

plan to remain in effect longer than five years.

168. As we have stated, the duration of this interim plan is five years. In order to ensure that we have adequate time to consider, in consultation with the Joint Board, how these complex support issues should be addressed after five years, we intend to refer these issues to the Joint Board no later than January 1, 2002.⁴⁰¹ We agree with the Joint Board that this proposed timing will permit the Joint Board and the Commission to consider the appropriate rural mechanism to succeed the plan we are adopting pursuant to the Rural Task Force's recommendation and to devote sufficient time to the task prior to the termination of that plan.

169. Consistent with the Joint Board's recommendations and in the context of the Joint Board's consideration of an appropriate high-cost mechanism for rural telephone companies, we anticipate conducting a comprehensive review of the high-cost support mechanisms for rural and non-rural carriers as a whole to ensure that both mechanisms function efficiently and in a coordinated fashion. We will use the transitional period during which a modified embedded cost mechanism is in place to develop a long-term universal service plan that better targets support to rural telephone companies serving the highest cost areas and recognizing the significant distinctions among rural carriers and between rural and non-rural carriers. In addition, we would include in that comprehensive review consideration of general issues related to excessive fund growth and competitive neutrality.

170. In developing a long-term universal service plan that better targets support to the highest cost rural areas, we intend to consider all options, including the use of forward-looking costs, to determine appropriate support levels for both rural and non-rural carriers. Although we find that distinct rural and non-rural mechanisms are appropriate at this time for the reasons discussed above, we are not convinced that this is a viable long-term solution. As we approach this task in the future, we will consider what plan best effectuates the mandates and goals of section 254 that supported services be provided at affordable and reasonably comparable rates to all Americans.

171. Although we recognize that the Act includes special provisions for markets served by rural telephone companies, we emphasize that these provisions do not require separate rural and non-rural universal service support mechanisms.⁴⁰² Several commenters argue that support should not be dependent upon the ownership characteristics of the carrier that happens to serve rural customers because section 254 requires comparable rates in rural *areas*.⁴⁰³ The Maine and Vermont Commission emphasize that for every rural customer served by a rural telephone company, there are four rural customers served

⁴⁰¹ See *Joint Board Recommended Decision* at para. 21.

⁴⁰² See *Tenth Report and Order*, 14 FCC Rcd at 20243 para. 200. See also Ad Hoc Telecommunications User Committee Comments at 13 ("The 1996 Act makes no distinction between rural and non-rural carriers when establishing the universal service guidelines. The 1996 Act requires no disparate treatment of rural and non-rural carriers when it directs the Commission to establish 'explicit and sufficient' support for universal service or when it specifies which carriers must contribute to the fund.") (citations omitted); Maine and Vermont Commissions Comments at 4 n.2 ("[T]he term [rural carrier] was not used in Section 254, and its use in the context of universal service actually obscures the objectives of Section 254, to make rates affordable and comparable for customers in all rural areas.").

⁴⁰³ See, e.g., Ad Hoc Telecommunications User Committee Comments at 13 (urging the Commission "to recognize that rural, high cost areas are defined by their unique characteristics and not by the size of the companies that serve them, and to reject any universal service policies for rural and non-rural carriers alike, that do not reflect or incorporate this concept"); Maine and Vermont Commissions Comments at 4 n.2 (arguing that "any system based upon the classification of companies will necessarily be both under-inclusive and over-inclusive of the intended beneficiary class, namely rural high-cost customers"); see also Florida Commission Comments at 5 ("The amount of funding should not necessarily depend on the size of the serving carrier.")

by a non-rural company.⁴⁰⁴ These are important issues that we should consider further in the future.

172. We agree with the Rural Task Force that its empirical analysis showed that there are considerable differences between rural and non-rural carriers and significant variations among rural carriers. At the same time, we observe that some of the data seem to show that some rural companies may be more similar to non-rural companies than to smaller rural companies.⁴⁰⁵ We anticipate that our comprehensive review of the high-cost support mechanisms for rural and non-rural carriers as a whole will include an examination of our current classification of companies as rural or non-rural for purposes of receiving universal service support. In this regard, we believe that the information the Rural Task Force provided in *White Paper 2: The Rural Difference* will be valuable.

173. The Rural Task Force concluded that, in light of the differences between rural and non-rural carriers, a distinct rural mechanism is appropriate and recommended against use of the Commission's forward-looking high-cost mechanism for non-rural carriers to calculate support for rural carriers. Although we agree with the Rural Task Force that a distinct rural mechanism is appropriate at this time, we believe that there may be significant problems inherent in indefinitely maintaining separate mechanisms based on different economic principles.

174. The Commission previously determined that support based on forward-looking cost is sufficient for the provision of the supported services and sends the correct signals for entry, investment, and innovation.⁴⁰⁶ Many commenters representing the interests of rural telephone companies argue that the Rural Task Force's analysis conclusively demonstrates that the forward-looking cost mechanism should not be used to determine rural company support and that only an embedded cost mechanism will provide sufficient support for rural carriers.⁴⁰⁷ We disagree.⁴⁰⁸ While the Rural Task Force demonstrated

⁴⁰⁴ Maine and Vermont Commissions Comments at 4 n.1. Maine and Vermont Commissions urge the Commission to produce greater alignment between the rural and non-rural support mechanisms, focus support on rural carriers that have high overall costs, not merely high loop costs, and consider permitting non-rural companies to divide their study areas into rural and non-rural areas. *Id.* at 7.

⁴⁰⁵ For example, the Rural Task Force reports that the average density is only 13 persons per square mile for areas served by rural carriers compared with 105 persons per square mile in areas served by non-rural carriers. At the same time, the average population density varies dramatically among rural carriers. Rural carriers in Alaska and Wyoming serve populations of 0.58 and 1.25 persons per square mile, respectively, while those in some states serve populations of over 100 persons per square mile. That is, some rural carriers serve areas with approximately the same density as the non-rural average. *See* Rural Task Force Recommendation at 11-12. Similarly, the Rural Task Force reports that average total plant investment per line ranges from \$3,000 for rural carriers with the largest study areas to over \$10,000 for rural carriers with the smallest study areas. The range of values for total plant investment per loop for rural carriers (\$1,400 to \$40,500) is far greater than the range for non-rural carriers (\$1,570 to \$4,350). That is, the largest rural carriers have an average total plant investment per line (\$3,000) that is lower than that of some non-rural carriers (\$4,350). *See* Rural Task Force Recommendation at 13.

⁴⁰⁶ *First Report and Order*, 12 FCC Rcd at 8899 paras. 224-25. In rejecting arguments for basing support on a carrier's embedded cost, the Commission agreed with the Joint Board that "to the extent that it differs from forward-looking economic cost, embedded cost[s] provide the wrong signals to potential entrants and existing carriers. . . . [W]hen embedded costs are above forward-looking costs, support of embedded costs would direct carriers to make inefficient investments that may not be financially viable when there is competitive entry. . . . [I]f embedded cost is below forward-looking economic cost, support based on embedded costs, would erect an entry barrier to new competitors, because revenue per customer and support, together would be less than the forward-looking economic cost of providing supported services." *Id.* at 8901 para. 228.

⁴⁰⁷ *See, e.g.*, NRTA, OPASTCO, & USTA Reply Comments at 3; GVNW Consulting Reply Comments at 4.

⁴⁰⁸ *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 412; *Alenco Communications, Inc. v. FCC*, 201 F.3d at 619.

the inappropriateness of using input values designed for non-rural carriers to determine support for rural carriers, we do not find that its analysis justifies a reversal of the Commission's position with respect to the use of forward-looking cost as a general matter.⁴⁰⁹

175. As some commenters point out, the Rural Task Force's analysis of the forward-looking mechanism was based on the results of running the existing high-cost universal service model for rural companies using non-rural inputs.⁴¹⁰ Because it found significant differences in comparing these results with actual company data, the Rural Task Force found that the model was not an appropriate tool for determining forward-looking costs of rural carriers. If inputs based on rural carrier data had been used, however, many of these differences could have been eliminated.⁴¹¹ Other differences identified by the Rural Task Force with respect to individual companies are generally the discrepancies one would expect when inputs designed for non-rural companies are used for an analysis of rural costs.⁴¹²

⁴⁰⁹ The Rural Task Force proposed modifications to the current embedded cost system, rather than attempting to modify the Commission's forward-looking cost mechanism that currently is used to determine non-rural support. See Rural Task Force Recommendation at 17-19; *Recommended Decision* at para. 13. See also Ad Hoc Telecommunications User Committee Comments at 9-10 ("The RTF simply did not fulfill its mandate to evaluate whether or not the 'FLEC mechanism for rural carriers should have different platform design features or input values than the mechanism adopted for non-rural carriers.") (quoting Public Notice creating Rural Task Force); California Commission Comments at 3 ("The RTF, however, gives no consideration to modifying or improving the FCC's Synthesis Model for rural carrier purposes prior to concluding that universal service support should be based on embedded costs.").

⁴¹⁰ See Ad Hoc Telecommunications User Committee Comments at 9-10; WorldCom Comments at 2 ("Without exception, the issues the RTF discusses in its analysis of the Commission's synthesis model merely reflect input questions, not problems with the model structure itself.").

⁴¹¹ For example, the Rural Task Force said "model lines differed significantly from actual lines served." Rural Task Force Recommendation at 17; see also GVNW Consulting Reply Comments at 4. This is not surprising because the Rural Task Force did not use current line count data as input values. Instead, the Rural Task Force used the line count data developed by AT&T's consultant for use in the industry-sponsored HAI model, which had been tried up to 1996 ARMIS line counts. Updating line counts on a regular basis is an important aspect of estimating costs in the non-rural mechanism. When the non-rural mechanism was adopted, the non-rural line counts were updated to reflect 1998 ARMIS line counts. See *Tenth Report and Order*, 14 FCC Rcd at 20186 para. 61. Line count input values for the non-rural mechanism were updated last year to reflect year-end 1999 line counts filed by the carriers pursuant to Part 36 of the Commission's rules. *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order, DA 00-2729 (rel. Dec. 8, 2000).

⁴¹² For instance, the Rural Task Force said that model results for the type of plant varied from actual plant constructed. Rural Task Force Recommendation at 18; see also GVNW Consulting Reply Comments at 4. This is not surprising because the non-rural model currently uses nationwide plant mix values when developing the non-rural mechanism. Although the Commission sought comment on proposals to use company-specific or state-specific plant mix values, it found that there was no reasonable alternative to nationwide values at the time. See *Tenth Report and Order*, 14 FCC Rcd at 20257 para. 233. The Rural Task Force also said that the model underestimates wire center area. Rural Task Force Recommendation at 18; see also GVNW Consulting Reply Comments at 5. The wire center area reported by the model is the sum of the distribution areas. Model results report only the area within the wire center that is served. If, as it appears, the Rural Task Force's definition of area includes the entire area within a wire center, served and unserved, where the unserved can be lakes, mountains and deserts, then the Rural Task Force's area will always be greater than the model reported area. The Rural Task Force also said that the model underestimates switching investment. Rural Task Force Recommendation at 18; see also GVNW Consulting Reply Comments at 5. It is generally accepted that forward-looking switch costs are less than embedded switch costs. This conclusion is incorporated in the model switch estimation procedures through a negative trend coefficient. Thus, it can be claimed that the model underestimates switching investment by relying on the fact that embedded costs are greater than the forward-looking costs. Second, model switching investment is (continued....)

176. In addition, the Rural Task Force acknowledged that the primary reason for the decrease in its estimated total support amounts for rural carriers is due to the statewide cost-averaging and nationwide benchmark employed in the non-rural mechanism to determine funding levels for non-rural carriers.⁴¹³ Indeed, the Rural Task Force's analysis in *White Paper 4* demonstrates how changing the area over which costs are averaged and changing the nationwide benchmark dramatically change support amounts.⁴¹⁴ That is, averaging and benchmarks have more impact on determining support levels than the cost estimates produced by the model. The Commission has long recognized that the mechanism used to determine forward-looking cost for rural carriers may differ from that used for non-rural carriers.⁴¹⁵ For instance, one could design a forward-looking mechanism for rural carriers that uses different benchmarks and averaging conventions.

177. We leave these issues for another day. Although we conclude that the Rural Task Force's analysis has not demonstrated that a forward-looking mechanism could never appropriately be used to estimate rural costs, we do not have sufficient information to do so at this time. Even those commenters who urge the Commission to move to forward-looking cost for rural carriers recognize that the Commission would need additional time to develop suitable rural input values.⁴¹⁶ Because the Commission has not developed rural inputs and it is not possible to determine forward-looking costs for rural carriers at this time, we find that rural carriers should continue to receive support based upon their embedded costs while the five-year plan adopted in this Order is in place.

(Continued from previous page) _____

dependent on the number of lines connected to the switch. If the Rural Task Force had used current lines to estimate the model switch investment then that investment would have been higher. The Rural Task Force also said that the model results for general support investment varies widely from actual data. Rural Task Force Recommendation at 18; *see also* GVNW Consulting Reply Comments at 5. Model general support investment for rural companies was based on the average relationship between non-rural general support investment and forward looking network investment. Applying the average relationship to particular rural companies should generate results that have as many over-estimations as under-estimations. Thus, the results for rural companies simply and accurately reflect an input based on an average relationship. When rural carrier specific information becomes available this problem should be significantly mitigated. The Rural Task Force also said that the model underestimates network operations and corporate operations expenses. Rural Task Force Recommendation at 18; *see also* GVNW Consulting Reply Comments at 5. Model network operations and corporate operations expenses include only those related to universal service. Non-universal service expenses related to toll services, special access lines and mergers and acquisition have been removed from the total network and corporate operations expenses. Therefore, model expenses are and should be less than actual expenses. Comparing model expenses to actual expenses is inconsistent with the design and purpose of the universal service modeling process.

⁴¹³ *See* Rural Task Force Recommendation at 19.

⁴¹⁴ For example, if support were averaged at the study area level, rather than at the state level, the total amount of support to rural and non-rural carriers would double the amount available under the current embedded cost mechanism. *A Review of the FCC's Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies: Rural Task Force White Paper 4* (Sept. 2000) (visited May 2, 2001) <<http://www.wutc.wa.gov/rtf>> at 18 (*White Paper 4*). If the benchmark were 115 percent of the nationwide average forward-looking cost instead of 135 percent, the total amount of support for rural and non-rural carriers would remain approximately the same as under the current mechanism. *White Paper 4* at 17.

⁴¹⁵ The Joint Board and the Commission "[did] not anticipate that all carriers will begin to receive universal service support in rural, insular, and high-cost areas based on forward-looking economic cost at the same time or even in an identical manner." *First Report and Order*, 12 FCC Rcd 8889 para. 203.

⁴¹⁶ *See, e.g.*, WorldCom Comments at 3; Ad Hoc Telecommunications User Committee Reply Comments at 5-6.

F. Identification of Service Locations

1. Background

178. All telecommunications carriers, including commercial mobile radio service (CMRS) carriers that provide supported services, regardless of the technology used, may be eligible to receive federal universal service support if they satisfy section 214(e)(1) of the Act.⁴¹⁷ Because such support is portable, a competitive eligible telecommunications carrier receives the same per-line high-cost support as an incumbent local exchange carrier for lines that it captures from the incumbent local exchange carrier, as well as for any “new” lines that the competitive eligible telecommunications carrier serves in the high-cost areas of the incumbent local exchange carrier.⁴¹⁸

179. Consistent with its recommendation that high-cost support be disaggregated and targeted below the study area level, the Rural Task Force recommended that a wireless mobile carrier providing service in an area served by a rural carrier use the customer’s residential or business location as the basis for determining in which disaggregation zone a customer is located for purposes of targeting universal service support.⁴¹⁹ In making this recommendation, the Rural Task Force recognized that the use of any location address could allow arbitrage of the universal service support system. The Rural Task Force further recommended that the Commission establish a reasonable method for determining the customer location for mobile wireless customers. Finally, the Rural Task Force advocated that the Commission, or other appropriate regulatory authority, retain authority to prevent the misuse of mobile wireless customer locations and ensure that universal service support is being used in accordance with section 254(e).

2. Discussion

180. We adopt the Rural Task Force’s recommendation that a wireless mobile carrier use a customer’s location as the basis for determining in which disaggregation zone a customer is located for purposes of receiving high-cost universal service support for service provided to that customer. To that end, we find that a customer’s billing address is a reasonable surrogate to identify a mobile wireless customer’s location for the purpose of identifying a corresponding disaggregation zone and thus the appropriate per-line support level for service provided to the mobile wireless customer. We also clarify that this approach is applicable to competitive eligible telecommunications carriers providing mobile wireless service not only in a rural carrier’s service area, but also in the service area of a non-rural carrier.

181. We recognize, as did the Rural Task Force and commenters, that, because mobile wireless carriers do not provide service at a fixed location, there is a question as to how to relate a mobile wireless carrier to a disaggregation zone for purposes of determining how much support a carrier is entitled to for serving that customer.⁴²⁰ We find that a mobile wireless customer’s billing address is a reasonable surrogate for the customer’s location. Unlike wireline carriers or fixed wireless carriers,⁴²¹ who out of necessity must have a provisioning database to determine the point of service for their

⁴¹⁷ See 47 U.S.C. 254(e)(1); *First Report and Order*, 12 FCC Rcd at 8858 para. 145; *Seventh Report and Order and Thirteenth Order on Reconsideration*, 14 FCC Rcd at 8113 para. 72.

⁴¹⁸ See *Ninth Report and Order*, 14 FCC Rcd at 20480 para. 90.

⁴¹⁹ Rural Task Force Recommendation at 38.

⁴²⁰ See *id.* at 38; *White Paper 5* at 21. See also CUSC Comments App. A at 15-16; John Staurulaukis, Inc. Comments at 16; Fred Williamson & Assoc. Comments at 9.

⁴²¹ Fixed wireless carriers, like wireline carriers, provision their services to a fixed point of use.

customers, mobile wireless carriers do not need such a database because a customer's point of use varies. Therefore, while some mobile wireless carriers may have databases that are similar to provisioning databases, most will have billing address databases. Thus, adoption of customer's billing address as a surrogate for service location eliminates the need for many mobile wireless carriers to create a new database for purposes of universal service funding. We note in this regard that in the *Local Competition and Broadband Reporting Report and Order*, we allow mobile wireless carriers who submit zip code data to use customer billing address as a surrogate for customer location because it is the most administratively easy solution to determining a customer's primary place of use.⁴²² Although we acknowledge that there may be several possible solutions to this problem,⁴²³ we find that this approach is reasonable and the most administratively simple solution to this problem.⁴²⁴

182. We, therefore, decline to use the residential or primary business location as a surrogate because, as noted above, not all mobile wireless carriers have databases capable of making such a determination. Further, we decline to use the system adopted by Congress in the Mobile Telecommunications Sourcing Act.⁴²⁵ The Mobile Telecommunications Sourcing Act requires a designated database provider⁴²⁶ or the states to develop an electronic database for determining the situs of customers' "place of primary use"⁴²⁷ for purposes of state and local taxation.⁴²⁸ Under this law, states or their designees will be required to establish an electronic database for making a determination on which municipality has taxing authority over the revenues generated by the customer.⁴²⁹ In the event that such a database is not available, the carrier may take advantage of a safe harbor provision under which it certifies that it has "expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignment to the taxing jurisdiction."⁴³⁰ We note that the Mobile Telecommunications Sourcing Act's database provision does not require the states to establish such databases until some time after August 2001.⁴³¹ We therefore decline to impose such a requirement at this time. To do so would unnecessarily increase the administrative burden on mobile wireless carriers.

183. In reaching this determination, we acknowledge, as did the Rural Task Force, that the

⁴²² *In the Matter of Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd. 7717, 7785 (rel. Mar. 30, 2000).

⁴²³ See John Staurulaukis, Inc. Comments at 16. Cf. Fred Williamson & Assoc. Comments at 9.

⁴²⁴ See John Staurulaukis, Inc. Comments at 16 ("[u]se of the billing address is the most administratively tractable solution for the problem of defining a "fixed address" for service using a mobile station."). Cf. CUSC Comments App. A at 15-16.

⁴²⁵ CUSC Comments App. A at 15-16. See also 4 U.S.C. §§ 116-124.

⁴²⁶ Defined as "a corporation, association, or other entity representing all the political subdivisions of a State that is: (A) responsible for providing an electronic database as prescribed in section 119(a) if the State has not provided such electronic database; and (B) approved by municipal and county associations or leagues of the State whose responsibility it would otherwise be to provide such database prescribed by sections 116 through 126 of this Title." 4 U.S.C. § 124 (3)(A), (B).

⁴²⁷ Defined as "the street address representative of where the customer's use of the mobile telecommunications service primarily occurs." 4 U.S.C. § 124 (8).

⁴²⁸ 4 U.S.C. § 117.

⁴²⁹ 4 U.S.C. § 119.

⁴³⁰ 4 U.S.C. § 120.

⁴³¹ 47 U.S.C. §§ 116, 119 (this provision is "applicable only to customer bills issued after the first day of the first month beginning more than two years after July 28, 2000").

use of a customer's location address could allow arbitrage of the universal service support mechanism.⁴³² If a carrier were to engage in arbitrage, e.g., misuse a customer's billing address by identifying a customer in a high-cost zone when service is primarily taken in a low cost zone for the purpose of receiving a higher level of per-line support, we will take appropriate enforcement action.⁴³³ We will continue to monitor the reasonableness of using a customer's billing address as the surrogate for a mobile wireless customer's location in a disaggregation zone for universal service purposes. As more mobile wireless carriers are designated as eligible to receive support, we may revisit this approach in the future.

184. Finally, consistent with our decision here, we also conclude that a competitive eligible telecommunications carrier providing mobile wireless service should use a customer's billing address for purposes of determining the appropriate amount of support for providing service to a customer in the service area of a non-rural incumbent local exchange carrier. In the *Ninth Report and Order*, the Commission adopted a targeting methodology for the delivery of high-cost support for non-rural carriers in which support is targeted to high-cost wire centers.⁴³⁴ The Personal Communications Industry Association (PCIA) requests that the Commission clarify how to determine which wire center should be used to determine the amount of support for any particular wireless customer.⁴³⁵ PCIA contends that a customer's address is the most accurate surrogate for the incumbent's wire center and therefore support for mobile wireless customers should be based on the wire center associated with the customer's address.⁴³⁶ We grant PCIA's request for clarification of the Commission's decision in the *Ninth Report and Order* to the extent it seeks clarification on the limited issue of assigning mobile wireless customers to the incumbent local exchange carrier's wire center.⁴³⁷ We clarify that a mobile wireless customer's billing address is a reasonable surrogate for the customer's address for assigning the customer's location to a wire-center in a non-rural carrier's study area to target universal service support.⁴³⁸

G. State Certification Under Section 254(e)

1. Background

185. Under section 254(e) of the Act, carriers must use universal service support "only for the

⁴³² See Rural Task Force Recommendation at 38-39.

⁴³³ See *Seventh Report and Order*, 14 FCC Rcd at 8115-16 para. 78. States or other parties may petition the Commission, under section 208 of the Act, if they believe a carrier has misapplied its high-cost support, and may also fully avail themselves of the Commission's formal complaint procedures to bring any alleged misapplication of high-cost support before the Commission. See also *Ninth Report and Order*, 14 FCC Rcd at 20488 para. 110.

⁴³⁴ See *id.* at 20470-73 paras. 70-76.

⁴³⁵ See Petition for Reconsideration and/or Clarification of the Personal Communications Industry Association (PCIA Petition), CC Docket No. 96-45 at 4-5.

⁴³⁶ We note that PCIA's petition, in requesting that support for mobile wireless carriers be based on "the wire center associated with the *customer's address*," does not provide additional guidance on the issue of what the customer's address is for mobile wireless carriers. PCIA Petition at 4 (emphasis added).

⁴³⁷ We note that on reply PCIA states no party opposed its recommended approach. See Reply Comments of the Personal Communications Industry Association, CC Docket No. 96-45 at 2.

⁴³⁸ PCIA states that a wireless carrier does not necessarily know the address of a prepay customer, and therefore, it may not be possible to determine support for these customers based on address. See PCIA Petition at 4 n.6. In this Order we do not resolve the issue of how to assign prepaid mobile wireless customers when the carrier does not have customer billing address information. We will review this issue on a case-by-case basis.

provision, maintenance and upgrading of facilities and services for which the support is intended.”⁴³⁹ In the *Ninth Report and Order*, the Commission concluded that because the support provided to non-rural carriers is intended to enable the reasonable comparability of intrastate rates, and states have primary jurisdiction over intrastate rates, it is most appropriate for states to determine whether support is used consistent with section 254(e).⁴⁴⁰ Accordingly, the Commission adopted, as a regulatory safeguard, rules requiring states seeking federal universal service high-cost support for non-rural carriers within their territory to file annually a certification with the Commission and USAC. The certification must state that all federal high-cost funds flowing to non-rural carriers in that state and/or competitive eligible telecommunications carriers seeking high-cost support in the service area of a non-rural carrier in that state, will be used in a manner consistent with section 254(e).⁴⁴¹ Absent such certification, a carrier cannot receive support.⁴⁴²

186. In its recommendation, the Rural Task Force recognized the need for accountability in the administration of the high-cost support mechanism for rural carriers.⁴⁴³ The Rural Task Force found that existing procedures used by NECA, USAC, the Commission, and state commissions reasonably promote such accountability. The Rural Task Force recommended that the Commission delegate to the states responsibility for oversight of section 254(e) in a manner similar to that used for non-rural carriers.⁴⁴⁴

2. Discussion

187. We conclude that states should be required to file annual certifications with the Commission to ensure that carriers use universal service support “only for the provision, maintenance and upgrading of facilities and services for which the support is intended” consistent with section 254(e). We conclude that the mandate in section 254(e) applies to *all* carriers, rural and non-rural, that are designated as eligible to receive support under section 214(e) of the Act.⁴⁴⁵ As we concluded with regard to non-rural carriers, the federal high-cost support that is provided to rural carriers is intended to enable the reasonable comparability of intrastate rates, and states have jurisdiction over intrastate rates. Given that states generally have primary authority over carriers’ intrastate activities, we believe that the state certification process provides the most reliable means of determining whether carriers are using support in a manner consistent with section 254(e). Accordingly, we will require states that wish to receive

⁴³⁹ 47 U.S.C. § 254(e).

⁴⁴⁰ *Ninth Report and Order*, 14 FCC Rcd at 20482 para. 95. The Commission noted that as long as the uses prescribed by the state are consistent with section 254(e), the states should have the flexibility to decide how carriers use the support provided by the federal mechanism. *Id.* at 20483 para. 96.

⁴⁴¹ *Id.* at 20483 para. 97. To ensure that carriers receiving *interstate* access universal service support will use that support in a manner consistent with section 254(e), the Commission adopted a certification scheme requiring carriers seeking such support to file a certification with the Commission stating that the carrier will use its support only for the provision, maintenance, and upgrading of facilities and service for which the support is intended. *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long-Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, 13062 para. 232 (*Interstate Access Support Order*), *pets. for review pending*, *Texas Office of Public Util. Counsel et al. v. FCC*, 5th Cir. No. 00-60434 (and consolidated cases) (2000). *See* 47 C.F.R. § 54.809.

⁴⁴² *Ninth Report and Order*, 14 FCC Rcd at 20484 para. 98. *See* 47 C.F.R. § 54.313(a).

⁴⁴³ Rural Task Force Recommendation at 33.

⁴⁴⁴ *Id.*

⁴⁴⁵ *See* 47 U.S.C. § 254(e).

federal universal service high-cost support for rural carriers within their boundaries to file a certification with the Commission and USAC stating that all federal high-cost funds flowing to rural carriers in that state will be used in a manner consistent with section 254(e).⁴⁴⁶ Absent such certification, carriers will not receive such support.

188. We recognize that some state commissions may have only limited regulatory oversight to ensure that federal support is reflected in intrastate rates. In the case of non-rural carriers, we concluded that states nonetheless may certify to the Commission that a non-rural carrier in the state had accounted to the state commission for its receipt of federal support, and that such support will be used “only for the provision, maintenance and upgrading of facilities and services for which the support is intended.”⁴⁴⁷ We determined that, in states in which the state commission has limited jurisdiction over such carriers, the state need not initiate the certification process itself.⁴⁴⁸ Instead, non-rural local exchange carriers, and competitive eligible telecommunications carriers serving lines in the service area of the non-rural local exchange carriers, may formulate plans to ensure compliance with section 254(e), and present those plans to the state, so that the state may make the appropriate certification to the Commission.⁴⁴⁹ We conclude that this approach is equally appropriate here with regard to rural carriers and competitive eligible telecommunications carriers serving lines in the service area of a rural local exchange carrier. Absent the filing of such certification, carriers will not receive federal universal service support.

189. We also recognize that, in limited instances, certain carriers may not be subject to the jurisdiction of a state (*e.g.*, certain tribally-owned carriers). In such instances, there is no state regulatory authority to ensure compliance with section 254(e). We conclude that, in these limited instances, a carrier shall certify directly to the Commission that federal high-cost support will be used in a manner consistent with section 254(e). The certification must be filed in the form of a sworn affidavit executed by a corporate officer attesting to the use of the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended pursuant to section 254(e) of the 1996 Act. A copy of this letter must also be submitted to USAC. Absent such a certification, carriers will not receive federal universal service support.

190. The certification requirement we adopt is applicable to all rural carriers and competitive eligible telecommunications carriers seeking high-cost support in the service area of a rural local exchange carrier. States, or carriers not subject to the jurisdiction of a state, shall file this certification annually. If filed by the state, the certification shall be applicable to all rural carriers and competitive eligible telecommunications carriers seeking high-cost support in the service area of a rural local exchange carrier that the state certifies as eligible to receive federal high-cost during that annual period.⁴⁵⁰ The certification may be filed in the form of a letter from the appropriate state regulatory

⁴⁴⁶ As explained above, three federal universal service mechanisms provide high-cost support for rural carriers. These include high-cost loop support, LSS and LTS. *See supra* para. 13. High-cost loop support provides support for a portion of a carrier’s total cost allocated to the intrastate jurisdiction. Similarly, LSS is available to support the intrastate switching costs of carriers with 50,000 or fewer lines. By contrast, LTS supports interstate allocated loop costs of non-price cap carriers (typically small, rural carriers) that participate in the NECA common line pool. Because the Commission has primary jurisdiction over interstate rates, oversight of the use of LTS lies with the Commission. *See Interstate Access Support Order*, 15 FCC Rcd at 13062 para. 232. We anticipate addressing certification of LTS when we address interstate access reform in the MAG proceeding. *See infra* n.1.

⁴⁴⁷ *Ninth Report and Order*, 14 FCC Rcd at 20483 para. 97.

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

⁴⁵⁰ The timing and effectiveness of these annual certifications are discussed *infra* in para. 191.

authority, or authorized corporate officer where the state lacks jurisdiction, and shall be filed with the Commission and USAC. A state may file a supplemental certification for carriers that were not eligible for support at the time the state filed its initial certification. In the event that a state determines that a carrier has not complied with section 254(e), the state shall have the authority to revoke certification. In addition, because states are responsible for filing section 254(e) certifications with the Commission, challenges to the propriety of the certifications, or revocation of the certifications, should be brought at the state level.

191. Under our existing rules, USAC submits to the Commission estimated universal service support requirements, including high-cost support, two months prior to the beginning of each quarter.⁴⁵¹ Thus, for the first quarter of 2002, USAC will submit estimated universal service support requirements on or before November 1, 2001. In order for USAC to submit an accurate estimate of the level of high-cost and local switching support, it will need to know which carriers have been certified pursuant to the section 254(e)-certification process. To allow USAC sufficient time to process section 254(e) certifications and estimate the level of high-cost support, we conclude that certifications should be filed one month before USAC's quarterly filing is due, that is on October 1. In the event that a certification is filed untimely, the carriers subject to that certification will not be eligible for support until the quarter for which USAC's subsequent filing is due. For example, if a state files a section 254(e) certification after October 1, 2001, but on or before January 1, 2002, the carrier would not be eligible for support until the second quarter of 2002.⁴⁵² In the event that a state revokes a certification, the state must notify USAC and the Commission within 30 days of the revocation.

192. In adopting this certification scheme, we recognize that rural carriers are receiving federal high-cost support under our existing rules and may be entitled to additional levels of federal high-cost support under our revisions to these rules, which will be effective July 1, 2001. We will not, however, require certifications for the last two quarters of 2001. Rather, we will require certifications to be submitted initially on October 1, 2001 for the first full year of implementation, January 1, 2002 – December 31, 2002. We acknowledge that, as a result, we will not have certifications for support distributed for the last two quarters of 2001. We believe that permitting the continued delivery of support during these two quarters without certification will ease the transition to the revised mechanism for states, carriers, and USAC, and ensure that the benefits accruing from its adoption are realized as quickly as possible. We note that we have the authority to take enforcement action against a carrier if we should determine that support is being used in a manner inconsistent with section 254(e).⁴⁵³ We believe that this enforcement power will afford sufficient protection against abuse during this limited period of transition.

193. Finally, we reconsider, on our own motion, the existing rule requiring state certification of the use of universal service support by non-rural incumbent local exchange carriers and eligible telecommunications carriers serving lines in the service area of a non-rural incumbent local exchange

⁴⁵¹ 47 C.F.R. § 54.709(a)(3). The Commission uses those support requirements to establish a contribution factor for the upcoming quarter. *See* 47 C.F.R. § 54.709(a). USAC then uses the contribution factor to bill carriers and collect the appropriate amount of support to fund the universal service programs. *Id.*

⁴⁵² *See* Appendix A for the relevant rules.

⁴⁵³ *See Seventh Report and Order*, 14 FCC Rcd at 8115-16 para. 78. States or other parties may petition the Commission, under section 208 of the Act, if they believe a carrier has misapplied its high-cost support, and may also fully avail themselves of the Commission's formal complaint procedures to bring any alleged misapplication of federal high-cost support before the Commission. *See also Ninth Report and Order*, 14 FCC Rcd at 20488 para. 110.

carrier adopted in the *Ninth Report and Order*.⁴⁵⁴ In its current form, the rule does not recognize that in limited instances, certain carriers may not be subject to the jurisdiction of a state. As a result, the rule does not provide a mechanism by which such a carrier's use of support can be certified as consistent with section 254(e). Consistent with our determination with regard to rural carriers and eligible telecommunications carriers serving lines in the service area of a rural incumbent local exchange carrier, we conclude that in these limited instances, a carrier shall certify directly to the Commission that federal high-cost support will be used in a manner consistent with section 254(e). The certification must be filed in the form of a sworn affidavit executed by a corporate officer attesting to the use of the support only for the provision, maintenance and upgrading of facilities and services for which the support is intended pursuant to section 254(e) of the Act. A copy of this letter must also be submitted to USAC. Absent such a certification, carriers will not receive support.⁴⁵⁵

H. Advanced Services

1. Background

194. Section 254(c) of the Act defines universal service as an “evolving level of telecommunications services that the Commission shall establish periodically[.]”⁴⁵⁶ In 1997, based on consideration of the definitional criteria set forth in section 254(c) and the Joint Board's recommendations, the Commission designated nine “core” services that are eligible for universal service support: single-party service; voice grade access to the public switched telephone network; Dual Tone Multifrequency signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income consumers.⁴⁵⁷

195. The 1996 Act addresses advanced telecommunications and information services in sections 254(b) and 706. Section 254(b) establishes the universal service principles that access to such services should be provided in all regions of the Nation, and should be reasonably comparable in rural, insular, and high-cost areas to the access in urban areas.⁴⁵⁸ Section 706 directs the Commission and the states to utilize various regulatory methods to “encourage deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans[.]”⁴⁵⁹

⁴⁵⁴ See *id.* at 20482-88 paras. 93-110. See also 47 C.F.R. § 54.313. This reconsideration on the Commission's own motion is appropriate given the pendency of petitions for reconsideration of the Commission's *Ninth Report and Order*. See *Central Florida Enterprises v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979).

⁴⁵⁵ See Appendix A for the relevant rule.

⁴⁵⁶ 47 U.S.C. § 254(c)(1).

⁴⁵⁷ *First Report and Order*, 12 FCC Rcd at 8807-25 paras. 56-87; see 47 U.S.C. § 254(c)(1).

⁴⁵⁸ 47 U.S.C. §§ 254(b)(2), (3).

⁴⁵⁹ Section 706(c) of the 1996 Act, reproduced in the notes under 47 U.S.C. § 157; see *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Second Report, 15 FCC Rcd 20913 (2000) (*Second 706 Report*). Section 706 generally defines advanced telecommunications capability as “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology. In the *Second 706 Report*, the Commission defined as “advanced” for section 706 purposes services with a transmission speed of at least 200 kilobits per second (kbps) (continued....)

196. The Rural Task Force recommended that the Joint Board review the definition of services that are supported by the federal universal service mechanisms.⁴⁶⁰ It also recommended that the list of supported services “should evolve to include access to information services at a rate that is reasonably comparable to that provided in urban areas.”⁴⁶¹

197. In addition, the Rural Task Force stated that its recommendation to continue distributing support to rural carriers based on their embedded costs “inherently provides incentives for the infrastructure investments necessary for providing access to advanced services.”⁴⁶² It recommended the adoption of a “no barriers to advanced services” policy for rural carriers, which it indicated would be comparable to that applied in connection with the forward-looking high-cost mechanism for non-rural carriers.⁴⁶³ The Rural Task Force recommended that the “no barriers” policy incorporate the following general principles: (1) support should be provided for plant “that can, either as built or with the addition of plant elements, when available, provide access to advanced services[;]” (2) “carriers should be encouraged by regulatory measures to remove infrastructure barriers relating to access to advanced services[;]” and (3) “[t]he federal universal service support fund should be sized so that it presents no barriers to investment in plant needed to provide access to advanced services.”⁴⁶⁴

2. Discussion

198. The definition of universal service under section 254(c) of the Act is a matter currently pending before the Joint Board. The Commission asked the Joint Board to review the list of supported

(Continued from previous page)

in two directions (provider-to-customer and customer-to-provider), and as “high-speed” services with a speed of at least 200 kbps in one direction. *Section 706 Report*, 15 FCC Rcd at 20921 para. 11.

⁴⁶⁰ Rural Task Force Recommendation at 22. The Rural Task Force stated that “[t]he provision of access to advanced services . . . is separate and distinct from the actual provision of advanced services when and if they have been added to the supported services defined periodically by the FCC under Section 254(c).” *Id.* We note that, contrary to the Rural Task Force’s suggestion, inclusion of a service on the list of supported services under section 254(c) generally means that universal service mechanisms support *access* to the service, rather than “the actual provision” of the service.” *Id.*; *see, e.g., First Report and Order*, 12 FCC Rcd at 8817 para. 74 (“we support the telecommunications network components necessary for access . . . , but not the underlying services themselves”).

⁴⁶¹ Rural Task Force Recommendation at 23. In 1997, the Commission determined that dial-up Internet access should not be supported separately from voice grade access “because the record does not indicate that a substantial majority of residential customers currently subscribe to Internet access by using access links that provide higher quality than voice grade access.” *First Report and Order*, 12 FCC Rcd at 8823 para. 83. In 1999, the Commission’s Common Carrier Bureau sought comment on requests by the Rural Utilities Service (RUS) and three state commissions to redefine voice grade access by increasing the minimum frequency range from 300-3,000 Hertz (Hz) to approximately 200-3,500 Hz. RUS and these states expressed concerns that the current definition does not ensure that consumers in rural areas using 28.8 kbps modems for Internet access can achieve data transmission speeds reasonably comparable to those achieved by consumers in urban areas using the same modems. *Common Carrier Bureau Seeks Comment on Requests to Redefine “Voice Grade Access” for Purposes of Federal Universal Service Support*, CC Docket No. 96-45, Public Notice, DA 99-2985 (rel. Dec. 22, 1999).

⁴⁶² Rural Task Force Recommendation at 22.

⁴⁶³ *Id.* The forward-looking high-cost support mechanism for non-rural carriers provides support for plant that does not impede the provision of access to advanced services. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Fifth Report and Order, 13 FCC Rcd 21323, 21351-52 paras. 68-70 (1998).

⁴⁶⁴ Rural Task Force Recommendation at 22-23.

services and, if warranted, recommend modifications.⁴⁶⁵ Among other things, the Commission asked the Joint Board to consider the record on requests to redefine voice grade access to ensure reasonable comparability of dial-up Internet access in urban and rural areas.⁴⁶⁶ In accordance with section 254(c), the Commission will consider whether any modifications to the list of supported services are warranted after the Joint Board completes its review.⁴⁶⁷

199. We agree with the Rural Task Force that our universal service policies should not inadvertently create barriers to the provision of access to advanced services, and believe that our current universal service system does not create such barriers.⁴⁶⁸ Initially, we emphasize that section 254(b) states that access to advanced services “should” be provided, and the Fifth Circuit has held that section 254(b) establishes “principles that the FCC should consider in developing its policies” rather than specific statutory commands.⁴⁶⁹ As the Rural Task Force recognized, the Commission’s existing high-cost loop support mechanism for rural carriers “inherently provides incentives for the infrastructure investments necessary for providing access to advanced services.”⁴⁷⁰

200. Contrary to the arguments of some commenters, use of support to invest in infrastructure capable of providing access to advanced services does not violate section 254(e), which mandates that support be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁴⁷¹ The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services. High-cost loop support is available to rural carriers “to maintain existing facilities and make prudent facility upgrades[.]”⁴⁷² Thus, although the high-cost loop support mechanism does not support the provision of advanced services, our policies do not impede the deployment of modern plant capable of providing access to advanced services. Rural carriers may consider both their present and future needs in determining what plant to deploy, knowing that prudent investment will be eligible for support.⁴⁷³ The measures that we adopt in this Order will increase incentives for carriers to modernize their plant by increasing the total amount of high-cost loop support available under the cap.

201. As we move forward in the future, we will consider ways to ensure that we do not create regulatory barriers to the deployment of advanced services. The principal thrust of the “no barriers” proposal appears to be that the Commission should require carriers to deploy plant capable of providing

⁴⁶⁵ *Referral Order*, 15 FCC Rcd 25257.

⁴⁶⁶ *Id.* at 25256 para. 3; *see supra* n.461.

⁴⁶⁷ *See* 47 U.S.C. § 254(c)(2) (“The Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms”); NYDPS Comments at 6; Sprint Comments at 3; Texas Commission Comments at 8.

⁴⁶⁸ *See* Rural Task Force Recommendation at 22; *supra* n.463.

⁴⁶⁹ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 421; 47 U.S.C. § 254(b); *cf.* Rural Task Force Recommendation at 22-23 (“The provision of access to advanced services is required under Section 254(b) . . . Sections 254(b)(2) and (3) require access to information services that is reasonably comparable to that provided in urban areas.”).

⁴⁷⁰ Rural Task Force Recommendation at 22.

⁴⁷¹ 47 U.S.C. § 254(e); *see, e.g.*, NYDPS Comments at 5-7.

⁴⁷² *First Report and Order*, 12 FCC Rcd at 8939 para. 300.

⁴⁷³ *Id.* Of course, carriers who make such investments using universal service support also must comply with the mandate that support be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 U.S.C. § 254(e).

access to advanced services, and encourage them to replace plant that cannot provide such access.⁴⁷⁴ Moreover, we believe any specific policies we adopt in this area should apply uniformly to all local exchange carriers, rather than as part of a transitional high-cost support mechanism for rural carriers.⁴⁷⁵ Therefore, we believe that the “no barriers” policy as specifically proposed by the Rural Task Force should be considered further in connection with our comprehensive review of the high-cost loop support mechanisms for rural and non-rural carriers. In accordance with our mandate under section 706, we will continue to examine whether deployment of advanced telecommunications capability to all Americans is progressing in a reasonable and timely manner, and to consider means by which we can stimulate the further deployment of access to advanced services.⁴⁷⁶

I. Interstate Access Universal Service Support for Rate-of-Return Carriers

1. Background

202. The Rural Task Force recommended a number of principles for the Commission to apply in addressing the issue of implicit support for high loop costs within the interstate access rates of rate-of-return carriers (typically rural carriers).⁴⁷⁷ The Commission has taken various measures to reform the access rate structure of price cap carriers.⁴⁷⁸ According to the Rural Task Force, rate disparity between price cap and rate-of-return carriers results from both access rate structure differences and cost differences, and may create significant pressures on interexchange carriers to geographically deaverage toll rates, contrary to the requirements of section 254(g) of the Act.⁴⁷⁹ To reform the access rate structure of rate-of-return carriers, the Rural Task Force recommended that the Commission determine the amount of implicit support within their access rates by calculating the difference between their current access rates and “the appropriate unit prices of interstate access[,]” and then replacing this amount with a new, uncapped support mechanism.⁴⁸⁰ The purpose of the new interstate access support mechanism would be similar to that of the mechanism adopted in the *Interstate Access Support Order* for price cap carriers.⁴⁸¹

⁴⁷⁴ See Rural Task Force Recommendation at 22-23. See also *Second 706 Report*, 15 FCC Rcd at 21004 para. 247 (“Because the development of the advanced services market remains in a very early stage, . . . we believe that there is time for us to examine further the factors that affect infrastructure investment and develop policies that will ensure access to needed services, but that are not inappropriately linked to universal service mechanisms for voice telephony”). We note that the Rural Utilities Service makes funding for rural carriers contingent on their use of the funds to deploy plant capable of providing access to advanced services. See 7 C.F.R. §§ 1751.100-1751.106. No commenter addressed the Rural Utilities Service’s standards or whether they would comport with federal high-cost universal service mechanisms.

⁴⁷⁵ See Maine and Vermont Commissions Comments at 4 (“According to the Rural Policy Research Institute, for every rural customer served by a ‘rural telephone company,’ there are four rural customers served by a non[-]rural company”).

⁴⁷⁶ See *Second 706 Report*, 15 FCC Rcd at 21003-14 paras. 244-268.

⁴⁷⁷ Rural Task Force Recommendation at 31-32. Although most rate-of-return carriers are rural carriers, whether a carrier is subject to price cap regulation does not turn on whether it meets the definition of rural telephone company. See generally *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Notice of Proposed Rulemaking, 13 FCC Rcd 14238 (1998); see also *supra* n.3.

⁴⁷⁸ See *Interstate Access Support Order*, 15 FCC Rcd at 12962.

⁴⁷⁹ 47 U.S.C. § 254(g).

⁴⁸⁰ Rural Task Force Recommendation at 31.

⁴⁸¹ See *Interstate Access Support Order*, 15 FCC Rcd at 13043-44 paras. 195-97.

203. The Rural Task Force did not recommend a specific method for determining the “appropriate unit prices of interstate access.” The Rural Task Force further recommended, among other things, that the new support mechanism be funded by collections from all providers of interstate telecommunications services, that support be subject to geographic deaveraging and targeted to high-cost areas, and that support be portable and available to all eligible telecommunications carriers on an equitable, non-discriminatory, and competitively neutral basis.

204. The Joint Board concurred with the Rural Task Force that the Commission should consider creating an explicit universal service support mechanism to replace support that may be implicit within the access rates of rate-of-return carriers, but acknowledged that access charge issues “are interstate in nature and, therefore, are properly before the Commission.”⁴⁸² The Joint Board stated, however, that the MAG plan now before the Commission “raises issues beyond interstate access reform, and proposes universal service policy and procedural changes, including rate comparability under section 254(b)(3) and the overall size of the universal service mechanisms.”⁴⁸³ It therefore encouraged the Commission “to ensure the Joint Board remains actively involved in review of those aspects of the MAG plan that relate to universal service.”⁴⁸⁴

2. Discussion

205. We find the Rural Task Force’s recommended principles for access reform to be reasonable and generally consistent with prior Commission actions to reform the access rate structure of price cap carriers. More specifically, these principles are generally consistent with our prior actions to identify implicit support in interstate access charges and to replace such implicit support with explicit universal service support available to all eligible telecommunications carriers on an equitable, non-discriminatory, and competitively neutral basis.⁴⁸⁵ As the Joint Board recognized, the Commission currently is considering access reform issues in a separate proceeding concerning the MAG plan.⁴⁸⁶ We recognize the importance of completing access reform for rate-of-return carriers, and intend to act expeditiously to resolve issues raised in the MAG proceeding.⁴⁸⁷ Our consideration of these issues in the MAG proceeding will be informed by the Rural Task Force’s recommended principles, which we will incorporate into that docket, as well as by the comments filed in this proceeding and the MAG proceeding concerning those principles.⁴⁸⁸ As we stated previously in the *MAG NPRM*, we intend to

⁴⁸² *Recommended Decision* at 10 para. 20.

⁴⁸³ *Id.* As stated above, the MAG plan is an interstate access reform and universal service support proposal for rate-of-return carriers. *See supra* n.1.

⁴⁸⁴ *Id.* The Joint Board further stated that “[a] significant number of Joint Board members urge that this involvement include a referral to the Joint Board of the universal service issues raised by the MAG plan.” *Id.*; *see id.* at Concurring Statement of Commissioner Laska Schoenfelder and Statement of Public Counsel Martha Hogery Concurring in Part and Dissenting in Part.

⁴⁸⁵ *See supra* n.478.

⁴⁸⁶ The MAG plan includes a proposal similar in some respects to the Rural Task Force recommendation to replace support that may be implicit within the access rate structure of rate-of-return carriers with a new, explicit support mechanism. *See MAG NPRM*, 16 FCC Rcd at 463 para. 8, 466 para. 18.

⁴⁸⁷ We recognize that the Fifth Circuit recently held that, pursuant to section 254(e) of the Act, the Commission cannot permit carriers to recover their universal service contributions through access charges imposed on interexchange carriers. We intend to address this matter expeditiously. *See Comsat Corp., et al. v. FCC*, No. 00-60044 (5th Cir. May 3, 2001); *see also* AT&T comments at 10-11.

keep the Joint Board actively involved in review of those aspects of the MAG plan that relate to universal service.⁴⁸⁹

206. We reject AT&T's argument that "[t]he Commission must immediately address access reform for rural carriers as part of the [Rural Task Force] plan."⁴⁹⁰ In contrast to the Rural Task Force's specific recommendations regarding reform of high-cost loop support under Part 36 of the Commission's rules, its recommendations regarding access reform consisted of general principles, which it recognized do not resolve fundamental questions that remain controversial.⁴⁹¹ We agree with NRTA, OPASTCO, USTA, and others that "[a]ccess charge reform issues would be more appropriately addressed in the MAG Plan proceeding[.]"⁴⁹² Likewise, we reject suggestions that we defer action on the Rural Task Force plan.⁴⁹³ As discussed above, the Rural Task Force plan represents a consensus of competing views developed over the course of several years and endorsed by a Joint Board Recommended Decision. The MAG plan was first submitted to the Commission on October 20, 2000, and requires further consideration to resolve issues raised by commenters.⁴⁹⁴ Accordingly, although we are considering the issues raised in both proceedings simultaneously, we conclude that the MAG plan's pendency before the Commission does not warrant delay in implementation of the Rural Task Force plan.⁴⁹⁵

V. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Background

207. As discussed in greater detail in the attached Order,⁴⁹⁶ we decline at this time to adopt the

(Continued from previous page) _____

⁴⁸⁸ See Ad Hoc Telecommunications User Committee Comments at 26-27; Arizona LEC Assn. Comments at 3; AT&T Comments at 4-11; California Commission Comments at 3, 7; CUSC Comments at App. A 25-26; Evans Tel. Co., et.al. Comments at 8; General Communications, Inc. Comments at 2-3; John Staurulaukis, Inc. Comments at 17-18; Texas Commission Comments at 8; WorldCom Comments at 4.

⁴⁸⁹ See *MAG NPRM*, 16 FCC Rcd at 466 para. 18 ("we intend to work closely with the Joint Board on those aspects of the MAG proposal related to interstate access universal service support"); see also *id.* at 462 para. 4.

⁴⁹⁰ AT&T Comments at 8; see General Communications, Inc. Comments at 2-3; AT&T Reply Comments at 2-6; WorldCom Reply Comments at 13-14.

⁴⁹¹ Rural Task Force Recommendation at 31 ("there is no agreement on how much or how to determine the amount of implicit support"); compare AT&T Comments at 8-10 ("AT&T suggests that the Commission follow the CALLS model for rural carriers") with CUSC Comments at App. A 25-26 (Rural Task Force's recommended approach, "like the CALLS plan, makes the unfounded assumption that all residual access revenues not recovered through the rebalanced access charges constitute appropriate universal service subsidies.").

⁴⁹² NRTA, OPASTCO, & USTA Comments at 3; see NTCA Comments at 20.

⁴⁹³ See NRTA, OPASTCO, & USTA Comments at 2-3; Fred Williamson & Assoc. Comments at 2; see also TDS Comments in CC Docket No. 00-256.

⁴⁹⁴ See, e.g., Alaska Commission Comments in CC Docket No. 00-256 at 2 ("Unlike the CALLS plan, the MAG's access charge reform proposals have not been tempered by industry consensus. Development of an industry consensus would likely result in changes that we believe are needed before the plan is approved."); WorldCom Comments at 2 ("the MAG plan's strengths are outweighed by obvious weaknesses. The Commission should not adopt the MAG plan in its current form").

⁴⁹⁵ Wyoming Commission Comments at 1 (urging the Commission not to allow "any unresolved access reform issues to stand in the way of timely and necessary federal universal service reform."); see Alaska Commission Comments in CC Docket No. 00-256 at 2 ("we would not like to see approval of the RTF delayed while the considerable additional issues in the MAG Plan are debated.").

⁴⁹⁶ See *supra* discussion at section IV.B.3.

Rural Task Force's proposal to freeze high-cost loop support on a per-line basis in rural carrier study areas where a competitive eligible telecommunications carrier initiates service. The purpose of the proposal was to prevent excessive growth in the universal service fund as a result of the entrance of competitive eligible telecommunications carriers in rural carrier study areas over the life of the five-year plan we adopt here. As discussed above in section IV.C.3, support provided to competitive eligible telecommunications carriers is not subject to the overall cap on the high-cost loop fund. During the five-year period, excessive growth in the fund is thus possible if incumbent carriers lose many lines to competitive eligible telecommunications carriers, or if competitive eligible telecommunications carriers add a significant number of lines. The first scenario raises particular fund growth concerns because as an incumbent "loses" lines to a competitive eligible telecommunications carrier, the incumbent must recover its fixed costs from fewer lines, thus increasing its per-line costs. With higher per-line costs, the incumbent would receive greater per-line support, which would also be available to the competitive eligible telecommunications carrier for each of the lines that it serves. Thus, a substantial loss of an incumbent's lines to a competitive eligible telecommunications carrier could result in excessive fund growth.

208. We base our decision not to adopt the Rural Task Force's proposal at this time on several concerns. First, the proposal may be of limited benefit in serving its intended purpose and may, in some instances, contribute to fund growth by freezing support at higher levels than would be warranted in the future. Second, the likelihood of a competitive eligible telecommunications carrier capturing a substantial percentage of lines from the incumbent during the five-year period is speculative. Third, the indexed cap on the high-cost loop fund will operate as a check on excessive fund growth to a certain extent. Fourth, we are concerned that the proposal may have the unintended consequence of discouraging efficient investment in rural infrastructure. Fifth, the proposal may hinder the competitive entry in rural study areas by creating an additional incentive for incumbents to oppose the designation of eligible telecommunications carriers in rural study areas. Finally, we are concerned that the proposal would require complex and administratively burdensome regulations to implement.

B. Issues for Comment

209. Although we decline, at this time, to adopt the Rural Task Force's proposal to freeze per-line support in rural carrier study areas in which a competitive eligible telecommunications carrier is providing service, we recognize that excessive fund growth may occur during this five-year plan. We note that the indexed cap on high-cost loop support would not check this growth fully, because support received by competitive carriers currently is not included within the cap. To develop the record on this issue more fully, we invite interested parties to propose possible alternative measures that may be appropriate to address this issue. We also invite commenters to address the likelihood that such measures may be necessary to prevent excessive fund growth during the five-year period.

210. One possible approach suggested by commenters would be to freeze support only when a competitive carrier serves a specific percentage of the total lines within a study area.⁴⁹⁷ Under this approach, the Commission would adopt a threshold percentage of lines lost for triggering the freeze. As discussed above, however, a simple threshold requirement would fail to target study areas where the excessive fund growth is most likely to occur, because it could not distinguish captured from new subscriber lines.⁴⁹⁸ With regard to any proposal to freeze support, commenters should address whether support should be frozen for the study area, the competitor's service area, or the incumbent's specific

⁴⁹⁷ See *supra* n.325.

⁴⁹⁸ See *supra* para. 130; Rural Task Force *White Paper 5* at 17 ("Dealing with 'captured' and 'new' lines may create administrative problems and the need to track customers from one [carrier] to another").

disaggregation zone. We also invite commenters to propose other alternatives. Commenters should address the administrative feasibility of any such proposals, and whether they are consistent with the principles of encouraging investment in rural infrastructure and promoting competitive entry.⁴⁹⁹

211. Although we are not convinced of the likelihood of excessive fund growth due to competitive entry in high-cost areas during the life of this five-year plan, we intend to resolve the issues raised in this Further Notice expeditiously after we have developed the record more fully. In the meantime, as discussed above, we intend to closely monitor the impact of competitive entry in rural carrier study areas to ensure that excessive fund growth does not occur, consistent with our obligation in section 254 to maintain a specific, predictable, and sufficient universal service fund.⁵⁰⁰

VI. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

212. As required by the Regulatory Flexibility Act (RFA),⁵⁰¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice*.⁵⁰² The Commission sought written public comment on the proposals in the *Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁵⁰³

1. Need for, and Objectives of, the Order

213. The 1996 Act requires the Commission to consult with the Joint Board in implementing section 254, which establishes a number of principles for the preservation and advancement of universal service in a competitive telecommunications environment.⁵⁰⁴ The Commission initiated this proceeding to consider the Recommended Decision of the Joint Board regarding a rural universal service plan developed by the Rural Task Force. In this Order, consistent with the recommendation of the Joint Board, we adopt interim rules for determining high-cost universal service support for rural telephone companies based upon the modified embedded cost mechanism proposed by the Rural Task Force. These rules should benefit all rural carriers because they will result in predictable levels of support so that rural carriers can continue to provide affordable service in rural America, while ensuring that consumers in all regions of the Nation, including rural areas, have access to affordable and quality telecommunications services.

214. In this Order, we take the following actions in response to the Rural Task Force's recommended reforms to the rural high-cost loop support mechanism and the proposals made by the MAG relating to these rules. First, we adopt the Rural Task Force's recommendation to re-base the high-cost loop support fund for rural telephone companies and retain an indexed cap on the fund. Second, we adopt a rural growth factor that allows growth in the high-cost loop support fund based on the annual increases in the Gross Domestic Product-Chained Price Index (GDP-CPI) and growth in the total number

⁴⁹⁹ See *supra* paras. 128-130.

⁵⁰⁰ 47 U.S.C. § 254(b)(5); see *supra* at para. 130.

⁵⁰¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁵⁰² *Further Notice* at 3-9.

⁵⁰³ See 5 U.S.C. § 604.

⁵⁰⁴ 47 U.S.C. § 254.

of working loops of rural carriers. Third, we adopt a modified version of the Rural Task Force's proposal as it relates to corporate operations expense. We revise the corporate operations expense limitation calculation so that the dollar values in the formula are re-based and indexed by the GDP-CPI. We also raise the minimum cap for those carriers with 6,000 or fewer loops. In the revised corporate operations expense formula, we allow these carriers to receive support for corporate operations expenses of up to \$600,000 or amounts derived from the revised corporate operations expense formula, whichever is greater. Fourth, we adopt a modified version of the Rural Task Force's proposed safety net additive so that if certain criteria are met, a carrier may receive support for its incremental expense adjustment associated with new investment. Fifth, while we retain section 54.305 of the Commission's rules which provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost support for which the acquired exchanges were eligible prior to their transfer, we also modify the rule to provide safety valve support for additional investment made in the acquired exchanges. Sixth, we adopt, with certain modifications, the three paths for the disaggregation and targeting of high-cost universal service support proposed by the Rural Task Force. We also adopt the general requirements that the Rural Task Force proposed for all disaggregation plans. Seventh, we adopt the Rural Task Force's proposed framework, with the above noted modifications, and it shall remain in place for five years. Finally, we conclude that states should file annual certifications with the Commission to ensure that rural carriers and competitive eligible telecommunications carriers providing service in the service area of a rural local exchange carrier use universal service support "only for the provision, maintenance and upgrading of facilities and services for which the support is intended" consistent with section 254(e) of the Act.

215. In this Order, the Commission also addresses certain issues raised in the MAG proceeding. Specifically, we find that the MAG proposal to remove the indexed cap entirely and to eliminate the limits on corporate operations expenses is unwarranted. We also decide against the MAG proposal to the extent that it recommends elimination of section 54.305 entirely. Finally, we disagree with the MAG proposal to allow rural carriers to disaggregate universal service support up to three zones per wire center. We find the Rural Task Force's recommended principles for access reform to be reasonable and generally consistent with prior Commission actions to reform the access rate structure of price cap carriers. These principles will aid our consideration of access charge reform issues in the pending MAG proceeding.

216. We find that the interim rules strike a fair and reasonable balance among the principles and goals enumerated in section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Specifically, as the Commission continues to develop a long-term coordinated universal service plan, this interim plan will provide predictable levels of support so that rural carriers can make prudent investments in rural America.

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

217. No comments were submitted in response to the IRFA, nor did commenters address the potential impact of these interim rules on small business. The Commission, however, did consider the burden that certain provisions contained in the Order may have on smaller carriers and sought to minimize that burden. For example, as the Commission states in this Order, to reduce the need for small carriers to seek a waiver under the corporate operations expense rules,⁵⁰⁵ we raise the minimum cap on allowable corporate operations expenses supported by universal service to \$600,000 or amounts derived from the revised corporate operations expense formulas, whichever is greater.⁵⁰⁶ This eliminates the

⁵⁰⁵ 47 C.F.R. § 36.621(a)(4).

⁵⁰⁶ See *supra* at para. 75.

burden and expense associated with the waiver process for those carriers.

3. Description and Estimate of the Number of Small Entities to Which the Notice will Apply

218. 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 adopted herein.⁵⁰⁷ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵⁰⁸ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵⁰⁹ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁵¹⁰

219. We have included small incumbent local exchange carriers in this 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."⁵¹¹ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.⁵¹² We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

220. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁵¹³ According to the most recent *Trends in Telephone Service* report, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services.⁵¹⁴ We do not have data

⁵⁰⁷ 5 U.S.C. § 603(b)(3).

⁵⁰⁸ 5 U.S.C. § 601(6).

⁵⁰⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

⁵¹⁰ 15 U.S.C. § 632.

⁵¹¹ 5 U.S.C. § 601(3).

⁵¹² See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC, dated 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 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).

⁵¹³ 13 C.F.R. § 121.201, SIC Code 4813.

⁵¹⁴ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (Dec. 2000) (*Trends Report*).

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 are unable at this time to estimate with greater precision the number of local exchange carriers that would qualify as small business concerns under the SBA's definition. Of the 1,335 incumbent carriers, 13 entities are price cap carriers that are not subject to these rules. Consequently, we estimate that fewer than 1,322 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected.

221. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁵¹⁵ According to the most recent *Trends in Telephone Service* data, 349 CAPs/competitive local exchange carriers and 60 other local exchange carriers reported that they were engaged in the provision of competitive local exchange services.⁵¹⁶ We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 349 small entity CAPs and 60 other local exchange carriers that may be affected.

222. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.⁵¹⁷ According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.⁵¹⁸ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Trends Report* data, 806 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.⁵¹⁹ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected.

223. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁵²⁰ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar

⁵¹⁵ 13 C.F.R. § 121.201, SIC code 4813.

⁵¹⁶ *Trends Report*, Table 16.3.

⁵¹⁷ 13 C.F.R. § 121.201, SIC code 4812.

⁵¹⁸ *1992 Census, Series UC92-S-1*, at Table 5, SIC code 4812.

⁵¹⁹ *Trends Report*, Table 16.3.

⁵²⁰ See *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, FCC 96-278, paras. 57-60 (rel. Jun. 24, 1996), 61 Fed. Reg. 33859 (Jul. 1, 1996); see also 47 C.F.R. § 24.720(b).

years.⁵²¹ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.⁵²² No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁵²³ Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

224. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.⁵²⁴ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).⁵²⁵ We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁵²⁶ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

225. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than \$15 million in each of the three previous calendar years.⁵²⁷ In the context of both the 800 MHz and 900 MHz SMR, a definition of "small entity" has been approved by the SBA.

226. These fees apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

227. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMRs, 38 are small or very small entities.

228. *Fixed Microwave Services.* Microwave services include common carrier,⁵²⁸ private-operational fixed,⁵²⁹ and broadcast auxiliary radio services.⁵³⁰ At present, there are approximately

⁵²¹ See *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, FCC 96-278, para. 60 (1996), 61 Fed. Reg. 33859 (Jul. 1, 1996).

⁵²² See, e.g., *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 paras. 115-117 (1994).

⁵²³ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997).

⁵²⁴ The service is defined in section 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

⁵²⁵ BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules. 47 C.F.R. §§ 22.757, 22.759.

⁵²⁶ 13 C.F.R. § 121.201, SIC code 4812.

⁵²⁷ 47 C.F.R. § 90.814(b)(1).

⁵²⁸ 47 C.F.R. §§ 101, *et seq.* (formerly Part 21 of the Commission's Rules).

⁵²⁹ Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80, 90. Stations in this service are called operational-fixed to distinguish them from (continued....)

22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we utilize the SBA's definition applicable to radiotelephone companies -- *i.e.*, an entity with no more than 1,500 persons.⁵³¹ We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

229. *39 GHz Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to 39 GHz licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.⁵³² For purposes of the 39 GHz license auction, the Commission defined "small entity" as an entity that has average gross revenues of less than \$40 million in the three previous calendar years, and "very small entity" as an entity that has average gross revenues of not more than \$15 million for the preceding three calendar years. The Commission has granted licenses to 29 service providers in the 39 GHz service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of 39 GHz licensees that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are no more than 29 39 GHz small business providers that may be affected.

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

230. In the Order, we adopt the Rural Task Force's proposal that rural carriers be given a choice of three different options for disaggregating and targeting per-line universal service high-cost support, including high-cost loop support, Long Term Support (LTS), and Local Switching Support (LSS). Rural carriers are required to choose one of the paths detailed below within 270 days of the effective date of the new rules through submission to the state commissions. Rural carriers not subject to the jurisdiction of the state are required to make such submissions to the Commission. Rural carriers that elect to disaggregate and target per-line support under either Path Two or Three are required to report loops at the cost-zone level, which is a modification of the current requirement that carriers report loops at the study-area level. This change will require only minor increases in a carrier's reporting burdens, and predominantly only in the first year that the carrier revises its method of reporting. Path 1 is available to rural carriers that do not want to target high-cost support. Path Two is available to rural carriers that want state commission review and approval of a disaggregation plan. Path Three is available to rural carriers interested in self-certifying a method for disaggregating universal service support into a maximum of two cost zones per wire center.⁵³³ Only a disaggregation plan filed under Path Three

(Continued from previous page) _____

common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁵³⁰ Auxiliary Microwave Service is governed by Part 74 of the Commission's rules. See 47 C.F.R. Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁵³¹ 13 C.F.R. § 121.201, SIC code 4812.

⁵³² 13 C.F.R. § 121.201, SIC code 4812.

⁵³³ Alternatively, the self-certified plan may comply with a prior regulatory determination that a different level of disaggregation is appropriate. Under the Rural Task Force's proposal, rural carriers also may disaggregate and (continued....)

requires additional reporting requirements to the Commission. Under Path Three, a carrier must use a rationale that is reasonably related to the cost of providing service for each cost zone within each disaggregation category (high-cost loop support, LSS, and LTS). We estimate that the annual burden hours in the first year would be 60 hours. We estimate subsequent annual burden hours at 8 hours. We believe the burden associated with this reporting requirement is appropriately balanced with the benefits reporting rural carriers will receive.

231. The Commission also adopted the Rural Task Force's proposal to extend the section 254(e) certification process to rural carriers.⁵³⁴ Under this process, state regulatory commissions provide the Commission with annual certifications indicating that the rural carriers in their states receiving federal universal service support will use the support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁵³⁵ Carriers not subject to the jurisdiction of the state must submit a sworn affidavit to the Commission stating that they will use support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." This reporting requirement will provide states and carriers with access to federal universal service support in a way that ensures the integrity of the universal service fund. We estimate that the annual burden hours associated with the section 254(e) certification process would be 12 hours per carrier. This is a nominal burden on rural carriers and is balanced against the high degree of federal universal service benefits rural carriers would receive.

232. Finally, the Commission adopted a modification to an existing reporting requirement regarding working loops. Under the current rules, rural carriers are required to submit, on an annual basis, the number of working loops it has for each study area it serves.⁵³⁶ In this Order, we modify this reporting requirement to require that once a competitor enters a rural carriers study area, working loops are required to be reported on a quarterly basis.⁵³⁷ The Commission determined that this was necessary to prevent the overpayment of support to incumbent rural carriers, which occurs under the current rule because competitors have an incentive to update quarterly, while the incumbent has an incentive to only update annually.⁵³⁸

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

233. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for

(Continued from previous page) _____
target per-line support to cost zones within wire centers. In this Order, we deny the MAG's proposal to allow rural carriers to disaggregate support to up to three zones.

⁵³⁴ 47 U.S.C. § 254(e).

⁵³⁵ *Id.* In jurisdictions where carriers are not subject to the jurisdiction of a state commission or other state regulatory authority, the carrier is required to self-certify that it will use the support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e).

⁵³⁶ 47 C.F.R. §§ 36.612, 54.307.

⁵³⁷ *See supra* paras. 133-134.

⁵³⁸ *Id.*

small entities.⁵³⁹

234. The Order adopted herein is the result of an analysis of a number of options for distributing federal universal service support to rural carriers. Throughout the Order, it is evident that the Commission took great strides in balancing the burdens associated with modification of the existing embedded cost mechanism and the benefits these modifications confer on rural carriers and competitive eligible telecommunications carriers. In this regard, it is important to note that we make these modifications with only minimal reporting requirements.

235. Among the significant alternatives, we considered whether modification of the corporate operations expense cap would minimize the burden and expense associated with seeking a waiver for smaller carriers. In this Order, we decide to raise the existing cap for carriers with 6,000 or fewer working loops so they can receive support for up to \$600,000 or amounts derived from the revised corporate operations expense formula adopted herein, whichever is greater.⁵⁴⁰ We thus decrease the need of smaller carriers to request a waiver. In addition, we adopt a modified version of the safety net additive mechanism proposed by the Rural Task Force. We conclude that a modification to the safety net additive is warranted because as proposed, the mechanism potentially allowed for the recovery of more than 100 percent of incremental costs.⁵⁴¹ We also consider alternative measurements of “meaningful investment” for purposes of calculating safety valve support. We conclude that the alternatives considered would, in some instances, deny the recovery of such meaningful investments.

236. Report to Congress: The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁵⁴² In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁵⁴³

B. Paperwork Reduction Act

237. As required by the Paperwork Reduction Act of 1995, the *Further Notice* invited the general public and the Office of Management and Budget (OMB) to comment on the proposed modifications contained in the Notice. In this Report and Order, we adopt with certain modifications the proposals contained in the *Further Notice*.

238. As described above, the rules we adopt in this Order reflect our efforts to balance the needs of rural carriers, while minimizing the burden on those entities that must comply with our reporting requirements. The information we request should not require significant additional resources as they are a modification of current reporting requirements. Additionally, by freezing the national average loop cost at \$240, we eliminate the need for non-rural carriers to file loop cost data on a quarterly basis, thus alleviating those carriers of an administrative burden.⁵⁴⁴

239. The action contained herein has been analyzed with respect to the Paperwork Reduction

⁵³⁹ 5 U.S.C. § 603(c).

⁵⁴⁰ See *supra* para. 74.

⁵⁴¹ See *supra* paras. 79-80.

⁵⁴² See 5 U.S.C. § 801(a)(1)(A).

⁵⁴³ See 5 U.S.C. § 604(b).

⁵⁴⁴ See *supra* para. 59.

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.

C. Effective Date of Final Rules

240. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the Federal Register. The final rules must take effect prior to 30 days after their publication in the Federal Register in order for NECA to be able to implement the necessary changes to the high-cost loop support mechanism by July 1, 2001. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the Federal Register.

D. Initial Regulatory Flexibility Analysis

241. As required by the Regulatory Flexibility Act (RFA),⁵⁴⁵ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking*.⁵⁴⁶ Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided below in section G. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the SBA.⁵⁴⁷ In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.⁵⁴⁸

1. Need for and Objectives of the Proposed Rules

242. In the Order accompanying this *Further Notice of Proposed Rulemaking*, we modify the rural high-cost mechanism. While we declined to adopt the Rural Task Force's proposal to freeze per-line support in rural carrier study areas in which a competitive eligible telecommunications carrier is providing service, we recognized that excessive fund growth may occur during the five-year duration of the interim plan. We noted that the indexed cap on high-cost loop support would not check this growth fully, because support received by competitive carriers is not included within the cap.⁵⁴⁹ To develop the record on this issue more fully, we issue this *Further Notice of Proposed Rulemaking* and invite interested parties to propose possible alternative measures that may be appropriate to address this issue.⁵⁵⁰ We also invite commenters to address the likelihood that such measures may be necessary to prevent excessive fund growth during the five-year period.

243. Although we are not convinced of the likelihood of excessive fund growth due to competitive entry in high-cost areas during the life of this five-year plan, we intend to resolve the issues

⁵⁴⁵ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁵⁴⁶ See generally *supra* paras. 207-211.

⁵⁴⁷ See 5 U.S.C. § 603(a).

⁵⁴⁸ See *id.*

⁵⁴⁹ See *supra* para. 125.

⁵⁵⁰ See *supra* paras. 207-211.

raised in this *Further Notice of Proposed Rulemaking* expeditiously after we have developed the record more fully.

2. Legal Basis

244. The legal basis as proposed for this *Further Notice of Proposed Rulemaking* is contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934 (as amended by the Telecommunications Act of 1996), 47 U.S.C. §§ 4(i), 4(j), 201-205, 254, 403.

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

245. 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 adopted herein.⁵⁵¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵⁵² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵⁵³ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁵⁵⁴

246. We have included small incumbent local exchange carriers in this 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."⁵⁵⁵ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.⁵⁵⁶ We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

247. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless)

⁵⁵¹ 5 U.S.C. § 603(b)(3).

⁵⁵² 5 U.S.C. § 601(6).

⁵⁵³ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

⁵⁵⁴ 15 U.S.C. § 632.

⁵⁵⁵ 5 U.S.C. § 601(3).

⁵⁵⁶ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC, dated 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 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).

companies.⁵⁵⁷ According to the most recent *Trends Report* data, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services.⁵⁵⁸ We do 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 are unable at this time to estimate with greater precision the number of local exchange carriers that would qualify as small business concerns under the SBA's definition. Of the 1,335 incumbent carriers, 13 entities are price cap carriers that are not subject to these rules. Consequently, we estimate that fewer than 1,322 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected.

248. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁵⁵⁹ According to the most recent *Trends Report* data, 349 CAPs/competitive local exchange carriers and 60 other local exchange carriers reported that they were engaged in the provision of competitive local exchange services.⁵⁶⁰ We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 349 small entity CAPs and 60 other local exchange carriers that may be affected.

249. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.⁵⁶¹ According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.⁵⁶² Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 806 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.⁵⁶³ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected.

250. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average

⁵⁵⁷ 13 C.F.R. § 121.201, SIC Code 4813.

⁵⁵⁸ *Trends Report*, Table 16.3.

⁵⁵⁹ 13 C.F.R. § 121.201, SIC code 4813.

⁵⁶⁰ *Trends Report*, Table 16.3.

⁵⁶¹ 13 C.F.R. § 121.201, SIC code 4812.

⁵⁶² *1992 Census, Series UC92-S-1*, at Table 5, SIC code 4812.

⁵⁶³ *Trends Report*, Table 16.3.

gross revenues of less than \$40 million in the three previous calendar years.⁵⁶⁴ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁵⁶⁵ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.⁵⁶⁶ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁵⁶⁷ Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

251. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.⁵⁶⁸ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).⁵⁶⁹ We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁵⁷⁰ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

252. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than \$15 million in each of the three previous calendar years.⁵⁷¹ In the context of both the 800 MHz and 900 MHz SMR, a definition of "small entity" has been approved by the SBA.

253. These fees apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

254. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

⁵⁶⁴ See *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, FCC 96-278, paras. 57-60 (rel. Jun. 24, 1996), 61 Fed. Reg. 33859 (Jul. 1, 1996); see also 47 C.F.R. § 24.720(b).

⁵⁶⁵ See *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, FCC 96-278, para. 60 (1996), 61 Fed. Reg. 33859 (Jul. 1, 1996).

⁵⁶⁶ See, *e.g.*, *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 paras. 115-117 (1994).

⁵⁶⁷ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997).

⁵⁶⁸ The service is defined in section 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

⁵⁶⁹ BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules. 47 C.F.R. §§ 22.757, 22.759.

⁵⁷⁰ 13 C.F.R. § 121.201, SIC code 4812.

⁵⁷¹ 47 C.F.R. § 90.814(b)(1).

255. *Fixed Microwave Services.* Microwave services include common carrier,⁵⁷² private-operational fixed,⁵⁷³ and broadcast auxiliary radio services.⁵⁷⁴ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we utilize the SBA's definition applicable to radiotelephone companies -- *i.e.*, an entity with no more than 1,500 persons.⁵⁷⁵ We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

256. *39 GHz Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to 39 GHz licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.⁵⁷⁶ For purposes of the 39 GHz license auction, the Commission defined "small entity" as an entity that has average gross revenues of less than \$40 million in the three previous calendar years, and "very small entity" as an entity that has average gross revenues of not more than \$15 million for the preceding three calendar years. The Commission has granted licenses to 29 service providers in the 39 GHz service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of 39 GHz licensees that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are no more than 29 39 GHz small business providers that may be affected.

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

257. In the Order accompanying this *Further Notice of Proposed Rulemaking*, the Commission revised the reporting frequency of line count data in study areas where competitive entry has occurred. Prior to the Order's adoption, rural carriers were required to submit line count data annually.⁵⁷⁷ The Commission determined that the more frequent reporting requirement was necessary to ensure that only one carrier receives support for each line served and to monitor the concerns expressed by the Rural Task Force with regard to the potential impact of competitive entry in rural carrier study areas.⁵⁷⁸ The line count data submitted by carriers on a quarterly basis under the Order should be sufficient for the Commission to implement any change it may adopt pursuant to this *Further Notice of*

⁵⁷² 47 C.F.R. §§ 101, *et seq.* (formerly Part 21 of the Commission's Rules).

⁵⁷³ Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. §§ 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁵⁷⁴ Auxiliary Microwave Service is governed by Part 74 of the Commission's rules. *See* 47 C.F.R. § 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁵⁷⁵ 13 C.F.R. § 121.201, SIC code 4812.

⁵⁷⁶ *Id.*

⁵⁷⁷ *See supra* para. 133.

⁵⁷⁸ *Id.*

Proposed Rulemaking; however, the issues of frequency of reporting and timing of submission may need to be revisited for implementation purposes.

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

258. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁵⁷⁹

259. Here, we have declined at this time to freeze per-line support in rural carriers' study areas in which a competitive eligible telecommunications carrier is providing service. Had we adopted the alternative of the freeze, we would, we believe, have also needed to adopt, *e.g.*, complex and administratively burdensome implementing regulations. By seeking additional comments on this issue, including comment from small entities regarding significant alternatives, we hope to identify alternatives that would include simpler reporting or other compliance requirements. Thus, the *Further Notice of Proposed Rulemaking* under consideration herein seeks to determine possible alternative measures that may be appropriate to address the issue of excessive fund growth that may result from competitive entry in rural study areas.⁵⁸⁰ We invite comment on how any alternatives proposed would be likely to affect small businesses.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.

260. None.

E. Initial Paperwork Reduction Act of 1995 Analysis

261. This *Further Notice of Proposed Rulemaking* contains either a proposed or modified information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due 60 days from the date of publication of this Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

F. Ex Parte

262. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte*

⁵⁷⁹ 5 U.S.C. § 603(c).

⁵⁸⁰ See *supra* paras. 209-211.

presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.⁵⁸¹

G. Comment Filing Procedures

263. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments 30 days or fewer from publication in the Federal Register, and reply comments 60 days or fewer from publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁵⁸²

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

265. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

266. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Sheryl Todd, Accounting Policy Division, 445 12th Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 96-45, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

267. Written comments by the public on the proposed and/or modified information collections are due on or before thirty days after the date of publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C. 20503.

⁵⁸¹ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

⁵⁸² See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

VII. ORDERING CLAUSES

268. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 214, 218-220, 254, 303(r), 403, 405, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 218-220, 254, 303(r), 403, 405, and 410, this Fourteenth Report and Order and Twenty-Second Order on Reconsideration in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256 IS ADOPTED.

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

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

271. 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.

272. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403, this Further Notice of Proposed Rulemaking in CC Docket No. 96-45 IS ADOPTED.

273. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking in CC Docket No. 96-45, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

274. 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. The final rules must take effect prior to 30 days after their publication in the Federal Register in order for NECA to be able to implement the necessary changes to the high-cost loop support mechanism by July 1, 2001. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary