place pending any restructuring of the high-cost support mechanism for rural carriers. In addition, because we are requiring non-rural carriers to continue reporting cost and loop-count data under Part 36 pursuant to the interim hold-harmless provision, continuing to calculate the expense adjustment for rural carriers using data from all carriers will be administratively easy to implement. We also wish to stress that, although we are modifying our rules to calculate the rural loop expense adjustment based on loop data for both rural and non-rural carriers, this remedy is an *interim* solution until we consider appropriate reforms for the rural high-cost support mechanism.

J. Lifting the Stay of the Commission's Section 251 Pricing Rules

119. In August 1996, the Commission promulgated certain rules in the *Local Competition Order* to implement section 251 of the Communications Act of 1934, as amended.³⁰² One such rule, section 51.507(f), requires each state commission to "establish different rates for [interconnection and unbundled network elements (UNEs)] in at least three defined geographic areas within the state to reflect geographic cost differences."³⁰³ Numerous parties, including incumbent LECs and state commissions, appealed the *Local Competition Order*, and the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's section 251 pricing rules in September 1996 pending its consideration of the appeal.³⁰⁴ In July 1997, the Eighth Circuit vacated the deaveraging rule, among others, on the grounds that the Commission lacked jurisdiction.³⁰⁵ On January 25, 1999, however, the U.S. Supreme Court reversed the Eighth Circuit's decision with regard to the Commission's section 251 pricing authority, and remanded the case to the Eighth Circuit for proceedings consistent with the Supreme Court's opinion.³⁰⁶

120. Because the section 251 pricing rules had not been in force for more than two years, and not all states established at least three deaveraged rate zones, the Commission stayed the effectiveness of section 51.507(f) on May 7, 1999, to allow the states to bring their rules into compliance.³⁰⁷ The Commission stated that the stay would remain in effect until six

³⁰² See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 15499 (1996).

³⁰³ 47 C.F.R. § 51.507(f).

³⁰⁴ *Iowa Utilities Board v. FCC*, 96 F.3d 1116 (8th Cir. 1996) (per curiam) (temporarily staying the *Local Competition Order* until the filing of the court's order resolving the petitioners' motion for stay). See also *Iowa Utilities Board v. FCC*, 109 F.3d 418 (8th Cir.) (dissolving temporary stay and granting petitioners' motion for stay, pending a final decision on the merits of the appeal), *motion to vacate stay denied*, 117 S. Ct. 429 (1996).

³⁰⁵ *Iowa Utilities Board v. FCC*, 120 F.3d 753, 800 n.21, 819 n.39, 820 (8th Cir. 1997).

³⁰⁶ *AT&T v. Iowa Utilities Board.*, 119 S. Ct. 721, 733, 738 (1999).

³⁰⁷ See *Deaveraged Rate Zones for Unbundled Network Elements*, CC Docket No. 96-98, Stay Order, 14 FCC Rcd. 8300, 8300-01 (1999) (*Deaveraged Rate Zones for Unbundled Network Elements*).

months after the Commission released its order in CC Docket No. 96-45 finalizing and ordering implementation of high-cost universal service support for non-rural LECs.³⁰⁸ The Commission did so to allow the states to coordinate their consideration of deaveraged rate zones with issues raised in that proceeding.³⁰⁹ Now that we have adopted an order in CC Docket No. 96-45 finalizing and ordering implementation of intrastate high-cost universal service support for non-rural LECs, state commissions can consider deaveraging in concert with the federal high-cost support that will be available in the intrastate jurisdiction. Consequently, the stay that has been in effect since May 7, 1999, shall be lifted on May 1, 2000. By that date, states are required to establish different rates for interconnection and UNEs in at least three geographic areas pursuant to section 51.507(f) of the Commission's rules.

V. PROCEDURAL MATTERS

A. Regulatory Flexibility Act Certification

121. The Regulatory Flexibility Act (RFA)³¹⁰ requires an Initial Regulatory Flexibility Analysis (IRFA)³¹¹ whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA)³¹² whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification.³¹³ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³¹⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³¹⁵ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business

³⁰⁸ *Deaveraged Rate Zones for Unbundled Network Elements*, 14 FCC Rcd at 8301.

³⁰⁹ *Deaveraged Rate Zones for Unbundled Network Elements*, 14 FCC Rcd at 8302.

³¹⁰ See 5 U.S.C. § 601 *et seq.* The RFA was amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Title II of the Contract with America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 87 (1996).

³¹¹ 5 U.S.C. § 603.

³¹² 5 U.S.C. § 604.

³¹³ 5 U.S.C. § 605(b).

³¹⁴ 5 U.S.C. § 601(6).

³¹⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632).

Administration (SBA).³¹⁶ The SBA defines a small telecommunications entity in SIC code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.³¹⁷

122. We conclude that a FRFA is not required here because the foregoing *Report and Order* adopts a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. In a companion *Further Notice of Proposed Rulemaking* in this docket, the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) seeking comment on the economic impacts on small entities.³¹⁸ No comments were received in response to that IRFA. Furthermore, we are taking action in this *Report and Order* that will have a beneficial impact on smaller rural carriers. Specifically, we are amending our Part 36 rules to calculate universal service funding for rural carriers as if all carriers, both rural and non-rural, continued to participate in the fund, pending the selection of an appropriate forward-looking high-cost support mechanism for rural carriers.³¹⁹ This action will avoid significant changes in support for rural carriers, and prevent the growth rate of high-cost universal service support for rural carriers from being significantly reduced because of a slowdown in loop growth rates that would be caused by the removal of non-rural carriers from the fund calculations. Therefore, we certify, pursuant to section 605(b) of the RFA, that the final rule adopted in the *Report and Order* will not have a significant economic impact on a substantial number of small entities.³²⁰ The Office of Public Affairs, Reference Operation Division, will send a copy of this certification, along with this *Report and Order*, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA.³²¹ In addition, this certification, and *Report and Order* (or summaries thereof) will be published in the Federal Register. The Commission will send a copy of this *Report and Order* including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.³²²

B. Effective Date of Final Rules

³¹⁶ Small Business Act, 15 U.S.C. § 632.

³¹⁷ 13 C.F.R. § 121.201.

³¹⁸ See *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 97-160, FCC 99-120 at paras. 257-271 (rel. May 28, 1999).

³¹⁹ See *supra* section IV.I.

³²⁰ 5 U.S.C. § 605(b).

³²¹ See 5 U.S.C. § 605(b).

³²² See 5 U.S.C. § 801(a)(1)(A).

123. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the Federal Register, and the information collections adopted herein shall be effective upon approval from the Office of Management and Budget (OMB). In this Order we conclude that the new forward-looking high-cost support mechanism should be implemented on January 1, 2000, and that states and territories that desire non-rural carriers within their jurisdiction to receive forward-looking high-cost support for calendar year 2000 must certify to the Commission and the Administrator that non-rural carriers receiving support within their jurisdiction will only use the support for the provision, maintenance and upgrading of the supported services. The first filing deadline for this certification will be January 1, 2000. Thus, the amendments must become effective before January 1, 2000. Making the amendments effective 30 days after publication in the Federal Register would jeopardize the required January 1, 2000 implementation and filing date. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the Federal Register.³²³

C. Paperwork Reduction Act

124. This *Report and Order* contains either proposed or modified information collections. The Commission has requested Office of Management and Budget ("OMB") approval, under the emergency processing provisions of the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, of the information collections contained in this rulemaking.³²⁴

VI. ORDERING CLAUSES

125. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 214, 218-220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 218-220, 254, 303(r), 403, and 410, the NINTH REPORT AND ORDER AND EIGHTEENTH ORDER ON RECONSIDERATION IS ADOPTED. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

126. IT IS FURTHER ORDERED that Part 36 of the Commission's Rules, 47 C.F.R. Part 36, IS AMENDED as set forth in Appendix C hereto, effective immediately upon publication in the Federal Register.

127. IT IS FURTHER ORDERED that Part 54 of the Commission's Rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix C hereto, effective immediately upon publication in the Federal Register.

³²³ See 5 U.S.C. § 553(d)(3).

³²⁴ See 44 U.S.C. § 3507(j).

128. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of the Report and Order, including the Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX A - PARTIES FILING COMMENTS

<u>Commenter</u>	<u>Abbreviation</u>
AT&T Corp.	AT&T
Ameritech	Ameritech
Bell Atlantic	Bell Atlantic
BellSouth Corporation	BellSouth
People of the State of CALIFORNIA and the California PUC	California
CenturyTel, Inc.	CenturyTel
Cincinnati Bell Telephone Company	CBT
Competitive Telecommunications Association	CompTel
General Services Administration	GSA
GTE Service Corporation	GTE
GVNW Consulting, Inc.	GVNW
Iowa Utilities Board	Iowa
ITCs, Inc.	ITCs
MCI Worldcom, Inc.	MCIW
New York State Dept. of Public Service	New York
Omnipoint Communications, Inc.	Omnipoint
Personal Communications Industry Association	PCIA
Puerto Rico Telephone Company	PRTC
Rural Telephone Coalition	RTC
SBC Communications Inc.	SBC
Sprint Corporation	Sprint
State Members of the Joint Board	State Members
TDS Telecommunications Corporation	TDS
Texas Office of Public Utility Counsel, Consumer Federation of America, National Association of State Utility Consumer Advocates, and the Consumer Union	Texas
United States Cellular Corporation	USCC
United States Telephone Association	USTA
US West, Inc.	US West
Vermont Public Service Board	Vermont
Arkansas Public Service Commission	
Maine Public utilities Commission	
Montana Public Service Commission	
New Hampshire Public Utilities Commission	
North Dakota Public Service Commission	
West Virginia Public Service Commission	
Wyoming Public Service Commission	
Virgin Islands Telephone Corporation	Vitelco