directed the Commission and the states to take the necessary steps to create universal service mechanisms that would be sustainable in a competitive environment.[414] To achieve this end, Congress directed that universal service support "should be explicit and sufficient to achieve the purposes of [section 254]."[415]

191. The 1996 Act further establishes as a principle, on which we must base our universal service policies, that quality services should be available across the nation at affordable and reasonably comparable rates.[416] Support mechanisms should also require all providers of telecommunications services to make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.[417] Support mechanisms should neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.[418] Thus, any telecommunications carrier, using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria for "eligible telecommunications carrier" status under section 214(e)(1).[419]

192. In conducting universal service reform pursuant to the principles of the Act, the Commission has "broad discretion" to balance the dual goals of providing explicit and sufficient universal service support while promoting local competition.[420] Moreover, as long as the Commission's universal service methodology provides sufficient support for universal service, the Commission is free to adopt a methodology that serves its other goal of encouraging local competition.[421]

193. *Initial Efforts to Convert Implicit Support to Explicit Support.* In the *Universal Service First Report and Order* and the *Access Charge Reform Order*, the Commission began the process of identifying and converting implicit interstate universal service support to explicit

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[414] *See* 47 U.S.C. § 254; *see also* H. Rep. No. 204, 104th Cong., 1st Sess. 80 (1995).

[415] 47 U.S.C. § 254(e).

[416] *See* 47 U.S.C. § 254(b)(1) and (3).

[417] 47 U.S.C. § 254(b)(4).

[418] *Universal Service First Report and Order*, 12 FCC Rcd at 8802. Besides the universal service principles specified in the 1996 Act, Congress directed that the Joint Board and the Commission be guided by such other principles they determine to be consistent with the Act, and necessary and appropriate for the protection of the public interest, convenience, and necessity. 47 U.S.C. § 254(b)(7). At the recommendation of the Joint Board, the Commission adopted competitive neutrality as an additional principle for universal service. *Universal Service First Report and Order*, 12 FCC Rcd at 8801-03.

[419] *Universal Service First Report and Order*, 12 FCC Rcd at 8858-59.

[420] *Alenco v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000); *Texas Office of Public Utility Counsel v. FCC*, 183 F. 3d at 412.

[421] *Texas Office of Public Utility Counsel v. FCC*, 183 F. 3d at 412.

support.[422] The Commission determined that implicit support for universal service should be identified and removed from interstate access charges, and should be provided instead through explicit support mechanisms.[423] For example, as an initial step toward achieving this task, the Commission reformed the mechanism for Long Term Support (LTS).[424] Historically, the Commission's rules required non-pooling LECs (generally, large price cap carriers) to make contributions to the LTS mechanism, which then made explicit monetary payments to the members of the NECA pool. These non-pooling LECs recovered their contributions through increased interstate access charges. Thus, while LTS was being provided explicitly through direct monetary payments, it was being recovered implicitly through inflated interstate access charges. In order to eliminate this implicit recovery, the Commission directed that LTS be derived from an explicit federal support mechanism funded by all interstate carriers, and that non-pooling LECs reduce their interstate access charges to reflect the elimination of their obligation to contribute directly to the NECA pool.[425]

194. As described below, the CALLS Proposal also seeks to remove implicit universal service support from our interstate access charge regime. Unlike LTS, where there was an existing mechanism providing explicit support but allowing implicit recovery, the CALLS Proposal begins by identifying implicit universal service support still in interstate access charges, removes that support, and then creates a mechanism that allows for the explicit provision and recovery of interstate access universal service support.

3. The Calls Proposal: Interstate Access Universal Service Support

a. Overview

195. CALLS proposes the establishment of an explicit interstate universal service support mechanism that will provide support to replace $650 million of annual implicit support currently collected through interstate access charges, which is being phased out as part of the CALLS Proposal's common line restructuring.[426] In contrast to the Commission's existing high-cost support mechanisms for rural and non-rural carriers, which provide support to enable states to ensure reasonable comparability of *intrastate* rates, the purpose of the new federal interstate access universal service support mechanism is to provide explicit support to replace the implicit

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[422] *Universal Service First Report and Order*, 12 FCC Rcd at 8782; *see generally Access Charge Reform Order*, 12 FCC Rcd 15982.

[423] *Universal Service First Report and Order*, 12 FCC Rcd at 8786, 9163-66; *Access Charge Reform Order*, 12 FCC Rcd at 15986-87.

[424] The LTS mechanism supports carriers with higher-than-average loop costs by providing LECs that are members of the NECA pool (generally, small non-price cap carriers) with enough support to enable them to charge a nationwide average CCL interstate access rate element. *Universal Service First Report and Order*, 12 FCC Rcd at 8893.

[425] *Universal Service First Report and Order*, 12 FCC Rcd at 9169.

[426] Modified Proposal at § 2.0.

universal service support in *interstate* access charges. As explained below, the new mechanism provides support to carriers serving lines in areas where they are unable to recover their permitted revenues from the newly revised SLCs.

196. Under the CALLS Proposal, in any geographically deaveraged UNE zone where the average common line revenue per line for that zone would exceed a benchmark of $7.00 per line for residential and single-line business lines and a benchmark of $9.20 per line for multi-line business lines, the interstate access support mechanism would provide support for a portion of the difference between permitted common line revenue and the benchmarks.[427] Although the aggregate difference between permitted common line revenue per line and the benchmarks exceeds $650 million, CALLS employs a series of formulas to pro rate the amount of interstate access support so that it does not exceed $650 million per year.[428] The amount of interstate access support provided in each study area is also adjusted on a phased-in basis so that by July 1, 2003, CCL charges and multi-line business PICCs will be eliminated for most customers served by price cap LECs.[429] This interstate access support will be portable to competing eligible telecommunications carriers and targeted to areas with the greatest differential between permitted common line revenue and the benchmarks. In addition, the CALLS Proposal would increase the maximum amount of federal Lifeline support provided under our existing rules in order to match the increase in the new residential SLC, thus shielding low-income consumers from the cost of the increased residential SLC.[430]

197. As discussed in Section IV above, in this Order, we provide price cap LECs the opportunity to choose between the rate levels that are part of the CALLS Proposal, including the $650 million interstate access universal service support mechanism, or to elect to submit to a cost study based on forward-looking economic cost that would be the basis for reinitializing rates to the appropriate level. In addition, as discussed in Section IV above, we plan to review any increases to residential and single-line business SLC caps above $5.00 to verify that any such increases are appropriate and reflect higher costs where they are to be applied. Given the relationship between access charges and the interstate access universal service support mechanism, in the event that a price cap LEC elects to participate in the cost-study proceeding, we will consider the sufficiency of the support mechanism, including both the size and distribution of support, concurrently with the SLC cap proceeding. Any adjustments to the

[427] Modified Proposal at § 2.0. The SLC cap on non-primary residential lines and single-line business lines is set at $7.00, and the SLC cap on multi-line business lines is set at $9.20. Although the maximum residential SLC cap changed from $7.00 in the Original CALLS Proposal to $6.50 in Modified Proposal, the CALLS members continue to use $7.00 for purposes of allocating interstate access support to each price cap LEC's service area to maintain consistency of benchmarks between primary and non-primary residential lines. *See* CALLS *ex parte* statement of April 14, 2000.

[428] Modified Proposal at § 2.0.

[429] Modified Proposal at § 2.0.

[430] Modified Proposal at § 2.1.2.3. Additional Lifeline support is estimated to be $60 million for the first year of the plan.

support mechanism shall be consistent with the principles that support should be explicit, portable and competitively neutral.

b. Size of the Interstate Access Universal Service Support Mechanism

(i) Background

198. CALLS proposes that the interstate access universal service support mechanism be sized at $650 million.[431] This amount is fixed under the CALLS Proposal for five years.[432] According to the proponents of the CALLS Proposal, the size of the proposed interstate access universal service support mechanism is the product of negotiation between parties with adverse interests, *i.e.*, large IXCs, who are the biggest contributors to universal service, and certain large LECs, such as GTE and BellSouth, who are the biggest recipients of universal service support.[433] CALLS points out that a support mechanism sized at $650 million is well within the estimates of existing implicit support in interstate access charges that have been filed with the Commission.

199. For example, the United States Telecom Association ("USTA"), estimated that based on embedded costs, current interstate common line rates contained $3.9 billion in implicit universal service support.[434] In another estimate based on embedded costs, William Rogerson, the Commission's Chief Economist at the time, and Senior Economist Evan Kwerel estimated that interstate access charges contained $1.9 billion in implicit universal service support, assuming that residential SLCs were capped at $ 6.50 per month.[435] On the other hand, the HAI model, relying on forward-looking costs, has been used to estimate implicit support in interstate common line elements of approximately $250 million.[436]

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[431] *See* Modified Proposal at § 2.2.1. This amount does not include administrative expenses recovered pursuant to 47 C.F.R. 54.709. *See* Section IV.C.3.f *infra.*

[432] Modified Proposal at § 2.2.1.

[433] *See* CALLS Supp. Reply at 25; GTE Supp. Comments at 11-12.

[434] USTA Comments, CC Docket Nos. 96-45 and 96-262 (filed July 23, 1999). The level of implicit support estimated using USTA's methodology, however, would be lower using the SLC rates that are described in the Modified Proposal.

[435] Rogerson and Kwerel also estimated implicit support to be $3.2 billion at a residential SLC cap of $4.50 per month. *See A Proposal for Universal Service and Access Reform*, Rogerson and Kwerel, CC Docket Nos. 96-45 and 96-262 (filed May 27, 1999).

[436] This estimate was provided by AT&T using the HAI Model Version 5.0a. *See* CALLS Reply at 11 n. 20 (citing HAI Model Version 5.0a, Docket No. 96-45, using SLC caps of $7.00 for residential and single line business lines and $9.20 for multi-line business lines and FCC Common Inputs as of March 10, 1999). The HAI model uses a series of algorithms designed to estimate the cost of building a telephone network. *See Universal Service Tenth Report and Order*, 14 FCC Rcd at 20162.

200. Moreover, according to CALLS, a support mechanism sized at $650 million is consistent with AT&T's estimate of implicit support based on forward-looking costs.[437] Using the Commission's synthesis model[438] with the Commission's common inputs as of June 2, 1999, AT&T concluded that $650 million is a reasonable estimate of the interstate portion of forward-looking loop and port costs exceeding a maximum residential and single-line business SLC of $7.00 and multi-line business SLC of $9.20.[439]

(ii) Discussion

201. We find that the $650 million interstate access universal service support mechanism proposed by CALLS satisfies section 254's goals that universal service support be explicit as well as specific, predictable, and sufficient. By fixing the amount of support at $650 million per year for five years, the CALLS Proposal provides a specific and predictable amount of explicit support.[440] In addition, we believe that this amount is sufficient to keep rates affordable and reasonably comparable. As the Fifth Circuit observed, section 254(e) is ambiguous as to what constitutes "sufficient" support, and thus the Commission must use its expertise and informed judgment to make a reasonable determination concerning the sufficiency of explicit universal service support.[441] The record in this proceeding, as well as our experience, reveals that identifying an amount of implicit support in our interstate access charge system to make explicit is an imprecise exercise. The various implicit support flows (*e.g.*, business to

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[437] *See* Declaration of Joel E. Lubin, Modified Proposal, Appendix D.

[438] The Commission's synthesis model is a series of algorithms that allow the user to estimate the cost of building a telephone network. *See generally* Federal State Joint Board on Universal Service, and Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs, Fifth Report and Order, CC Docket No. 96-45, Fifth Report and Order, 13 FCC Rcd 21323 (1998) (*Universal Service Fifth Report and Order*); *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20162-64.

[439] According to CALLS, AT&T used the following methodology to arrive at the $650 million estimate:

> AT&T aggregated the serving wire centers in each price cap LEC study area into three cost zones: low, medium and high, such that the number of lines in each cost zone were roughly equal. Then, AT&T used the FCC's Synthesis Model with FCC inputs as of June 2, 1999, to calculate the unseparated forward-looking costs of the loop and ports in all zones. AT&T then applied a 25% separations factor against the unseparated forward-looking costs of the loop and port, and compared 25% of the average forward-looking cost within each cost zone against a maximum affordable SLC of $7 per residence and single line business line, and $9.20 per multi-line business. To the extent that the forward-looking costs in a high-cost zone exceeded the SLC cap, the difference between 25% of the projected loop and port cost and the applicable SLC cap represents the amount to be funded by the Interstate Access-Related High-cost Fund. When summed across all zones in all price cap LEC study areas, the total forward-looking cost-based estimate of implicit support to be funded through the Interstate-Access-related USF is $613 million. On the basis of this analysis, [AT&T] concluded that $650 million would be a reasonably conservative estimate.

See *CALLS NPRM*, Appendix C, 14 FCC Rcd at 16977.

[440] *See* 47 U.S.C § 254(e).

[441] *TOPUC v. FCC*, 183 F.3d at 425-26.

residential, high-volume to low-volume, and geographic rate averaging) are not easily severable and quantifiable. Moreover, the competitive pricing pressures present during this transitional period between monopoly and competition present additional complexities in identifying a specific amount of implicit support. Thus, we recognize that different estimates of this amount each may be considered reasonable.

202. We are persuaded, however, that at this time $650 million is a reasonable estimate of the amount of universal service support that currently is in our interstate access charge regime. This estimate falls within the range of estimates that have been submitted in the universal service proceeding.[442] We also agree with the CALLS proponents who argue that the negotiated nature of the $650 million estimate provides strong evidence that $650 million will be sufficient, though not excessive, to ensure affordable and reasonably comparable rates.[443] CALLS includes companies such as AT&T and Sprint who, with MCI and other IXCs, pay the lion's share of universal service contributions, as well as companies such as Bell Atlantic and SBC who provide local service in areas that tend to be lower cost to serve on average and who therefore are net payers of universal service contributions. As net payers, these carriers have incentives to minimize the size of universal service support mechanisms. Companies such as BellSouth, GTE, and Sprint Local, on the other hand, provide service in areas that generally have higher costs and therefore are usually net recipients of universal service support. As net recipients of universal service support, these LECs have incentives to maximize the size of the universal service support mechanisms. Because of the divergent interests of these parties, we believe that $650 million represents a sufficient amount of explicit universal service support to replace the implicit support that has been removed from access charges, and should ensure affordable and reasonably comparable rates.

203. Consistent with our obligations under section 254, we emphasize that reforming access charges and creating an interstate access universal service support mechanism sized at $650 million is a necessary first step on the path to a more competitive telecommunications marketplace. As discussed above, we will revisit the size and operation of this mechanism before the end of the five-year plan as part of any changes we make to access charges as a result of a price cap LEC cost study. Otherwise, we agree with commenters who suggest that this estimate should be reevaluated at the end of the five-year plan to determine the sufficiency of the fund based on the development of competition and market-based pricing.[444] At that time, we will make any adjustment to the fund that is necessary to ensure that such funding is sufficient, yet not excessive, to keep rates in high-cost areas affordable and reasonably comparable to rates in

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[442] The record in our universal service proceeding illustrates that there can be substantial variations in model-produced estimates of forward-looking costs, and therefore estimates of the amount of universal service support that is implicit in our interstate access regime. This largely is due to variations in model inputs. Estimates vary due to the cost of capital, depreciation rates, the number of entities sharing telephone poles, and the actual location of customers. *See Universal Service Fifth Report and Order*, 13 FCC Rcd 21323.

[443] CALLS Reply Comments at 11.

[444] *See, e.g.*, MCI Comments at 4.

areas with greater population density.[445] Because we plan to reevaluate the size of the interstate access universal service mechanism, and because creation of this mechanism is a necessary first step to remove implicit support from our interstate access charge regime, we decline commenters' suggestions that we delay implementation of the mechanism pending further evaluation.[446]

204. Some commenters argue that the size of the interstate access universal service mechanism is too large.[447] Other commenters argue that the size of the interstate access universal service support mechanism is too small.[448] Still other commenters argue that the $650 million estimate is not based on a reasonable measure of price cap LECs' forward-looking costs.[449] These commenters also argue that not all CMT revenues arise due to the provision of universal service, and thus the FCC must undertake a detailed examination of price cap LECs' rates and costs to determine the proper amount of implicit universal service support that should be recovered through the interstate access universal service support mechanism.[450] The estimates from parties commenting on the CALLS Proposal range from $300 million[451] to $1.2 billion.[452] For example, ALTS and Time Warner merely assert, without any empirical support, that the interstate access universal service support mechanism would be more appropriately sized at $300 million.[453] U S West, on the other hand, estimates support at $1.2 billion. U S West's effort to quantify interstate access universal service support illustrates the difficulty in calculating a precise amount of implicit universal service support that should be recovered through the interstate access universal service support mechanism. For example, U S West's estimate assumes a multi-line business SLC of $6.50, rather than $9.20.[454] Therefore, U S West's estimate

[445] *See Alenco v. FCC,* 201 F.3d at 620 (observing that "excessive funding may itself violate the sufficiency requirements of the Act. . . . Because universal service is funded by a general pool subsidized by all telecommunications providers—and thus indirectly by the customers—excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.")

[446] *See e.g.,* Joint Board Supp. Comments at 6; California Commission Supp. Comments at 6.

[447] ALTS and Time Warner Supp. Comments at 17 (arguing for a $300 million interstate access mechanism); California Commission Supp. Comments at 6.

[448] Montana Commission Supp. Comments at 2; Wyoming Commission Supp. Comments at 2-3; U S West Supp. Reply at 1 (advocating a $1.2 billion interstate access universal service support mechanism).

[449] California Commission Supp. Comments at 6; MCI Comments at 4; Ohio Commission Comments at 21; Joint Consumer Commenters Supp. Comments at 17; Washington Commission Comments at 6.

[450] California Commission Supp. Comments at 5-6;

[451] ALTS and Time Warner Supp. Comments at 17.

[452] U S West Supp. Comments at 7.

[453] ALTS and Time Warner Supp. Comments at 17.

[454] See U S West Supp. Comments at 8.

fails to account for a significant amount of revenue that will be recovered through the multi-line business SLC, and thus does not need to be recovered through the interstate access universal service support mechanism. Although we do not believe these alternative estimates are more reliable than CALLS' $650 million estimate, we find that the range of these estimates by parties with adverse interests supports the reasonableness of an interstate access universal service support mechanism sized at $650 million per year.

205. We also reject suggestions by commenters[455] that the proposed $650 million interstate access universal service support mechanism is excessive because it was designed to cover the "gap" between capped end user charges and LEC permitted revenues under price caps based on embedded costs. Under the universal service distribution formulas, as discussed below, the difference between price cap LEC permitted revenue and the SLC benchmarks exceeds the $650 million cap on the interstate access universal service support mechanism. Nevertheless, price cap LECs, who are the largest net recipients of universal service support, have agreed that $650 million provides adequate interstate access universal service support. Thus, we agree with CALLS and the Massachusetts Department of Telecommunications and Energy[456] that the $650 million is a reasonable, yet not excessive, estimate of the amount necessary to provide sufficient universal service support to ensure affordable and reasonably comparable end-user rates.

c. Distribution of Interstate Access Support

(i) Background

206. The methodology for distributing interstate access universal service support consists of a series of mathematical formulas that measure the difference between CMT revenue under price caps and benchmarks based on the new SLC caps.[457] These formulas compare price cap LEC CMT revenue per line to the SLC benchmarks at both the study area and UNE zone levels. These formulas target interstate access support to the study areas and UNE zones with the greatest difference between CMT revenue and the SLC benchmarks.[458] Because UNE zone prices, and the resulting CMT revenues, are based on costs, this methodology is designed to direct greater amounts of support to higher cost areas. Specifically, an amount up to the first $75 million is allocated to study areas where the study area average revenue requirement per line is

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[455] *See, e.g.*, Cable & Wireless Comments at 5.

[456] *See* Mass. DTE Comments at 5.

[457] *See* Modified Proposal at § 2.2.3-2.2.6; Appendix B §§ 54.800-54.807.

[458] In this proceeding, the SLC "benchmarks" are used to quantify the relative differential between the maximum revenue recoverable through the SLC caps and a price cap LEC's permitted CMT revenue. The CALLS Proposal targets support to areas with the greatest differential between these two measures. By contrast, in the high-cost proceeding for non-rural carriers, we adopted a support mechanism that compares the estimated state-wide average intrastate-allocated costs of providing universal service to a national benchmark set at 135 percent of the national average intrastate-allocated cost of providing universal service. *See Universal Service Ninth Report and Order*, 14 FCC Rcd at 20463-64. The non-rural high-cost support mechanism targets support to areas with the greatest costs relative to the national benchmark.

above the SLC benchmarks.[459] These study areas also receive priority for distribution of the remaining interstate access support. After distribution of up to the first $75 million, the remaining interstate access support is distributed to carriers serving UNE zones where the UNE zone average CMT revenue per line is above the SLC benchmarks. To maintain the $650 million cap, the distribution formulas also account for growth in the number of lines eligible to receive universal service support during the course of the year.[460]

207. To distribute the $650 million of interstate access support among service areas served by price cap LECs, the CALLS Proposal derives a specific and separate amount of interstate access support for certain price cap LEC study areas and UNE zones on a per-line basis.[461] These per-line support amounts are known as Interstate Access Universal Service Support Per Line.[462] To calculate these amounts, the CALLS Proposal proposes the following seven steps.

(1) *Study Area Average Price Cap CMT Revenue Per Line Per Month.* To calculate this amount, the CALLS Proposal starts with the prior year price cap CMT revenue per line,[463] adjusts it for exogenous costs, and multiplies it by the base period lines.[464] For price cap LECs that do not have study area specific common line rates (*i.e.*, SLC, PICC, and CCL charge that are study area specific), CMT revenue for the filing entity is allocated to study areas based on the base factor portion (BFP) costs for each study area.[465]

(2) *Preliminary Minimum Access Universal Service Support.* To determine this amount, the CALLS Proposal calculates the amount by which study area Average Price Cap

[459] This $75 million is phased-in in the first two years of the plan. *See* MAA Phase In Percentage, Appendix B § 54.800 (e).

[460] Appendix B § 54.807. If reported line growth were to exceed projected line growth, the interstate access universal service support mechanism could slightly exceed $650 million in a particular year. If reported line growth is less than projected line growth, the interstate access universal service support mechanism could be slightly below $650 million in a particular year.

[461] Modified Proposal at §§ 2.2.2.-2.2.3; Appendix B §§ 54.800(m); 54.806(i) and (j); and 54.807.

[462] Appendix B § 54.807. The per line support amount is derived by dividing a price cap LEC's study area universal service support (SAUSS), Appendix B § 54.800(m), by twelve months and all eligible telecommunications carriers' base period lines in such study area. *See* Appendix B § 54.807.

[463] Price cap common line, marketing, and transport interconnection charge (TIC) revenue (collectively, CMT Revenue) is the total revenue a filing entity would be permitted to receive for SLCs, PICCs, and CCL charges, including marketing expenses presently collected pursuant to 47 C.F.R. § 69,156(a), and residual interconnection charge revenues collected through PICCs, but it does not include the current recovery of incumbent LEC universal service contributions that are first removed from existing price cap baskets. *See* Modified Proposal at §2.1.1.1.

[464] *See* Appendix B § 54.800(a); 47 C.F.R. § 61.3(d). This is done prior to Tariff Review Plan (TRP) preparation.

[465] *See* Appendix B § 54.800(a).

CMT Revenue exceeds the revenue allowed under the $7.00 and $9.20 SLC benchmarks.[466]

(3) *Zone Average Revenue Per Line.* To calculate interstate access support levels on a geographically zoned basis, using UNE loop pricing zones where such zones exist,[467] deaveraged price cap common line revenue per line is calculated for each zone.[468]

(4) *Study Area Above Benchmark Revenues.* Zone Average Revenue Per Line is then compared to the $7.00 residential and single-line business benchmark and the $9.20 multi-line business benchmark to derive Zone Above Benchmark Revenue.[469] Zone Above Benchmark Revenue for each zone in a study area is then summed to arrive at Study Area Above Benchmark Revenue.[470]

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[466] Modified Proposal at § 2.2.2. To derive this amount, the Administrator must perform the following calculations:

(a) If Average Price Cap CMT Revenue Per Line Per $\text{Month}_{\text{Study Area}}$ is greater than $9.20 then: Preliminary Minimum Access $\text{USF}_{\text{study area}}$ = (Average Price Cap CMT Revenue Per Line Per $\text{Month}_{\text{study area}}$ x ILEC Base Period Lines x 12) - (($7.00 x ILEC Base Period Residential & Single Line Business $\text{Lines}_{\text{study area}}$ x 12) + ($9.20 x ILEC Base Period Multi-line Business $\text{Lines}_{\text{study area}}$ x 12));

(b) If Average Price Cap CMT Revenue Per Line Per $\text{Month}_{\text{Study Area}}$ is greater than $7.00 but less than $9.20 then: Preliminary Minimum Access $\text{USF}_{\text{study area}}$ = (Average Price Cap CMT Revenue Per Line Per $\text{Month}_{\text{Study Area}}$ - $7.00) x (ILEC Base Period Residential & Single Line Business $\text{Lines}_{\text{study area}}$ x 12); and,

(c) If Average Price Cap CMT Revenue Per Line Per $\text{Month}_{\text{Study Area}}$ is less than $7.00 then the Preliminary Minimum Access $\text{USF}_{\text{study area}}$ is zero.

Appendix B § 54.804.

[467] Modified Proposal at § 2.2.3; Appendix B §§ 54.805. According to CALLS, where a state has not yet established geographically deaveraged UNE loop pricing zones, CALLS proposes the following:

> the Universal Service Administrator would preliminarily calculate the potential universal service support for price cap LEC study areas within that state using a model or other appropriate tool, and roughly apportion lines by wire center into three zones with relatively equal numbers of lines. Those zones are used as a "placeholder" to size, but not actually distribute, the relative share of universal service support going to a given state.

See CALLS NPRM, Appendix C, 14 FCC Rcd at 16980 n. 65 (citing Original Proposal at 2.2.3.1.1(b)).

[468] Modified Proposal at § 2.1.1.3; Appendix B § 54.805. The relative price cap revenue per line in each zone reflects the relative UNE rates in that zone, and the level of revenue per line in each zone is such that the price cap LEC can recover total permitted price cap common line revenues. *See* Modified Proposal at 2.2.3.2; Appendix B § 54.800(q).

[469] Modified Proposal at § 2.2.3.1.1; Appendix B § 54.805.

[470] Modified Proposal at § 2.2.3.1.2; Appendix B § 54.805.

(5) *Study Area Access Universal Service Support (SAUSS).* To calculate SAUSS, the CALLS Proposal first provides for the calculation of Preliminary Study Area Universal Service Support (PSAUSS) and the Minimum Support Requirement (MSR).[471]

(a) *PSAUSS.* To derive PSAUSS, the CALLS Proposal (1) sums Study Area Above Benchmark Revenue from each price cap LEC to derive Nationwide Total Above Benchmark Revenues, (2) divides $650 million by the Nationwide Total Above Benchmark Revenues to get the Adjustment Factor, and (3) multiplies the Study Area Above Benchmark Revenues by the Adjustment Factor to derive PSAUSS.[472] These calculations are designed to limit interstate access universal service support to the $650 million cap.

(b) *MSR.* To derive MSR, the CALLS Proposal (1) compares Preliminary Minimum Access Universal Service Support to PSAUSS to derive the Minimum Delta, (2) sums the Minimum Delta amounts of each price cap LEC to derive Total National Minimum Delta, (3) calculates a Minimum Adjustment Amount (MAA),[473] and (4) adds the MAA to the PSAUSS to get the MSR for study areas with minimum support requirements.[474] The MSR is designed to target interstate access universal service support to study areas most in need of support. Finally, the PSAUSS for study areas that do not have an MSR must be adjusted to account for the distribution of the MSR.[475]

(6) *Interstate Access Universal Service Support Per Line.* To derive a per line support amount per month, SAUSS is allocated as follows:

(a) *Study Areas Without UNE Pricing.* In any study area within which the price cap LEC has not established state approved geographically deaveraged UNE loop

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[471] Modified Proposal at § 2.2.3.2; Appendix B § 54.806.

[472] Modified Proposal at § 2.2.3.2; Appendix B § 54.806(c).

[473] The MAA is one of the following: (1) if the Total National Minimum Delta is greater than $75 million, MAA equals the Minimum Delta multiplied by the current phase-in percentage; or (2) if the Total National Minimum Delta is less than $75 million, MAA equals the Minimum Delta times the current phase-in percentage. *See* Appendix B § 54.806(f).

[474] *See* Appendix B § 54.806(g).

[475] To adjust the PSAUSS, the CALLS Proposal (1) sums the MSR amounts to get Total National Minimum Support Requirements (Total National MSR) for areas with MSRs, (2) subtracts this amount from $650 million to get funds available for study areas with no MSR, (3) sums PSAUSS amounts for study areas with no MSR, (4) divides the funds available from (2) by (3) to obtain the PSAUSS adjustment factor, and (5) multiplies PSAUSS by the PSAUSS adjustment factor to get SAUSS for study areas with no MSR. *See* Appendix B § 54.806(c).

rates, SAUSS is divided by twelve and by the total number of eligible telecommunications carriers' base period lines.[476]

(b) *Study Areas With UNE Pricing*. If UNE loop rates have been established, a per line support amount is calculated by allocating SAUSS to UNE zones first to the lines in the zones with the greatest differential between Zone Average Revenue Per Line[477] and the SLC benchmarks, "cascading" to lines in zones with lower differentials to the extent that funding remains available.[478]

(7) *Distribution of Interstate Access Universal Service Support Per Line*. Interstate Access Universal Service Support Per Line is distributed to all eligible telecommunications carriers based on their reported lines.[479]

(ii) Discussion

208. Although there may be several methodologies by which the $650 million of interstate access universal service support could be distributed, we conclude that the distribution methodology proposed by CALLS is reasonable and satisfies the universal service principles of the 1996 Act. Accordingly, for the reasons discussed below, we adopt the distribution methodology proposed by CALLS.

209. Through a series of mathematical formulas, the CALLS distribution methodology calculates a per-line support amount for a particular UNE zone. This per-line support amount is portable among competing eligible telecommunications carriers. In other words, if a competitor serves a customer in a supported study area or UNE zone, the competitor will receive the incumbent's support for that line. Moreover, as described below,[480] this per-line support amount will be published regularly by the Universal Service Administrative Company (USAC). Thus, both incumbents and competitors will know the per-line support amounts available for serving customers in a particular area, and can plan their business strategies accordingly.

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[476] Modified Proposal at § 2.2.4.1; Appendix B §54.807(b). The base period lines for the relevant quarter are adjusted for growth.

[477] *See* Appendix B § 54.800(q).

[478] *See* Modified Proposal at § 2.2.4.1; Appendix B § 54.807(c). Because interstate access support is capped and does not allow each price cap LEC to recover all of its common line price cap revenue shortfall created by the new SLC caps and geographic rate deaveraging, the CALLS Proposal suggests this cascading distribution methodology to ensure that interstate access universal service support is made available first to eligible telecommunications carriers serving customers in the zones with the greatest differential between CMT revenue and the SLC benchmarks

[479] *See* Appendix B § 54.807.

[480] *See* Section IV.C.3.f *infra*.

210. Taken together, these features satisfy the concerns raised by the state members of the Joint Board that the interstate access universal service mechanism be consistent with the universal service principles of specificity, predictability, and competitive neutrality.[481] By calculating per-line support for lines served in a particular UNE zone, the CALLS methodology provides a specific amount of support for each line served by eligible telecommunications carriers in that zone. The CALLS methodology also provides predictable support because the total amount of interstate access universal service support is fixed at $650 million for the five year life of the proposal[482] and the distribution of that support can be predetermined and published for a particular period based on the distribution formulas. Because the support provided under the CALLS proposal is portable among all eligible telecommunications carriers serving a supported customer, regardless of whether they are incumbents or competitors and regardless of the technology they use, the distribution methodology is competitively neutral.

211. Some commenters, however, criticize various aspects of the distribution methodology and suggest that we modify the methodology to address their concerns. U S West and the Washington Commission propose that universal service support be targeted to smaller geographic areas than UNE zones.[483] We recognize that targeting interstate access universal service support to levels more geographically deaveraged than the UNE zone level could, in theory, provide a more precise means of distributing universal service support than under the CALLS Proposal.[484] The distribution methodology in the interstate access support mechanism proposed by CALLS, however, cannot be viewed in isolation. Rather, it is but one piece of a larger effort at comprehensive reform for interstate access charges and universal service. The decision to deaverage interstate access universal service support to the UNE zone is directly linked to deaveraging SLCs to the UNE zone and the UNE-zone pricing requirements of the Commission's rules. Altering the interstate access universal service distribution methodology to accomplish a greater degree of geographic deaveraging would create dissonance between the universal service and access charge reforms achieved by the CALLS Proposal, which, taken as a whole, are reasonable.

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[481] *See* Joint Board Supp. Comments at 6.

[482] See Section IV supra discussing the optional forward-looking cost study.

[483] Washington Commission Comments at 4-5; U S West Supp. Comments at 5 (requesting distribution of universal service support targeted to density zones with less than five lines per square mile).

[484] Indeed, in reforming our high-cost universal service support mechanism for non-rural carriers, we chose to distribute support using a wire-center approach. *See Universal Service Ninth Report and Order*, 14 FCC Rcd at 20471. The support provided by that mechanism is designed to assist states in achieving reasonable comparability of *intrastate* rates within their borders by ensuring that no state faces costs significantly above the average among states nationwide. *See Universal Service Ninth Report and Order* 14 FCC Rcd at 20463. By contrast, the goal of the instant proceeding is to remove implicit universal service support from *interstate* access charges and replace it with explicit support. In achieving the different goals of these two proceedings, it does not necessarily follow that we must adopt support methodologies that mirror each other. So long as the support mechanisms that we adopt are consistent with the principles of the 1996 Act, we have the discretion to craft those mechanisms in the manner that best suits the needs of the particular proceeding before us. *See Alenco v. FCC,* 201 F.3d at 620

212. U S West further argues that the distribution mechanism is not predictable because any change in UNE deaveraging will shift the allocation of universal service support among support recipients.[485] U S West maintains that such volatility in a universal service distribution methodology violates the 1996 Act's principle of predictability. We disagree. We do not believe that the statutory principle of predictability necessitates the level of certainty or permanence that U S West appears to be seeking. Support amounts provided under all of our universal service support mechanisms are intentionally subject to change to some degree, depending on the variables used to calculate support (*e.g.*, line counts, costs reported by carriers, UNE rates, etc.). This dynamic feature of our support mechanisms is necessary to ensure that support is provided in amounts commensurate with the recipient's needs. Although support amounts may change as the underlying variables change, the amounts are predictable because support can be precisely determined based on a given set of variables. Moreover, we do not expect that states will adjust their UNE zones so often and by such great magnitudes that the changes would render the interstate access universal service support mechanism unpredictable. Furthermore, U S West, and any other concerned carriers, can work with state commissions to address their concerns about fixing UNE zone rates.

213. MCI argues that the distribution formulas should be adjusted to target support in greater proportion to areas that have higher multi-line business SLCs, rather than to areas that have lower multi-line business PICCs.[486] While MCI's approach would lead to lower average multi-line business PICC rates sooner, multi-line business PICC rates will fall dramatically in any event under the CALLS Proposal.[487] Thus, we find no reason to adjust the distribution methodology based on MCI's claims.

d. Lifeline

(i) Background

214. The Commission's Lifeline Assistance program provides federal universal service support to reduce the monthly service charges paid by qualifying low-income customers. There are three tiers of federal Lifeline support that provide up to a maximum of $7.00 of support.[488] The first tier is the federal baseline Lifeline support amount of $3.50 per qualifying low-income consumer,[489] which is designed to offset the SLC, currently capped at $3.50. If the state commission in a particular state approves an additional reduction of $1.75 in the amount paid by consumers, a second tier of federal Lifeline support in the amount of $1.75 is made available to

[485] U S West Supp. Comments at 9-10. For example, in the case of Colorado, U S West argues that a shift to more averaged UNE rates would dramatically reduce the amount of universal service funding allocated to that state from $60 million to only $12 million. U S West Supp. Comments at 10.

[486] MCI Supp. Comments at 29.

[487] *See* CALLS Supp. Reply at 28.

[488] Appendix B § 54.403(a).

[489] Appendix B § 54.403(a).

the carrier providing Lifeline service to that customer.[490] Finally, a third tier of up to $1.75 in federal support is available to match 50 percent of any additional state support.[491]

215. The CALLS Proposal would increase Lifeline support for low-income consumers to offset the increase to the residential SLC cap. Under the CALLS Proposal, the first tier of Lifeline support equals the tariffed rate in effect for the primary residential end-user common line charge for qualifying low-income consumers.[492] Today, Lifeline consumers pay no SLC, but must pay IXC-billed PICC recovery charges, unless the IXC voluntarily waives that fee. Under the CALLS Proposal, the entire SLC is waived through a modification of first-tier Lifeline support, and the residential PICC is eliminated.[493] In addition, the LEC signatories to the CALLS Proposal have also agreed not to assess universal service charges on Lifeline customers.[494]

(ii) Discussion

216. We adopt the CALLS Proposal that any increase in the SLC be accompanied by a corresponding increase to the first tier of federal Lifeline support by the amount necessary to cover any increase in the SLC. Such an increase in support is consistent with the principles of the 1996 Act as outlined in our *Universal Service First Report and Order* because it will provide sufficient support to ensure that qualifying low-income consumers have access to telecommunications services at affordable and reasonably comparable rates.[495] Without such an increase in Lifeline support, the CALLS Proposal would negatively and disproportionately affect low-income subscribers by increasing the cost of basic telephone service. Consistent with the Commission's decision in the *Universal Service First Report and Order*, this first-tier Lifeline support shall be available to any eligible telecommunications carrier serving a qualifying low-income consumer, regardless of whether the carrier charges a SLC or is a CALLS signatory.[496] As the Commission stated in the *Universal Service First Report and Order*, an incumbent LEC's SLC is a reasonable proxy for the interstate portion of other eligible telecommunications carriers' costs, and providing first-tier Lifeline support to all eligible telecommunications carriers is a competitively neutral way to encourage such carriers to serve qualifying low-income consumers.[497] We estimate that the increased Lifeline support associated with the CALLS

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490 Appendix B § 54.403(a).

491 *See* Appendix B § 54.403(a)(1).

492 *See* Appendix B § 54.403(a)(1).

493 Modified Proposal at § 2.1.2.3.

494 *Wallman March 30 Letter* at 3.

495 *Universal Service First Report and Order*, 12 FCC Rcd at 8954.

496 *Universal Service First Report and Order*, 12 FCC Rcd at 8970.

497 *Universal Service First Report and Order*, 12 FCC Rcd at 8969-70.

Proposal will be approximately $60 million in the first year of the plan and will gradually increase to approximately $125 million in the fifth year of the plan.[498]

217. Some commenters question whether the increase in tier-one Lifeline support under the CALLS Proposal would be offset by changes to other tiers of Lifeline program. Other commenters question whether the increase in Lifeline support is included in the $650 million interstate access universal service support mechanism, or whether the increase in Lifeline support is separate from and in addition to the $650 million support mechanism. We clarify that tier-one Lifeline support proposed by CALLS does not affect the other tiers of Lifeline support and is not part of the $650 million interstate access universal service support mechanism.[499] The additional Lifeline support required by CALLS will be collected and disbursed through the normal operation of the Commission's universal service contribution methodology, which, consistent with section 254 of the Act, assesses contributions on all interstate telecommunications carriers.

e. LEC Recovery of Universal Service Contributions

(i) Background

218. The CALLS Proposal provides that as of July 1, 2000, price cap LECs will establish a separate rate element (*e.g.*, line item) to recover all contributions to the universal service support mechanisms.[500] The CALLS Proposal allows a price cap LEC to assess this rate element on a per-line basis or as a percentage of interstate end-user revenues, and, at the option of the carrier, it may be combined for billing purposes with other end-user rate elements.[501] As discussed above, the LEC members of CALLS have agreed not to assess universal service charges on Lifeline customers. Upon implementation of the interstate access universal service support mechanism, price cap LECs will make a corresponding exogenous adjustment to remove recovery of their universal service contributions from price cap baskets at the same percentage adjustment as they went into the price cap baskets.[502]

(ii) Discussion

219. We find that the CALLS method for LEC recovery of universal service contributions is reasonable and consistent with the Act, Commission precedent, and the Fifth

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[498] The estimate of $125 million is based on a residential SLC cap of $6.50 per line. As discussed in section IV.A. above, however, the Commission will initiate a cost proceeding to review whether the residential SLC should be increased above $5.00.

[499] *See* Appendix B § 54.403(a)(1).

[500] Modified Proposal at § 1.

[501] Modified Proposal at § 1.2.

[502] Modified Proposal at § 1.3.

Circuit decision in *TOPUC v. FCC*.[503] We reject the claim of commenters that the CALLS plan violates section 254(d) of the Act by eliminating price cap LECs' contributions to universal service insofar as the plan provides that incumbent LECs may recover universal service contributions through an end-user charge.[504] This argument misreads the Act, ignores the Fifth Circuit's decision in *TOPUC v. FCC*, and is contrary to our *Universal Service Eighth Report and Order*. Section 254(d) simply states that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." Nothing in section 254(d) prohibits any telecommunications carrier from recovering its universal service contributions from its customers.

220. In *TOPUC v. FCC*, the Fifth Circuit emphasized, based on section 254(e), that the Commission should not require incumbent LECs to recover their universal service contributions from access charges.[505] In response to the Fifth Circuit's decision, in the *Universal Service Eighth Report and Order*, the Commission permitted incumbent LECs to recover universal service contributions through an explicit line-item charge to end users.[506] Because the CALLS plan permits, but does not require, an incumbent LEC to recover contributions through an explicit line-item charge to end users, it is consistent with Commission precedent and the *TOPUC v. FCC* decision. We, therefore, reject the assertion that allowing price cap LECs to recover universal service contributions through end user charges violates section 254(d) of the Act.

221. Other commenters argue that we should require that price cap LECs recover their universal service contributions through a flat-rated per-line charge, rather than as a percentage charge applied to the interstate revenues derived from each customer.[507] According to these commenters, because price cap LECs still possess market power, the Commission cannot rely on market forces to discipline the price cap LECs' universal service contribution recovery

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[503] Some commenters argue that recovery of interstate access universal service support from all interstate telecommunications carriers revenues negatively affects carriers, such as Commercial Mobile Radio Services Providers and rural LECs, who receive limited benefits from reductions in access charges. *See, e.g.*, Joint Board Supp. Comments at 8-9. The Commission fully addressed its decision to require all interstate telecommunications carriers to contribute to universal service mechanisms in the *Universal Service First Report and Order*, and the Fifth Circuit affirmed the Commission's decision on appeal. *Universal Service First Report and Order*, 12 FCC Rcd at 9171-88 (requiring all interstate telecommunications carriers to contribute to universal service funding with a few limited exceptions); *see also* TOPUC v. FCC, 183 F.3d at 429-30. Thus, we decline to revisit this issue here.

[504] *See, e.g.*, Joint Consumer Commenters Supp. Comments at 37.

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

[506] *Universal Service Eighth Report and Order*, 15 FCC Rcd at 1693.

[507] *See, e.g.*, Ad Hoc Supp. Comments at 10-11.

practice.[508] Alternatively, these commenters argue that price cap LECs should only be permitted to recover universal service costs through a flat-rated charge because such costs are non-traffic sensitive.[509] In the *Universal Service Eighth Report and Order*, we decided to provide price cap LECs some flexibility to determine how they recover their contributions to the universal service support mechanisms from their customers, provided that they provide accurate and truthful information about the nature of the charge imposed and that they do not shift more than an equitable share of their contributions to any customer or group of customers.[510] We believe that permitting price cap LECs to recover their universal service contributions as either a flat-rated charge, or as a percentage of interstate revenues, is consistent with our earlier determination to allow price cap LECs some flexibility in how they recover their universal service contributions. We therefore reject suggestions that we should further restrict a price cap LEC's recovery of its universal service contributions. As we have cautioned previously, however, we will not hesitate to take action on a case-by-case basis against carriers that impose unjust or unreasonable line item charges.[511]

f. Implementation

(i) Background

222. Under our existing rules, the administrator of the universal service support mechanisms, USAC, submits estimated universal service support requirements to the Commission approximately two months before the beginning of each quarter.[512] The Commission uses those estimated support requirements to establish a contribution factor, which it announces approximately one month before the beginning of each quarter.[513] USAC then uses

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[508] *See, e.g.*, Ad Hoc Supp. Comments at 10.

[509] *See, e.g.*, Ad Hoc Supp. Comments at 10.

[510] *See Universal Service Eighth Report and Order*, 15 FCC Rcd at 1692-93; *Universal Service First Report and Order*, 12 FCC Rcd at 9211-12 (stating that "[i]f contributors [to universal service] choose to pass through part of their contributions and to specify that fact on customer's bills, contributors must be careful to convey information in a manner that does not mislead by omitting important information that indicates that the contributor has chosen to pass through the contribution or part of the contribution to its customers and that accurately describes the nature of the charge").

[511] *See* 47 U.S.C. § 201(b); In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7528 (1999) (*Truth in Billing First Report and Order*).

[512] 47 C.F.R. § 54.709(a).

[513] 47 C.F.R. § 54.709(a).

the contribution factor to bill contributors and collect the appropriate amount of contributions to fund all of the universal service support mechanisms.[514]

223. The CALLS Proposal for an interstate access universal service support mechanism that we adopt today does not change the current universal service contribution methodology. Rather, it simply adds the new mechanism to the existing methodology. Thus, in addition to the support requirements of the existing support mechanisms for high-cost, low income, schools and libraries, and rural health care, USAC will submit estimated support requirements for the interstate access support mechanism, and the quarterly contribution factor will reflect those additional support requirements. The quarterly contribution factor also will reflect the increased Lifeline support required as a result of the increased SLC caps under the CALLS Proposal.

224. As discussed below, in order for USAC to calculate and distribute interstate access universal service support, eligible telecommunications carriers seeking support will be required to file certain line counts and other data on a regular basis. Additionally, because of the short time period before the July 1, 2000 implementation of the access charge and universal service reforms adopted in this Order, certain adjustments to the regular filing schedule will be necessary during the initial period of operation for the interstate access universal service support mechanism. In adopting these reporting requirements, we have attempted to minimize the reporting burdens on support recipients, while at the same time ensuring that we have sufficient information to enable the proper calculation and distribution of interstate access universal service support.

(ii) Discussion

225. We agree with CALLS that the interstate access universal service support mechanism should be administered by USAC and collected in the same manner as the Commission's other universal service support mechanisms. No commenters objected to this aspect of the CALLS Proposal. We, therefore, make the following changes to our rules to facilitate implementation of the CALLS Proposal.

226. *Fund Administration.* We direct USAC to serve as the administrator for the interstate access universal service support mechanism.[515] The interstate access universal service support mechanism shall be administered by USAC's High Cost and Low Income Division under the direction of the High Cost and Low Income Committee of the USAC Board.[516] USAC shall keep separate accounts for the amounts of money collected and disbursed for interstate access universal service support,[517] and USAC shall account for and recover the administrative expenses

[514] 47 C.F.R. § 54.709(a). Pursuant to the 1996 Act, providers of interstate telecommunications services are required to contribute to the Commission's universal service support mechanisms. *See* 47 U.S.C. § 254(d); *see also* Appendix B § 54.706.

[515] *See* Appendix B § 54.702.

[516] *See* Appendix B §§ 54.701(g) and § 54.705(c)(1).

that it incurs in connection with administering the interstate access universal service support mechanism.[518]

227. *Line Counts.* As specified in the rules listed in Appendix B, each eligible telecommunications carrier that is providing service within an area served by a price cap LEC in a particular study area and wishes to receive support must submit to USAC on the last business day of March, June, September, and December of each year data showing the number of lines it served in that study area as of the last business day of the previous quarter.[519] The line counts must be assigned to UNE Zones if UNE Zones have been established within that study area. This line count information must also show residential/single line business line counts separate from multi-line business line counts.[520] The residential/single line business lines reported include single and non-primary residential lines, single-line business lines, basic rate interface (BRI) integrated services digital network (ISDN) service, and other related residence class lines. Similarly, the multi-line business class lines reported include multi-line business, centrex, ISDN primary rate interface (PRI) and other related business class lines.[521]

228. *Other Data.* In addition to line count information, price cap LECs[522] must file on June 30, 2000, October 15, 2000, April 16, 2001 and annually after that, all information necessary for USAC to determine: (1) Average Price Cap CMT Revenue Per Line Per Month for each price cap LEC study area;[523] (2) the rates established for UNE Loops[524] and UNE Line Ports by UNE Zone in those study areas where UNE Zones have been established; and (3) the boundaries of each UNE Zone within each price cap study area.[525]

229. *First Year Implementation.* In order to implement interstate access support on July 1, 2000, certain adjustments must be made to the reporting schedule described above. First, we direct USAC to file with the Commission no later than June 5, 2000, a supplement to its third quarter 2000 filing, revising its estimate of the universal service support requirements in light of our action in this proceeding. This supplement should account for the additional support necessitated by the interstate access support mechanism as well as additional Lifeline support.

(Continued from previous page)

[517] *See* Appendix B § 54.702(i).

[518] *See* Appendix B § 54.715(c).

[519] Appendix B § 54.802(a).

[520] Appendix B § 54.802(a).

[521] Such lines include all business class lines assessed the end user common line charge pursuant to 47 C.F.R. § 69.152.

[522] This reporting requirement does not apply to eligible telecommunications carriers other than price cap LECs.

[523] *See* Appendix B § 54.800(a).

[524] *See* Appendix B § 54.802(b)(2).

[525] Appendix B, § 54.802(b).

To prevent fluctuations in the contribution factor and ensure a uniform collection of contributions, we direct USAC to estimate support requirements in its supplemental filing for the third quarter of 2000 as if all carriers potentially eligible for interstate access support will file to receive such support. In the event that not all eligible carriers ultimately seek such support, USAC shall apply any surplus contributions to reduce future collection requirements.

230. In early June, 2000, based on USAC's supplemental filing, we will release a Public Notice announcing the third quarter contribution factor.[526] On or before June 30, 2000, all eligible telecommunications carriers seeking interstate access universal service support shall file the applicable line counts and other data necessary to calculate interstate access support. On or around August 2, 2000, USAC shall file with the Commission estimated universal service support requirements for the fourth quarter. In early September 2000, we will release a Public Notice announcing the fourth quarter contribution factor. On or around September 29, 2000, USAC will disburse July and August interstate access support based on each eligible telecommunications carriers' June 30, 2000 line counts.[527] Thereafter, USAC will distribute interstate access support in accordance with its regular disbursement schedule, with one exception discussed below. Because a price cap LEC will not know precisely how much interstate access universal service support it will receive until September 2000, we shall allow such a carrier to make a good faith estimate of the amount of interstate access universal service support it likely will receive for purposes of our June 16, 2000 tariff filing. Carriers filing good faith estimates shall true-up their tariffs once the amount of their interstate access universal service support is known.

231. Because of the timing of this Order, we believe that it is in the public interest to provide eligible telecommunications carriers other than price cap LECs with additional time to gather third quarter line count information in order to take advantage of the portability of interstate access support. Therefore, in the event that such eligible telecommunications carriers cannot meet the June 30, 2000 line count reporting deadline, we shall allow these eligible telecommunications carriers to file their March 30, 2000 line counts on September 29, 2000, and receive interstate access support for the third quarter of 2000 retroactively.

232. *Section 254(e) Certification.* Section 254(e) provides that a carrier receiving universal service support must use that support "only for the provision, maintenance, and upgrading of facilities and service for which the support is intended."[528] In the *Universal Service Ninth Report and Order*, we set forth rules requiring a state that wishes to receive federal universal service high-cost support for non-rural carriers within its territory to file a certification with the Commission stating that all federal high-cost funds flowing to non-rural carriers in such state will be used in a manner consistent with section 254(e).[529] Because the *Universal Service*

[526] *See* 47 C.F.R. § 54.709(a)(3).

[527] As stated below, however, eligible telecommunications carriers other than participating price cap LECs may file their March 30, 2000 line counts on September 29, 2000.

[528] 47 U.S.C. § 254(e).

[529] *Universal Service Ninth Report and Order*, 14 FCC Rcd at 20483.

Ninth Report and Order addressed federal universal service support for intrastate rates, we required states to file a certification of section 254(e) compliance with the Commission because states have jurisdiction over rates for intrastate services. In this Order, we address federal support for interstate rates, a matter over which the Commission has jurisdiction. Thus, to ensure that carriers receiving interstate access universal service support will use that support in a manner consistent with section 254(e), we shall require carriers seeking such support to file a certification with the Commission and USAC.[530] This certification is applicable to price cap LECs and eligible telecommunications carriers seeking support from our interstate access universal service mechanism. The certification shall be filed with the Commission and USAC at the same time a carrier files its first set of line count data with USAC.[531] Such certification shall be filed in CC Docket No. 96-45 annually thereafter on June 30th.[532] The certification may be filed in the form of a letter and must state that the carrier will use its interstate access universal service support only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.[533] Carriers that fail to abide by this certification, or otherwise violate section 245(e), shall be subject to enforcement action by the Commission.

4. Consultation with Joint Board

233. We wish to point out that our actions today are consistent with our obligation under the 1996 Act to consult with the Joint Board, and are based on the recommendations that we have received from the Joint Board throughout our universal service proceedings. In response to the Commission's latest request for input on access charge and universal service reform,[534] the state members of the Joint Board filed comments on the CALLS Proposal.[535] We value these suggestions and insights from our state colleagues, and we have responded to their comments in the appropriate sections of this Order.[536] We look forward to continued consultation and cooperation with the Joint Board in the future as we reform other aspects of our universal service support mechanisms in light of developments in the increasingly competitive telecommunications marketplace.

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[530] *See* Appendix B § 54.809; *see also* Joint Board Supp. Comments at 6 (raising the issue of certification pursuant to Section 254(e)).

[531] *See* Appendix B § 54.809(c).

[532] *See* Appendix B § 54.809.

[533] *See* Appendix B § 54.809(b).

[534] *CALLS Modified Proposal NPRM.*

[535] Joint Board Supp. Comments.

[536] *See* Sections IV.A.3.a and IV.A.3.c. *supra.*

D. Low-Volume Long-Distance Proceeding

1. Introduction

234. We initiated an inquiry last summer to ensure that all Americans were benefiting from the Commission's pro-competitive reforms.[537] We were prompted to do so when a number of individuals and consumer groups questioned whether consumers who make few interstate long-distance calls were benefiting to the same degree as high-volume users from the Commission's access charge and universal service reforms. In that proceeding we sought comments from consumers and carriers alike.[538] Our primary focus concerned the impact of certain flat fees that interstate long-distance companies had begun charging consumers.

235. The CALLS proposal will, among other things, benefit low-volume long-distance callers by eliminating some of these flat fees, and making others avoidable. Although we decline to reach the question whether the flat charges at issue in the Notice of Inquiry are unreasonable, inequitable, or inconsistent with the Act, we conclude that the elimination or avoidability of these charges moots the factual premise that prompted us to begin the low-volume investigation. In light of our adoption today of the CALLS proposal, we are confident, for the reasons described below, that the needs of all consumers will be served by the industry, and that low-volume users will share in the benefits of the Commission's pro-competitive telecommunication reforms. Thus, we have resolved the issues raised by the low-volume long-distance inquiry, and bring that proceeding to a close.

2. Notice of Inquiry

236. After we adopted our access charge and universal service reforms, interstate long-distance providers began assessing new flat fees on their end users. AT&T, for example, began charging a $3.00 minimum usage fee that customers are required to pay even if they made no long-distance calls in a month.[539] Similarly, MCI charged its basic-rate customers either a $5.00 or a $3.00 minimum, depending upon when they had initiated their service with MCI.[540]

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[537] *See Low-Volume Long-Distance Users NOI*, 15 FCC Rcd 6298.

[538] Among those individuals who filed comments were: Mr. Eric Anderson, Mr. Richard A. Arsinow, Mr. Bob Beaudoin, Mr. and Mrs. James Besenger, Mr. Fred Bethke, Ms. Nancy T. Clark, Robert W. Cooper, Jr., Mr. Allan DeSmet, Ms. Sandra Farrell, D.D.S., Mr. Jonathan Freidin, Ms. Barbara N. Gibbons, Ms. Frances Gizerian, Mr. Frank A. Griffith, Mr. Donald G. Hyatt, Mr. Barry D. Johnson, Mr. T. David Krauser, Mr. Robert L. Lehr, Mr. Roger Merel, Ms. Ruth J. Pelt, Ms. Gwen Petitjean, Mr. Mark Plemmons, R. Rivera, Mr. Paul F. Schaeffer, Mr. Michael Schneider, Robert Sullivan, Mr. Richard Stallworthy, and Ms. Davena Swinford.

[539] AT&T Tariff FCC No. 27, 1st Rev. P. 4-7.3, at § 4.1.1.N (eff. June 15, 1999); 1st Rev. P. 24-57.39, at § 24.1.1.U.2 (eff. Sept. 5, 1998).

[540] MCI Tariff FCC No. 1, 140th Rev. P. 19.1, at § C.3.021211 (eff. Feb. 1, 1999); 3rd Rev. P. 19.183, at § C.3.421 (eff. Jan. 3, 1998).

According to these long-distance carriers, the charges were intended to recover the costs they incurred in maintaining separate account and billing records for their customers.[541]

237. AT&T, MCI, and Sprint also began charging their residential customers a flat, averaged, monthly charge designed to recover the PICC that the long-distance carriers were paying regulated local carriers. As of August 1, 1999, the charges AT&T, MCI, and Sprint were charging were $1.51, $1.46, and $1.50, respectively.[542] These charges exceeded the $1.04 the carriers actually were assessed for residential customers with just one line. In addition, AT&T began to recover some of its contributions to the high-cost universal service support mechanism,[543] as well as the contributions that regulated local carriers flowed-through to AT&T, through a flat charge of 93 cents per month.[544] AT&T did so even though carrier contributions to the universal service support mechanism are calculated based on a percentage of a carrier's interstate and international end-user revenues.[545] By November 2, 1999, AT&T had increased this fee to $1.38.[546]

238. As a result of these flat charges, a number of individuals and consumer groups questioned whether end users who make few long-distance calls were benefiting to the same degree as high-volume users from the Commission's access charge and universal service reforms. Some argued that customers who make few long-distance calls have seen their bills go up, despite the reduction in per-minute charges. Consequently, on July 20, 1999, we commenced a proceeding seeking comments regarding the impact of flat charges on those consumers who make few or no long-distance calls.[547] We asked whether minimum usage fees and other flat charges imposed on consumers who make few long-distance calls are a reasonable result of competitive market dynamics and the removal of implicit subsidies, or whether they warrant regulatory intervention.[548]

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[541] *Low-Volume Long-Distance Users NOI*, 15 FCC Rcd at 6303-04.

[542] AT&T Tariff FCC No. 27, 3rd Rev. P. 24-555 at §24.1.18 C (eff. July 1, 1999); MCI Tariff FCC No. 1, 16th Rev. P. 16.3, §1.061111A. (eff. August 1, 1999); Sprint Tariff FCC No. 1, 6th Rev. P. 38.2, § 3.11.10 (eff. Aug. 1, 1999).

[543] As discussed in Section IV.C.2, in the *Universal Service Ninth Report and Order* we reformed our high-cost universal service support mechanism for non-rural carriers to enable states to maintain reasonably comparable intrastate rates.

[544] *See* AT&T Tariff FCC No. 27, 2nd Rev. P. 24-555 at §24.1.18 D (eff. July 1, 1998).

[545] *See Universal Service Ninth Report and Order*, 14 FCC Rcd at 20489.

[546] *See* AT&T Tariff FCC No. 27, 5th Rev. P. 24-555 at §24.1.18.D. (eff. Nov. 2, 1999).

[547] *See Low-Volume Long-Distance Users NOI*, 15 FCC Rcd 6298.

[548] *Id.*, 15 FCC Rcd at 6301-03.

239. We asked for comments on a number of possible courses of action. One proposal was to rely on competition--including that resulting from dial-around services[549] and entry into long-distance service by regulated local telephone companies[550]--to provide services suitable to the needs of low-volume residential customers.[551] This proposal was supported by both long-distance and regulated local telephone companies.[552]

240. Another proposal, supported mostly by consumer groups and local telephone companies, was to rely on direct regulatory intervention.[553] For instance, we asked whether the Commission should require regulated local carriers to bill end users directly, rather than long-distance carriers, or require carriers to combine into a single line item the charges associated with all of our pro-competitive reforms.[554] Another possibility was to require some or all long-distance carriers to maintain rate plans that do not include a minimum monthly charge.[555] Additionally, we asked whether the Commission should require all or some subset of long-distance carriers to pass through to their low-volume customers a specific portion of the cost savings they have received as a result of access charge reform.[556] Another option was to set a maximum percentage by which low-volume rates may exceed high-volume rates.[557] Several local telephone companies and consumer advocates also supported requiring long-distance carriers to

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[549] Dial-around services are long-distance providers that are accessible on a per-call basis by dialing a 101-xxxx number.

[550] Until relatively recently, most regulated local telephone companies were absolutely prohibited from providing long-distance service in their immediate areas because of their market power. As of 1996, however, these carriers may ask the Commission to allow them to provide long-distance services once they open their local markets to competition. *See* 47 U.S.C. § 271.

[551] *See Low-Volume Long-Distance Users NOI*, 15 FCC Rcd at 6304.

[552] Ameritech Low-Volume Comments at 2; AT&T Low-Volume Comments at 2, 13, 24, and Declaration of Gregory L. Rosston at 3, 17; Bell Atlantic Low-Volume Comments at 1-3; BellSouth Low-Volume Comments at 3-4, SBC Low-Volume Reply at 2; CompTel Low-Volume Comments at 2-3, 6-7; MCI Low-Volume Comments at 1-2; Sprint Low-Volume Comments at 5-6; TRA Low-Volume Comments at 13; USTA Low-Volume Comments at 2, 5.

[553] *See Low-Volume Long-Distance Users NOI*, 15 FCC Rcd at 6303-05.

[554] *See id.*, 15 FCC Rcd at 6304-05, 6307. *See also* AARP Low-Volume Comments at 4-5; Ad Hoc Low-Volume Comments at 7; Bell Atlantic Low-Volume Comments at 1-2; BellSouth Low-Volume Comments at 7-8; GSA Low-Volume Comments at 8; TRA Low-Volume Reply at 5; TURN Low-Volume Comments at 2.

[555] *See Low-Volume Long-Distance Users NOI*, 15 FCC Rcd at 6305-06. *See also* AARP Low-Volume Comments at 3, 5; CFA Low-Volume Comments at v-vi, 26; CompTel Low-Volume Comments at 4, 6; TURN Low-Volume Comments at 2.

[556] *Low-Volume Long-Distance Users NOI*, 15 FCC Rcd at 6305-06. *See also* Ameritech Low-Volume Comments at 3; CFA Low-Volume Comments at 26; GSA Low-Volume Comments at 7; Rep. Hill Low-Volume Comments at 4; RTC Low-Volume Comments at 2, 4; USTA Low-Volume Comments at 4.

[557] *Low-Volume Long-Distance Users NOI*, 15 FCC Rcd at 6306. This option was supported by TURN. *See* TURN Low-Volume Comments at 7-8.

recover the charges regulated local carriers assess on them as a percentage of the end user's bill, capped at a certain dollar level.[558]

241. We also requested comment on whether efforts by the Commission, states, carriers, and consumer groups to educate consumers regarding choices they can exercise in the marketplace could reduce or eliminate the need for additional regulation.[559] Finally, we asked whether there were any particular enforcement actions that the Commission should take.[560] Several commenters suggested that the Commission increase its enforcement efforts against carriers that recover more than their share of costs, or regulate the way in which carriers characterize their fees.[561]

3. Discussion

242. The CALLS proposal addresses most of the concerns raised by, and on behalf of, low-volume consumers, and may save customers who make no long-distance calls as much as $4.00 to $5.00 per month in flat fees. In view of our decision to adopt the CALLS proposal, we find that other regulatory intervention is not warranted at this time, and would not serve the public interest. The record before us indicates that the competitive marketplace the Commission is fostering is increasingly responsive to the needs of all consumers, including low-volume users. Consequently, we conclude that we have resolved the issues raised in the low-volume long-distance proceeding.

243. A number of carriers have agreed to offer long-distance plans with no monthly minimum charges. As part of the CALLS proposal, for example, AT&T has pledged to offer for at least three years--and possibly as long as five--a basic residential plan that has no monthly recurring charge and no minimum usage requirement.[562] Sprint has also committed to offering at least one basic rate plan without a minimum usage fee for the duration of the CALLS plan.[563] Now that we have approved Bell Atlantic's application to provide long-distance service in New York,[564] Bell Atlantic has also targeted two long-distance plans to residential, low-volume users by

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[558] *Low-Volume Long-Distance Users NOI*, 15 FCC Rcd at 6305-07. *See also* Bell Atlantic Low-Volume Comments at 3; TURN Low-Volume Comments at 7-8.

[559] *Low-Volume Long-Distance Users NOI*, 15 FCC Rcd at 6304-06. *See also* GTE Low-Volume Comments at 10; TURN Low-Volume Comments at 2-3, 10-12; USTA Low-Volume Comments at 5; Qwest Low-Volume Comments at 16-17, and Sprint Low-Volume Comments at 7-8.

[560] *See Low-Volume Long-Distance Users NOI*, 15 FCC Rcd at 6305-06.

[561] *See* Ad Hoc Low-Volume Comments at 9-10; CompTel Low-Volume Comments at 9; GTE Low-Volume Comments at 16-17; TURN Low-Volume Reply at 5-6.

[562] *See AT&T March 30 Letter.*

[563] *See Sprint February 25 Letter.*

[564] Application of Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, Inter-Lata Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 75 (1999).

eliminating minimum use charges.[565] As of May 1, 2000, MCI, which has not signed on to the CALLS proposal, also began a plan that has no monthly minimum charges.[566] Thus, more than eighty percent of long-distance users will have plans available to them with no monthly minimums.

244. The CALLS plan will also eventually combine the SLC and the PICC on the first line for residential end users, avoiding the concerns raised by the long-distance carriers' pass-through of the PICC.[567] In addition, both long-distance carriers and local service providers will bill their customers directly for their universal service costs, eliminating the similar flow-through problem. AT&T has also implemented changes to eliminate its flat 1.38 cent universal service charge. Instead, effective April 1, 2000, it is assessing a fee that is based on a percentage of the customer's long-distance bill.[568] AT&T made this change, in part, because of our investigation of its flat universal service fee.[569] MCI and Sprint were already assessing universal service fees on a percentage basis.[570]

245. Thus, under the CALLS plan, AT&T's Basic Schedule customers who make no long-distance calls will see their flat fees cut almost in half. Previously, such a customer would have paid a $3.50 SLC, a $1.51 PICC pass-through, a $1.38 universal service charge, and a $3.00 minimum use fee, for a total of $9.39.[571] According to CALLS' estimates, that customer will now pay $4.35 for the SLC and $0.36 for universal service, for a total of $4.71.[572] Perhaps more significantly, this means that customers who make no long-distance calls will pay nothing to their long-distance carriers. We conclude, therefore, that our adoption of CALLS, evidence that low-volume users are starting to benefit from the competition resulting from Commission reforms, and our existing regulatory authority eliminate the need to continue the Low-Volume, Long-Distance proceeding. We remind carriers, however, of our statutory authority to investigate any charges that appear unlawful.[573] As we have cautioned previously, we will not

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565 The "Timeless" plan would charge ten cents per minute at all times for calls that are dialed directly, with no monthly minimum. The "E-Values" plan, which also has no minimums, charges five cents per minute for weekend calls, and nine cents per minute weekdays for Internet customers who sign up via Bell Atlantic's web site.

566 MCI FCC Tariff No. 1, 1st Rev. P. 364 §C.3.02.021 (eff. May 1, 2000).

567 *See AT&T March 30 Letter.*

568 AT&T Tariff FCC No. 13, 9th Rev. P. No. 38.6.3, §19.L.2; AT&T Tariff FCC No. 27, 6th Rev. P. 3-19.6, § 3.5.12.B. (eff. Feb. 19, 2000).

569 *See* Interexchange Carrier End-User Charges To Recover Universal Service Contributions, CC Docket No. 99-324, Order, 14 FCC Rcd 20032 (Com. Car. Bur. Nov. 1, 1999) (*IXC Universal Service Suspension Order*).

570 MCI Tariff FCC No. 1, 3rd Rev. P. No. 16.4, § C-1.061 (eff. Jan. 1, 1998); Sprint Tariff FCC No. 1, 2nd Rev. P. No. 38, §3.3.11.8 (eff. Jan. 1, 1998).

571 CALLS Supp. Comments at 3.

572 *Id.*

hesitate to take action on a case-by-case basis against carriers that impose unjust or unreasonable line-item charges. We also will monitor the effect of the CALLS proposal on consumers.

246. Our decision to adopt the CALLS proposal, and to conclude the low-volume inquiry, is based in large part on the availability of interstate long-distance plans that meet the needs of low-volume users. Sprint and AT&T have committed to making such plans available in their support for the CALLS proposal. They each have said, for example, that they will eliminate their PICC pass-through charges for residential and single-line business customers, offer at least one basic rate plan that does not contain minimum usage charges, freeze the per-minute rates on certain plans, and flow through their access charge savings to residential and business customers.[574] We expect the IXCs will pass through these access charge reductions in a manner that benefits both residential and business customers. Sprint and AT&T have also committed to informing their residential customers of the various plans they offer for long-distance services.[575]

247. We find the commitments of Sprint and AT&T to be in the public interest because they will help ensure that low-volume users of long-distance service share in the benefits of the 1996 Telecommunications Act and the pro-competitive reforms that the Commission has adopted. Because we have made the rate structure components of the CALLS proposal mandatory for all price cap LECs, and the rate levels mandatory for at least an interim period, Sprint and AT&T will in fact receive the benefits provided by the CALLS proposal. Specifically, their switched access usage charges will be reduced by their proportionate share of $2.1 billion, and the residential and single-line business PICCs will be eliminated. Consequently, we order Sprint and AT&T to comply with all the voluntary commitments they made in their respective February 25, 2000, and March 30, 2000, letters.[576] If they fail to do so, the carriers may be subject to any of the remedies available under the Act, including fines, forfeitures, or the rejection of any non-conforming rates.

248. In its revised submission to the Commission, the Coalition as a whole committed to working with the Commission's Consumer Information Bureau to develop a consumer education plan.[577] This plan must focus on educating consumers about important issues related to

(Continued from previous page)

[573] *See* 47 U.S.C. §§ 204, 205. *See also IXC Universal Service Suspension Order*, 14 FCC Rcd 20032.

[574] *See Sprint February 25 Letter*; AT&T *March 30 Letter*. State members of the Federal-State Joint Board have expressed concern that Sprint and AT&T have not indicated when they will flow through these saving, or that low-volume consumers will benefit from such reductions. Joint Board Supp. Comments at 4. We note, however, that Sprint and AT&T have said that they will not increase the per-minute rates on their "no minimum use" plans for at least one year. *Sprint February 25 Letter*; *AT&T March 30 Letter*. Moreover, even if Sprint and AT&T do not flow the per-minute savings through to low-volume users, such users will have greatly benefited from the elimination of flat fees such as the minimum use charges.

[575] *Sprint February 25 Letter*; *AT&T March 30* Letter.

[576] *See Sprint February 25 Letter; AT&T March 30 Letter*. *Cf.* Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271, 3356 (1995) (*AT&T Non-dominance Order*) (ordering AT&T to comply with voluntary commitments from September 21 and October 5, 1995, *ex parte* letters it filed in a proceeding regarding its treatment as a non-dominant provider of interstate, domestic, interexchange service).

[577] Modified Proposal at § 7.

long-distance and local phone pricing and service. These markets are changing at an ever-accelerating rate; education by CALLS members will empower consumers to make better-informed decisions.

249. This education plan will entail informing consumers how they can best inventory their long-distance and local service needs, and choose the most appropriate calling plan. The education plan will promote available government programs that assist low-income consumers in obtaining telephone service. Finally, CALLS will create programs and materials to educate consumers on how to understand their phone bills.[578] Consumer education plan materials must be made available in alternative formats and languages, in order to reach the maximum number of consumers.

250. Not later than 90 days after the effective date of this order, CALLS members must submit to the Consumer Information Bureau a compliance statement detailing the actions taken to fulfill their consumer education plan, as well as further public education efforts they will take over the life of the CALLS plan.

V. PROCEDURAL ISSUES

A. Final Regulatory Flexibility Analysis

251. As required by the Regulatory Flexibility Act (RFA),[579] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the CALLS NPRM,[580] and revised in the Public Notice requesting comment on the modified CALLS Proposal.[581] The Commission sought written public comment on the proposals in the CALLS NPRM and the CALLS Proposal, including comments on the IRFAs. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.[582] To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

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[578] We further note that our Truth in Billing Order and rules address the way carriers characterize their fees, as well as many of the problems that consumers have understanding charges. *See Truth In Billing First Report and Order*, 14 FCC Rcd at 7496. A carrier is required to list, item-by-item, each charge it bills to the consumer. *Id.*, 14 FCC Rcd at 7516. The language used must be clear to the average consumer, and the bill must include telephone numbers that consumers can call for further explanations of their telephone bills. *Id.*

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

[580] *CALLS NPRM*, 14 FCC Rcd at 16875-76.

[581] Coalition for Affordable Local and Long Distance Services (CALLS) Modified Proposal, CC Docket No. 96-262, Public Notice, DA-00-533, at 1-3 (Comm. Carr. Bur., rel. Mar. 8, 2000).

[582] *See* 5 U.S.C. § 604.

1. Need for and Objectives of this Order

252. The CALLS members offer the proposal as a comprehensive solution to the members' access charge, universal service, and price cap concerns. The CALLS plan would revise the current system of common line charges by combining existing carrier and subscriber charges into one flat-rated subscriber line charge (SLC), and would provide for limited deaveraging of those charges under specific conditions. The CALLS plan also would establish an interstate access universal service support mechanism that provides explicit support to replace support currently implicit in interstate access charges. In addition, the CALLS plan calls for annual reductions in traffic-sensitive switching access rates until they reach a specified level.

253. As stated in Section I above, we believe that the CALLS Proposal is in the public interest, and so adopt it to the extent discussed in this Order. This Order agrees with the CALLS members that the CALLS Proposal is the result of certain segments of the telecommunications industry developing a comprehensive approach to resolve outstanding issues concerning access charges and universal service. By adopting the CALLS Proposal, this Order will result in lower rates for both low-volume and high-volume long distance consumers, more competition, greater flexibility for price cap LECs to meet competition, and an explicit, portable interstate access universal service support mechanism. It is the CALLS Proposal's comprehensive solution of historically contentious issues that allows the Commission to take these actions while ensuring that consumers in high-cost areas will continue to have affordable service.[583]

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

254. The Commission received no comments addressing the IRFA. We did, however, receive some general small-business-related comments. Some commenters request that the CALLS Proposal require a proportionate share of the agreed upon local switching rate reductions to come from tandem-switched rates. Other commenters argue that the CALLS Proposal should have a separate X-factor for mid-size price cap incumbent LECs. These comments are addressed in detail in this Order,[584] and are summarized in subsection 5 of the FRFA, infra.

3. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

255. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[585] The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3

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583 *See* Section II above.

584 *See* Section IV.B.2 above.

585 5 U.S.C. § 603(b)(3).

of the Small Business Act.[586] 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 SBA.[587]

256. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity that has no more than 1500 employees.[588]

Total Number of Telephone Companies Affected.

257. *Price Cap Local Exchange Carriers.* The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of price cap LECs that would qualify as small business concerns under the SBA's definition. However, there are currently only 13 price cap LECs, four of which share common ownership.[589] Consequently, significantly fewer than 13 providers of local exchange service are estimated to be small entities or small price cap LECs that may be affected by these proposals. We have included small price cap LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[590] The SBA's Office of Advocacy contends that, for RFA purposes, small price cap LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[591] We have therefore included small price cap LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

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[586] *Id.* § 601(3).

[587] *Id.* § 632.

[588] 13 C.F.R. § 121.201.

[589] Two carriers, VALOR and Iowa Telecom, are under contract to purchase exchanges from price cap LECs, and will be subject this Order. Both carriers are probably small entities.

[590] 5 U.S.C. § 601(3).

[591] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC, May 27, 1999. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g.*, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

258. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange service. The closest applicable definition under SBA rules is for telephone telecommunications companies other than radiotelephone (wireless) companies.[592] The most reliable source of information regarding the number of competitive LECs nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, 129 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.[593] The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of competitive LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 129 providers of local exchange service are small entities or small competitive LECs that may be affected by these proposals.

4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

259. It is not clear whether, on balance, the CALLS Proposal will increase or decrease price cap incumbent local exchange carriers' administrative burdens. Some of the rate structure reforms in the CALLS Proposal will require additional filings. In particular, the CALLS Proposal requires price cap LECs to file with the Universal Service Administration Corporation (USAC) additional information pertaining to line counts by zone and customer class, revenue data, and information regarding zone boundaries. Competitive LECs would also have to file with USAC line counts by zone and customer class. The filings are on a quarterly basis. On the other hand, other reforms in the CALLS Proposal, such as the elimination of the PICC, should reduce administrative burdens for price cap LECs. Finally, some of the reforms in the CALLS Proposal may have a neutral affect on administrative burdens. For example, under the CALLS Proposal, implicit subsidies now collected by price cap LECs from IXCs through access charges will be collected as explicit subsidies from USAC. This reform should neither increase nor decrease the administrative burden for price cap LECs.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

260. The proposals made by CALLS could have varying positive or negative impacts on price cap LECs, including any such small carriers. The alternative to consideration of adopting the CALLS proposal at this time would be to continue in effect the existing access

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592 Standard Industrial Classification (SIC) Code 4813.

593 FCC, Common Carrier Bureau, *Carrier Locator: Interstate Service Providers*, Figure 1 (number of carriers paying into the TRS Fund by type of carrier) (Jan. 1999).

charge and universal service fund rules. Neither this alternative, nor any other identified by the Commission, would lessen the significant economic impact on small entities while remaining consistent with this Order's objectives.

261. Several commenters, while not directly responding to our IRFA, did raise general small-business-related concerns. Commenters concerned about protecting smaller IXCs in competition with large IXCs request that the CALLS Proposal require a proportionate share of the agreed upon local switching rate reductions to come from tandem-switched rates.[594] This Order explains, however, that 1) competition in the long distance market eliminates the need for rules protecting smaller IXCs, and 2) even if price cap LECs target their access rate reductions only to direct-trunked transport, these reductions should make direct-trunked transport an affordable alternative for smaller IXCs.[595] Other commenters argue that the CALLS Proposal should have a separate X-factor for mid-size price cap incumbent LECs because these carriers are not able to achieve the same levels of productivity growth as larger LECs.[596] As this Order explains, however, the X-factor adopted under the CALLS proposal is not a productivity offset, but is merely a method to reduce traffic sensitive charges to the Proposal's target level.[597]

262. This Order makes two allowances for smaller price cap LECs. First, the Order allows a higher target access rate for smaller and rural price cap LECs. Whereas the target for the BOCs and GTE is set at 0.55 cents, the target is 0.95 cents for small rural price cap LECs and 0.65 cents for the other smaller price cap LECs.[598] Second, the Order allows mid-size price cap carriers with at least 20 percent of total holding company lines serving statutorily rural areas to pool their access charge reductions and to temporarily recover them from sources other than residential end users and per-minute charges.[599]

6. Report to Congress

263. The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[600] In addition, the Commission will send a copy of this Order, including this FRFA, to the

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[594] *See* Section IV.B.2.a above.

[595] *See* Section IV.B.2.a above.

[596] *See* Section IV.B.2.b above.

[597] *See* Section IV.B.2.b above.

[598] *See* Appendix B § 61.3(nn).

[599] *See* Section IV.B.2.b above; *see also April 14 VALOR Letter.*

[600] *See* 5 U.S.C. § 801(a)(1)(A).

Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the Federal Register.[601]

B. **Paperwork Reduction Act**

264. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

VI. ORDERING CLAUSES

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

266. We, therefore, ORDER that the Inquiry initiated in CC Docket 99-249 is hereby TERMINATED. This action is taken pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 303.

267. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

268. IT IS FURTHER ORDERED that the provisions in this Order SHALL BE EFFECTIVE immediately upon publication in the Federal Register. Pursuant to 5 U.S.C. § 553(d)(3), we find good cause exists to have the rules take effect immediately upon publication in the Federal Register. Local exchange carriers subject to price cap regulation must file access reform tariffs no later than June 16, 2000 in order for them to be effective by July 1, 2000, as required by Section 69.3 of the Commission's rules, 47 C.F.R. § 69.3. In addition, to ensure that the local exchange carriers subject to price cap regulation have actual notice of these rules immediately following their release, we are serving those entities by overnight mail. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

[601] *See* 5 U.S.C. § 604(b).