

West Virginia Public Service Commission  
Consumer Advocate Division  
Western Alliance  
Western Wireless Corporation  
Wisconsin PSC

West Virginia  
Western Alliance  
Western Wireless  
Wisconsin

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**APPENDIX B - PARTIES FILING REPLY COMMENTS**

<b><u>Commenter</u></b>	<b><u>Abbreviation</u></b>
Ameritech	Ameritech
AT&T	AT&T
Bell Atlantic Telephone Companies	Bell Atlantic
BellSouth Corporation	BellSouth
People of the State of CALIFORNIA and the California PUC	California
CenturyTel, Inc.	CenturyTel
Florida Public Service Commission	Florida
General Services Administration	GSA
GTE Service Corporation	GTE
MCI WorldCom, Inc.	MCIW
National Exchange Carrier Association, Inc.	NECA
Puerto Rico Telephone Company	PRTC
Roseville Telephone Company	Roseville
Sprint Corporation	Sprint
United States Cellular Corporation	USCC
US West, Inc.	US West
Virgin Islands Telephone Corporation	Vitelco
West Virginia Consumer Advocate	West Virginia

**APPENDIX C - FINAL RULES**

Part 36 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 36 - JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES**

**Subpart F - Universal Service Fund**

1. Section 36.601 is amended to read as follows:

**§ 36.601 General.**

(a) . . . .

(b) . . . .

(c) The annual amount of the total nationwide expense adjustment shall consist of the amounts calculated pursuant to section 54.309 of this Chapter and the amounts calculated pursuant to this subpart F. The annual amount of the total nationwide loop cost expense adjustment calculated pursuant to this Subpart F shall not exceed the amount of the total loop cost expense adjustment for the immediately preceding calendar year, increased by a rate equal to the rate of increase in the total number of working loops during the calendar year preceding the July 31st filing. The total loop cost expense adjustment shall consist of the loop cost expense adjustments, including amounts calculated pursuant to sections 36.612(a) and 36.631 of this Subpart. The rate of increase in total working loops shall be based upon the difference between the number of total working loops on December 31 of the calendar year preceding the July 31st filing and the number of total working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submissions pursuant to section 36.611 of this Subpart. Beginning January 1, 2000, non-rural incumbent local exchange carriers and, eligible telecommunications carriers serving lines in the service area of non-rural incumbent local exchange carriers, shall only receive support pursuant to this Subpart F to the extent that they qualify pursuant to section 54.311 of this Chapter for interim hold-harmless support.

2. Section 36.611 is amended to read as follows:

**§ 36.611 Submission of information to the National Exchange Carrier Association.**

In order to allow determination of the study areas and wire centers that are entitled to an expense adjustment, each incumbent local exchange carrier (LEC) must provide the National Exchange Carrier Association (NECA) (established pursuant to Part 69 of this Chapter) with the information listed below for each of its study areas, with the exception of

the information listed in subsection (h), which must be provided for each study area and, if applicable, for each wire center, as that term is defined in Part 54 of this Chapter. This information is to be filed with NECA by July 31st of each year, and must be updated pursuant to section 36.612 of this Subpart. The information filed on July 31st of each year will be used in the jurisdictional allocations underlying the cost support data for the access charge tariffs to be filed the following October. An incumbent LEC is defined as a carrier that meets the definition of an "incumbent local exchange carrier" in section 51.5 of this Chapter.

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) . . .

(f) . . .

(g) . . .

(h) For rural telephone companies, as that term is defined in section 51.5 of this Chapter, the number of working loops for each study area. For non-rural telephone companies, the number of working loops for each study area and for each wire center. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. These figures shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

3. Section 36.612 is amended to read as follows:

**§ 36.612 Updating information submitted to the National Exchange Carrier Association.**

(a) Any rural telephone company, as that term is defined in section 51.5 of this Chapter, may update the information submitted to the National Exchange Carrier Association (NECA) on July 31st pursuant to section 36.611 (a) through (h) of this Subpart one or more times annually on a rolling year basis according to the schedule below. Every non-rural telephone company must update the information submitted to NECA on July 31st pursuant to section 36.611 (a) through (h) of this Subpart according to the schedule below.

(1) Submit data covering the last nine months of the previous calendar year and the first three months of the existing calendar year no later than September 30th of the

existing year;

(2) Submit data covering the last six months of the previous calendar year and the first six months of the existing calendar year no later than December 30th of the existing year;

(3) Submit data covering the last three months of the second previous calendar year and the first nine months of the previous calendar year no later than March 30th of the existing year.

4. Section 36.622 is amended to read as follows:

**§ 36.622 National and study area average unseparated loop costs.**

(a) . . .

(1) The National Average Unseparated Loop Cost per Working Loop shall be recalculated by the National Exchange Carrier Association to reflect the September, December, and March update filings.

(2) . . .

(3) . . .

(b) . . .

(1) If a company elects to, or is required to, update the data which it has filed with the National Exchange Carrier Association as provided in § 36.612(a), the study area average unseparated loop cost per working loop and the amount of its additional interstate expense allocation shall be recalculated to reflect the updated data.

(2) . . .

(c) . . .

(d) [deleted].

5. Section 36.631 is amended to read as follows:

**§ 36.631 Expense adjustment.**

(a) . . .

(b) . . .

(c) . . .

(d) Beginning January 1, 1998, for study areas reporting more than 200,000 working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of subsections (d)(1)-(4). After January 1, 2000, the expense adjustment (additional interstate expense allocation) shall be calculated pursuant to section 54.309 of this Chapter or section 54.311 of this Chapter (which relies on this Part), whichever is applicable.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 54 - UNIVERSAL SERVICE**

**Subpart D - Universal Service Support for High Cost Areas**

6. Section 54.5 is amended by adding the following paragraph to the end of the section as follows:

**§ 54.5 Terms and definitions.**

*Wire center.* A wire center is the location of a local switching facility containing one or more central offices, as defined in the Appendix to Part 36. The wire center boundaries define the area in which all customers served by a given wire center are located.

7. Section 54.307 is amended to read as follows:

**§ 54.307 Support to a competitive eligible telecommunications carrier.**

(a) *Calculation of support.* A competitive eligible telecommunications carrier shall receive universal service support to the extent that the competitive eligible telecommunications carrier captures the subscriber lines of an incumbent local exchange carrier (LEC) or serves new subscriber lines in the incumbent LEC's service area.

(1) A competitive eligible telecommunications carrier shall receive support for

each line it serves in a particular wire center based on the support the incumbent LEC would receive for each such line.

(2) A competitive eligible telecommunications carrier that uses switching purchased as unbundled network elements pursuant to section 51.307 of this Chapter to provide the supported services shall receive the lesser of the unbundled network element price for switching or the per-line DEM support of the incumbent LEC, if any. A competitive eligible telecommunications carrier that uses loops purchased as unbundled network elements pursuant to section 51.307 of this Chapter to provide the supported services shall receive the lesser of the unbundled network element price for the loop or the incumbent LEC's per-line payment from the high-cost loop support and LTS, if any. The incumbent LEC providing nondiscriminatory access to unbundled network elements to such competitive eligible telecommunications carrier shall receive the difference between the level of universal service support provided to the competitive eligible telecommunications carrier and the per-customer level of support that the incumbent LEC would have received.

(3) A competitive eligible telecommunications carrier that provides the supported services using neither unbundled network elements purchased pursuant to section 51.307 of this Chapter nor wholesale service purchased pursuant to section 251(c)(4) of the Act will receive the full amount of universal service support that the incumbent LEC would have received for that customer.

(b) In order to receive support pursuant to this Subpart, a competitive eligible telecommunications carrier must report to the Administrator on July 31st of each year the number of working loops it serves in a service area as of December 31st of the preceding year, subject to the updates specified in subsection (c). For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in section 51.5 of this Chapter, the carrier must report the number of working loops it serves in the service area. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must report the number of working loops it serves in the service area and the number of working loops it serves in each wire center in the service area. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. These figures shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(c) For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in section 51.5 of this Chapter, the carrier may update the information submitted to the Administrator on July 31st pursuant to subsection (b) one or more times annually on a rolling year basis according to the schedule below. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must update the information submitted to the Administrator on July 31st pursuant to subsection (b) according to the schedule below.

- (1) Submit data covering the last nine months of the previous calendar year and the first three months of the existing calendar year no later than September 30th of the existing year;
- (2) Submit data covering the last six months of the previous calendar year and the first six months of the existing calendar year no later than December 30th of the existing year;
- (3) Submit data covering the last three months of the second previous calendar year and the first nine months of the previous calendar year no later than March 30th of the existing year.

8. A new section 54.309 is added as follows:

**§ 54.309 Calculation and distribution of forward-looking support for non-rural carriers.**

(a) *Calculation of Total Support Available Per State.* Beginning January 1, 2000, non-rural incumbent local exchange carriers, and eligible telecommunications carriers serving lines in the service areas of non-rural incumbent local exchange carriers, shall receive universal service support for the forward-looking economic costs of providing supported services in high-cost areas, provided that the State in which the lines served by the carrier are located has complied with the certification requirements in section 54.313 of this Subpart. The total amount of forward-looking support available in each State shall be determined according to the following methodology:

(1) For each State, the Commission's cost model shall determine the statewide average forward-looking economic cost (FLEC) per line of providing the supported services. The statewide average FLEC per line shall equal the total FLEC for non-rural carriers to provide the supported services in the State, divided by the number of lines served by non-rural carriers in the State.

(2) The Commission's cost model shall determine the national average FLEC per line of providing the supported services. The national average FLEC per line shall equal the total FLEC for non-rural carriers to provide the supported services in all States divided by the total number of lines served by non-rural carriers in all States.

(3) The national cost benchmark shall equal 135 percent of the national average FLEC per line.

(4) Support calculated pursuant to this section shall be provided to non-rural carriers in each State where the statewide average FLEC per line exceeds the national cost benchmark. The total amount of support provided to non-rural carriers in each State where the statewide average FLEC per line exceeds the national cost benchmark shall equal 76 percent of the amount of the statewide average FLEC per line that exceeds the national cost benchmark, multiplied by the number of lines served by non-rural carriers in the State.

(5) In the event that a State's statewide average FLEC per line does not exceed the national cost benchmark, non-rural carriers in such State shall be eligible for support pursuant to section 54.311 of this Subpart. In the event that a State's statewide average FLEC per line exceeds the national cost benchmark, but the amount of support otherwise provided to a non-rural carrier in that State pursuant to this section is less than the amount that would be provided pursuant to section 54.311 of this Subpart, the carrier shall be eligible for support pursuant to section 54.311 of this Subpart.

(b) *Distribution of Total Support Available Per State.* The total amount of support available per State calculated pursuant to subsection (a) shall be distributed to non-rural incumbent local exchange carriers, and eligible telecommunications carriers serving lines in the service areas of non-rural incumbent local exchange carriers, in the following manner:

(1) The Commission's cost model shall determine the wire center average FLEC per line for each wire center in the service areas of non-rural carriers in the State. Non-rural incumbent local exchange carriers, and eligible telecommunications carriers serving lines in the service areas of non-rural incumbent local exchange carriers, that serve wire centers with an average FLEC per line above the national cost benchmark, as defined in subsection (a)(3), shall receive forward-looking support;

(2) The wire center scale support amount for each wire center identified in subsection (b)(1) shall equal 76 percent of the amount of the wire center average FLEC per line that exceeds the national cost benchmark, multiplied by the number of lines in the wire center;

(3) The total amount of forward-looking support available in the State calculated pursuant to subsection (a)(4) shall be divided by the sum of the total wire center scale support amounts calculated for each wire center pursuant to subsection (b)(2);

(4) The percentage calculated pursuant to subsection (b)(3) shall be multiplied by the total wire center scale support amount calculated for each wire center pursuant to subsection (b)(2);

(5) The total amount of support calculated for each wire center pursuant to subsection (b)(4) shall be divided by the number of lines in the wire center to determine the per-line amount of forward-looking support for that wire center;

(6) The per-line amount of support for a wire center calculated pursuant to subsection (b)(5) shall be multiplied by the number of lines served by a non-rural incumbent local exchange carrier in that wire center, or by an eligible telecommunications carrier in that wire center, to determine the amount of forward-looking support to be provided to that carrier.

(c) *Petition for Waiver.* Pursuant to section 1.3 of this Chapter, any State may file a petition for waiver of subsection (b), asking the Commission to distribute support calculated

pursuant to subsection (a) to a geographic area different than the wire center. Such petition must contain a description of the particular geographic level to which the State desires support to be distributed, and an explanation of how waiver of subsection (b) will further the preservation and advancement of universal service within the State.

9. A new section 54.311 is added as follows:

**§ 54.311 Interim hold-harmless support for non-rural carriers.**

(a) *Interim Hold-Harmless Support.* The total amount of interim hold-harmless support provided to a non-rural incumbent local exchange carrier shall equal the amount of support calculated for that carrier pursuant to Part 36 of this Chapter. The total amount of interim hold-harmless support provided to a non-rural incumbent local exchange carrier shall also include Long Term Support provided pursuant to section 54.303 of this Subpart, to the extent that the carrier would otherwise be eligible for such support. Beginning on January 1, 2000, in the event that a State's statewide average FLEC per line, calculated pursuant to section 54.309(a) of this Subpart, does not exceed the national cost benchmark, non-rural incumbent local exchange carriers in such State shall receive interim hold-harmless support calculated pursuant to Part 36, and, if applicable, section 54.303 of this Subpart. In the event that a State's statewide average FLEC per line, calculated pursuant to section 54.309(a) of this Subpart, exceeds the national cost benchmark, but the amount of support that would be provided to a non-rural incumbent local exchange carrier in such State pursuant to section 54.309(b) of this Subpart is less than the amount that would be provided pursuant to Part 36 and, if applicable, section 54.303 of this Subpart, the carrier shall be eligible for support pursuant to Part 36 and, if applicable, section 54.303 of this Subpart. To the extent that an eligible telecommunications carrier serves lines in the service area of a non-rural incumbent local exchange carrier receiving interim hold-harmless support, the eligible telecommunications carrier shall also be entitled to interim hold-harmless support in an amount per line equal to the amount per line provided to the non-rural incumbent local exchange carrier pursuant to subsection (b).

(b) *Distribution of Interim Hold-Harmless Support Amounts.* The total amount of interim hold-harmless support provided to each non-rural incumbent local exchange carrier within a particular State pursuant to subsection (a) shall be distributed first to the carrier's wire center with the highest wire center average FLEC per line until that wire center's average FLEC per line, net of support, equals the average FLEC per line in the second most high-cost wire center. Support shall then be distributed to the carrier's wire center with the highest and second highest wire center average FLEC per line until those wire center's average FLECs per line, net of support, equal the average FLEC per line in the third most high-cost wire center. This process shall continue in a cascading fashion until all of the interim hold-harmless support provided to the carrier has been exhausted.

(c) *Petition for Waiver.* Pursuant to section 1.3 of this Chapter, a State may file a petition for waiver of subsection (b), asking the Commission to distribute interim hold-harmless support to a geographic area different than the wire center. Such petition must

contain a description of the particular geographic level to which the State desires interim hold-harmless support to be distributed, and an explanation of how waiver of subsection (b) will further the preservation and advancement of universal service within the State.

10. A new Section 54.313 is added as follows:

**§ 54.313 State certification.**

(a) *Certification.* States that desire non-rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a non-rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to sections 54.309 and/or 54.311 of this Subpart must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to sections 54.309 and/or 54.311 of this Subpart shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

(b) *Certification Format.* A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with both the Office of the Secretary of the Commission clearly referencing CC Docket No. 96-45, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth below in subsection (c). The annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers will only use the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification. All certifications filed by a State pursuant to this section shall become part of the public record maintained by the Commission.

(c) *Filing Deadlines.* In order for a non-rural incumbent local exchange carrier in a particular State, and/or an eligible telecommunications carrier serving lines in the service area of a non-rural incumbent local exchange carrier, to receive federal high-cost support, the State must file an annual certification, as described in subsection (b), with both the Administrator and the Commission. Support shall be provided in accordance with the following schedule:

(1) *First Program Year (January 1, 2000 - December 31, 2000).* During the first program year (January 1, 2000 - December 31, 2000), a carrier in a particular State shall receive support pursuant to section 54.311 of this Subpart. If a State files the certification described in this section during the first program year, carriers eligible for support pursuant to section 54.309 shall receive such support pursuant to the following schedule:

(i) *Certifications filed on or before January 1, 2000.* Carriers subject to certifications filed on or before January 1, 2000 shall receive support pursuant to section 54.309 of this Subpart for the first and second quarters of 2000 in the second quarter of 2000,

and on a quarterly basis thereafter. Support provided in the second quarter of 2000 shall be net of any support provided pursuant to section 54.311 of this Subpart for the first quarter of 2000.

(ii) *Certifications filed on or before April 1, 2000.* Carriers subject to certifications that apply to the first and second quarters of 2000, and are filed on or before April 1, 2000, shall receive support pursuant to section 54.309 of this Subpart for the first and third quarters of 2000 in the third quarter of 2000, and support for the second and fourth quarters of 2000 in the fourth quarter of 2000. Such support shall be net of any support provided pursuant to section 54.311 of this Subpart for the first or second quarters of 2000.

(iii) *Certifications filed on or before July 1, 2000.* Carriers subject to certifications filed on or before July 1, 2000, shall receive support pursuant to section 54.309 of this Subpart for the fourth quarter of 2000 in the fourth quarter of 2000.

(iv) *Certifications filed after July 1, 2000.* Carriers subject to certifications filed after July 1, 2000, shall not receive support pursuant to section 54.309 of this Subpart in 2000.

(2) *Second Program Year (January 1, 2001 - December 31, 2001).* During the second program year (January 1, 2001 - December 31, 2001), a carrier in a particular State shall not receive support pursuant to sections 54.309 or 54.311 of this Subpart until such time as the State files the certification described in this section. Upon the filing of the certification described in this section, support shall be provided pursuant to the following schedule:

(i) *Certifications filed on or before October 1, 2000.* Carriers subject to certifications filed on or before October 1, 2000 shall receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the first, second, third, and fourth quarters of 2001.

(ii) *Certifications filed on or before January 1, 2001.* Carriers subject to certifications filed on or before January 1, 2001 shall receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the second, third, and fourth quarters of 2001. Such carriers shall not receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the first quarter of 2001.

(iii) *Certifications filed on or before April 1, 2001.* Carriers subject to certifications filed on or before April 1, 2001 shall receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the third and fourth quarters of 2001. Such carriers shall not receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the first or second quarters of 2001.

(iv) *Certifications filed on or before July 1, 2001.* Carriers subject to certifications filed on or before July 1, 2001 shall receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the fourth quarter of 2001. Such

carriers shall not receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the first, second, or third quarters of 2001.

(v) *Certifications filed after July 1, 2001.* Carriers subject to certifications filed after July 1, 2001 shall not receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in 2001.

(3) *Subsequent Program Years (January 1 - December 31).* During the program years subsequent to the second program year (January 1, 2001 - December 31, 2001), a carrier in a particular State shall not receive support pursuant to sections 54.309 or 54.311 of this Subpart until such time as the State files the certification described in this section. Upon the filing of the certification described in this section, support shall be provided pursuant to the following schedule:

(i) *Certifications filed on or before October 1.* Carriers subject to certifications filed on or before October 1 shall receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the first, second, third, and fourth quarters of the succeeding year.

(ii) *Certifications filed on or before January 1.* Carriers subject to certifications filed on or before January 1 shall receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the second, third, and fourth quarters of that year. Such carriers shall not receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the first quarter of that year.

(iii) *Certifications filed on or before April 1.* Carriers subject to certifications filed on or before April 1 shall receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the third and fourth quarters of that year. Such carriers shall not receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the first or second quarters of that year.

(iv) *Certifications filed on or before July 1.* Carriers subject to certifications filed on or before July 1 shall receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, beginning in the fourth quarter of that year. Such carriers shall not receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in the first, second, or third quarters of that year.

(v) *Certifications filed after July 1.* Carriers subject to certifications filed after July 1 shall not receive support pursuant to sections 54.309 or 54.311 of this Subpart, whichever is applicable, in that year.

**Separate Statement  
of  
Commissioner Susan Ness**

*Re: Federal-State Joint Board on Universal Service (CC Docket No. 96-45).*

A cornerstone of the Telecommunications Act of 1996 is the notion that all Americans should have access to telecommunications services at affordable and reasonably comparable rates. It is axiomatic that universal service benefits *all* Americans, not just low-income consumers or those living in high cost areas. Each time a new subscriber is added to the system, the value of that system is enhanced.

Under section 254 of the Act, the federal government and the states together share responsibility for ensuring that specific, predictable and sufficient mechanisms are in place to preserve and advance universal service.<sup>1</sup> A key component of universal service is the requirement that quality services be available at just, reasonable, and affordable rates.<sup>2</sup> Working in close consultation with our colleagues on state public utility commissions, we today adopt an order that further clarifies these principles. We identify the federal role as enabling reasonable comparability among states; the state role is to ensure reasonable comparability within its borders. We emphasize that states can and should satisfy their own rate comparability needs to the extent possible before drawing support from other states through the federal mechanism.

We also establish, in part through operation of a cost model, the amount of federal funding that non-rural carriers receive in those states that do not have sufficient resources to make local rates reasonably comparable. The cost model estimates the carriers' forward-looking cost of providing service, which is the basis for prices in a competitive market. We cannot permanently rely on a system that is based upon the historic costs of incumbent carriers – costs which are not uniformly and predictably derived. The cost model is far from perfect. But, when used to measure forward-looking costs statewide, the model appears to have gained a reasonable level of acceptance. The model was developed to determine universal service support, and is not in its current form intended to be used for other purposes, such as setting prices for unbundled network elements. I will be watching the implementation closely to determine whether the cost model achieves our objectives.

I want to underscore what I have said previously – we have made no determination as to the appropriateness of applying this model, or any model, to determine comparative funding levels for rural carriers. The Joint Board has asked the Rural Task Force to

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<sup>1</sup> 47 U.S.C. § 254(b)(5).

<sup>2</sup> 47 U.S.C. § 254(b)(1).

**The Commission's Model Is Unwieldy, Easily Manipulated, and Will Require Constant Maintenance.** Not only does the Commission have its universal service priorities wrong, but also the model on which it relies is inconsistent with the Telecommunications Act's requirement that universal service support be "specific" and "predictable." The model is an immensely complicated computer program that requires around 180 hours – more than one week – to run. Since issuing an October 1998 NPRM in which it proposed this model, the Commission has made numerous changes to the model platform, and each change has required interested parties to go back to their computers and spend days testing the model. Only in the last few weeks has the Commission decided on final input values. In my view, it is unclear whether interested parties have even had the opportunity meaningfully to comment on a final version of the model, as the Administrative Procedure Act requires.

The model is also completely dependent on hundreds of assumptions about the local exchange markets and costs. The bottom line is that, simply by making different assumptions about local exchange networks, or by picking different input values for costs, the Commission is able to push the end result in whatever direction it chooses. I do not believe that a system that can be manipulated in this way will generate the "specific" and "predictable" universal service support that the 1996 Act requires. In addition, the fact that the Commission has found it necessary to tinker with this model so extensively reflects its fundamental lack of confidence in its model.

The model is also going to be enormously time-consuming and expensive to maintain. Each time technology or prices change, the Commission's staff will be required to adjust the model. I am opposed to wasting resources on this effort.

**The Commission's Approach to Universal Service Means that Consumers Will Pay More.** As a final matter, I want to point out what the Commission's current approach to high-cost universal service will mean for consumers. According to the model, carriers in a few states (primarily Mississippi and Alabama) should receive significantly more funding than they currently do, and the Commission plans to increase subsidies for carriers in these states. But the model also says that carriers in many other states should receive *less* universal service funding than they now do. The Commission, however, does not plan to follow the model's guidance with respect to these carriers. Instead, because it committed to Congress in April 1998 that universal service support would not decrease for any state, the Commission plans to continue distributing current levels of universal service support to carriers in all states.

The result of this so-called "hold harmless" requirement is that all carriers will receive as much or more universal service funding as they did before the issuance of these two orders. In other words, the bill for high-cost universal service support will go up, and consumers' phone bills are going to increase correspondingly. I predict that these will be only the first of several increases that consumers can expect to see in the upcoming months as a result of this Commission's misguided universal service policies.

**DISSENTING STATEMENT OF COMMISSION FURCHTGOTT-ROTH**

Re: *Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45; *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Tenth Report and Order, CC Docket Nos. 96-45, 97-160.

In the companion orders that it releases today, the Commission finalizes its implementation of a computer model that it will use to determine the total cost of providing service to every resident in the country. It plans to use this model to distribute universal service support among "non-rural carriers," the term that is used to describe the large telephone companies that serve rural areas. As I have said at earlier stages in this proceeding, this Commission's approach to universal service is fundamentally at odds with the Telecommunications Act generally and specifically with its express directive that the Commission "preserve and advance" universal service. Moreover, its adoption of this unwieldy model is inconsistent with the Act's mandate that universal service support be "specific" and "predictable." Finally, as a consequence of the Commission's action today, consumers will now pay higher bills for dubious subsidies to large companies. I therefore dissent from these orders.

**The Orders Are Inconsistent With Congress's Objective of Preserving Universal Service Support for Rural Carriers.** By way of background, four years ago, universal service was a \$2 billion per year program targeted mostly at small, rural telephone companies. Today, as a result of the Commission's unwarranted interference in the existing universal service system and the new programs that it has dreamed up, the program costs taxpayers more than \$5 billion a year.

I believe that this proceeding illustrates, yet again, that this Commission has its universal service priorities entirely backward. Section 254 of the Telecommunications Act of 1996 was drafted with rural carriers in mind. The primary objective of that provision was to ensure that rural carriers continued to receive sufficient funding to enable them to provide local service at rates comparable to those in urban areas. In light of this objective, the Commission should have turned first to the matter of preserving rural universal service. Instead, the Commission has squandered a tremendous amount of its employees' time and taxpayers' money coming up with an entirely new approach to universal service. And the matter of universal service support for rural carriers has been this Commission's very last priority.

I am relieved to see that the Commission has in these orders taken steps to ensure that funding for rural carriers will not decrease – at least in the near term. I have little confidence, however, that rural carriers can count on this promise for long. This Commission has so substantially increased universal service funding for other, less essential programs that, if and when it finally turns to addressing the issue of rural universal service support, I question whether there will be any money left for rural telephone companies.

further action by the Commission in consultation with the Joint Board. This approach would have given the Joint Board ample opportunity to weigh in to recommend that we accelerate and, if absolutely necessary, extend the sunset date. Certainly, I applaud the extent to which the item describes the hold harmless as "transitional." Without a sunset date as a baseline, however, I fear we have left the Commission, as well as the carriers and consumers who will have to pay for the two funds, unnecessarily vulnerable to enormous pressures by those states and carriers that will receive less federal support under the new mechanism. I should add that, by leaving ambiguous precisely when we will end the hold harmless, we have left ourselves vulnerable to accusations, in the courts and perhaps elsewhere, that the hold harmless is not really transitional at all.

That said, I would reiterate my strong support for this important action in our universal service implementation. The fact that it is our duty to take this action does not take away from the need for courage in doing so. And our decision today is, indeed, courageous, for it brings us even closer to ensuring that all subsidy flows are visible to everyone in the marketplace, even consumers. Although important to the development of universal service, many implicit and other subsidy flows historically have not been as apparent to carriers and consumers, and thus they have frustrated the development of local competition. The Act wisely commands that we make universal service support explicit in order to remove this obstacle to competition and thereby benefit the public. The public, however, may not always appreciate this benefit. Consumers may long for the days when they did not know what they were paying for. But that's not the way markets work, and in exchange for the benefits of competition, consumers must give up some of the comforts of regulatory paternalism that were only possible under the old, monopolistic regime. And, I dare say, letting consumers know what they are paying for will better help us to balance our duty to promote universal service against the harsh reality that, like any government spending program, the costs of universal service are ultimately borne by the American public. Perhaps that balance will curb what otherwise would be an irresistible temptation to allow federal largesse in this regard to grow unconstrained.

Based on our action today, I am hopeful that the Commission can exercise similar courage as we work hard to put together the other pieces of the subsidy puzzle, including access reform and rural high cost support. We must not quaver in our resolve to make that which is implicit explicit, nor should we be naïve enough to think we can reform implicit subsidies without any effect on consumers. Certainly, we should try to minimize these effects to the extent doing so does not undermine the reform itself. But the Commission has repeatedly tried – and, to my mind, consistently failed – to shield consumers from such impacts. And I see on the horizon no truly viable method, whether directly or through less formal means, for shielding consumers in a significant way from these impacts, save doing what seems almost unthinkable: imposing new price regulations on the competitive long distance market, just as we watch long distance rates plummet toward commodity levels. In my view, our time would be better spent completing the exercise of subsidy reform, rather than engaging in exercises in futility.

**SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL,  
CONCURRING IN PART**

*Re: Ninth Report and Order and Eighteenth Order on Reconsideration, Federal-State Joint Board on Universal Service (CC Docket No. 99-45).*

I enthusiastically support the Commission taking this important step toward fulfilling our duty to implement the universal service provisions of the Telecommunications Act of 1996. The task of determining support levels for federal high cost support is one of the most complex and contentious issues the Commission has faced since it began implementing the 1996 Act. My colleagues, our Common Carrier staff and the state members of the Joint Board are to be commended for their diligent and, at times, frustrating work to develop a platform for estimating cost of service that attempts to build on the best ideas from each of the other proposed models.

In order to promote competition and reduce at least some of the distortions created by the traditional subsidy regime, I think it is imperative that we introduce some notion of economic cost into universal service support. Although I believe the criticisms leveled at the approach we have taken with the new support mechanism have at least some merit, I cannot agree that we should have abandoned the cost models altogether. The only alternative to this approach appears to involve continuing to funnel money to states and carriers with little way of knowing objectively whether such support was necessary and without being able to target it for purposes of minimizing distortions to competitive entry signals. I fully understand that the platform is not perfect, but it is the best approach for estimating economic cost of service on a nationwide basis that we currently have. Furthermore, the models have been subjected to prolonged scrutiny over the past several years.

Yet, even though I applaud the Commission's adoption of the new mechanism as a general matter, I am troubled that we have not specified a date when carriers will no longer be "held harmless" with respect to the levels of federal support received under the old high cost mechanism, and thus I must reluctantly concur in part.

I agree that there is merit in giving carriers that will not receive as much federal support under the new mechanism some period to adjust to that change. I believe it is essential, however, that we keep that period as brief as reasonably possible because we will be collecting and distributing funds for two support mechanisms as long as the hold harmless stays in place. This approach, I concede, holds *carriers receiving federal support* harmless. But clearly, *other carriers and consumers* will not be held harmless. Rather, to support the old and new mechanisms simultaneously, carriers will have to make temporarily inflated contributions, which they will pass on to their customers in the form of higher rates or unnecessarily high line items. Thus, at the very least, I would have preferred to specify in this *Order* a date certain (*i.e.*, a sunset date) by which the hold harmless would end, absent

## Separate Statement of Commissioner Gloria Tristani

*Re: Federal-State Joint Board on Universal Service; Ninth Report & Order and Eighteenth Order on Reconsideration. CC Docket No. 96-45*

*Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs. CC Docket Nos. 96-45 & 97-160.*

In adopting these Orders, the Commission has taken an important step towards fulfilling its mandate under the 1996 Act to ensure that all Americans have access to telecommunications and information services. The new high-cost mechanism, together with the selected inputs, establishes a specific, predictable, and sufficient mechanism to preserve and advance universal service. I believe that the mechanism will provide sufficient resources to the states to ensure reasonable comparability of rates among states. Moreover, I am pleased that the Commission will be ready to provide forward-looking support to non-rural carriers based on this mechanism, effective January 1, 2000.

I commend my fellow Joint Board members, the Joint Board staff, and the Common Carrier Bureau for their outstanding cooperation in developing the model and model inputs. I likewise commend the outside parties who worked with the Joint Board and the Bureau throughout this process. I look forward to continued cooperation as we confront the other pieces of universal service reform, including adjusting interstate access charges to account for explicit support, selecting an appropriate methodology for rural carriers serving high cost areas, and addressing the needs of unserved and underserved areas.