B. Intercarrier Compensation Further Notice

345. In this Further Notice of Proposed Rulemaking (Further Notice) we seek comment on certain additional issues not resolved in our accompanying order.

346. *Originating Access.* In this order, we conclude that retention of originating access charges would be inconsistent with our new regulatory approach to intercarrier compensation.[887] Accordingly, we find that originating charges for all telecommunications traffic subject to our comprehensive intercarrier compensation framework must be eliminated by the conclusion of the transition to the new regime. We seek comment on issues relating to the transition for the elimination of originating access.

347. *Transit Traffic.* Transiting occurs when two carriers that are not directly interconnected exchange traffic by routing the traffic through an intermediary carrier's network.[888] We request comment on whether the reforms we adopt today necessitate the adoption of any rules or guidelines governing transit service.

348. *Universal Service Rules Applicable to Rate-of-Return Carriers.* In this order, we conclude that under certain circumstances, rate-of-return carriers will be able to receive universal service support to recover net reduced revenues from intercarrier compensation as a result of reforms adopted in this order that they do not otherwise recover through SLC increases or other revenue increases. We seek comment on what rule changes are necessary to allow rate-of-return carriers to receive universal service support in this manner.

349. *Parts 51, 54, 61 and 69.* Part 51 of the Commission's rules contain requirements applicable to interconnection, including reciprocal compensation.[889] Part 54 of the Commission's rules describe universal service programs and administration.[890] Part 61 of the Commission's rules prescribes the framework for the initial establishment of and subsequent revisions to tariff publications.[891] Part 69 of the rules governs the Commission's access charge regulations for interstate or foreign access services.[892] We solicit comment on the need to revise the rules set forth in Parts 51, 54, 61 and/or 69, or any other rules, as a result of the reforms we adopt today.

VII. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

350. The rulemaking this Further Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.[893] Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the

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[887] *See supra* para. 229.

[888] *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4737–38, para. 120. Typically, the intermediary carrier is an incumbent LEC and the transited traffic is routed from the originating carrier through the incumbent LEC's tandem switch to the terminating carrier. The intermediary (transiting) carrier then charges a fee for use of its facilities. *See id.* We note that carriers have various agreements governing the provision of transit traffic. *See id.*

[889] *See* 47 C.F.R. Part 51.

[890] *See* 47 C.F.R. Part 54.

[891] *See* 47 C.F.R. Part 61.

[892] *See* 47 C.F.R. Part 69.

[893] 47 C.F.R. § 1.200 *et seq.*

substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.[894] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.[895]

B. Comment Filing Procedures

351. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[896] interested parties may file comments and reply comments regarding the Further Notice on or before the dates indicated on the first page of this document. **All filings related to the intercarrier compensation Further Notice of Proposed Rulemaking should refer to CC Docket No. 01-92. All filings related to the universal service contributions Further Notice of Proposed Rulemaking should refer to WC Docket No. 06-122. All filings related to numbering reporting issues of the universal service contributions Further Notice of Proposed Rulemaking should refer to CC Docket No. 99-200.** Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's e-Rulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

352. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal e-Rulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.

353. ECFS filers must transmit one electronic copy of the comments for CC Docket Nos. 01-92, 99-200, or WC Docket No. 06-122, respectively. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

354. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

355. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

356. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

357. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

358. Parties should send a copy of their filings in CC Docket No. 01-92 to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-

[894] *See* 47 C.F.R. § 1.1206(b)(2).

[895] 47 C.F.R. § 1.1206(b).

[896] 47 C.F.R. §§ 1.415, 1.419.

A266, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to cpdcopies@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

359. Parties should send a copy of their filings in WC Docket No. 06-122 to Jennifer McKee, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A423, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to cpdcopies@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

360. Parties should send a copy of their filings in WC Docket No. 99-200 to Marilyn Jones, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A423, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to cpdcopies@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

361. Documents in CC Docket Nos. 01-92, 99-200, and WC Docket No. 06-122 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

C. Initial Regulatory Flexibility Analysis

362. As required by the Regulatory Flexibility Act of 1980,[897] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix E. 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 on or before the dates indicated on the first page of this Notice.

D. Final Regulatory Flexibility Analysis

363. Pursuant to the Regulatory Flexibility Act (RFA),[898] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for the Report and Order concerning the possible significant economic impact on small entities by the policies and actions considered in the Report and Order.

E. Paperwork Reduction Act

364. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-

[897] *See* 5 U.S.C. § 603.

[898] *See* 5 U.S.C. § 603. The RFA, *see* 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 ("Small Business Act").

198,[899] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

F. Accessible Formats

365. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

G. Congressional Review Act

366. The Commission will include a copy of this Order on Remand and Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. § 801(a)(1)(A).

VIII. ORDERING CLAUSES

367. Accordingly, IT IS ORDERED that, pursuant to Sections 1–4, 201–209, 214, 218-220, 224, 251, 252, 254, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, and Sections 601 and 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151–154, 157 nt, 201–209, 214, 218-220, 224, 251, 252, 254, 303(r), 332, 403, 502, 503, and sections 1.1, 1.411–1.429, and 1.1200–1.1216 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.411–1.429, 1.1200–1.1216, the ORDER ON REMAND AND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING ARE ADOPTED.

368. IT IS FURTHER ORDERED that Parts [__] of the Commission's rules, 47 C.F.R. § [__] are AMENDED as set forth in Appendix A hereto.

369. IT IS FURTHER ORDERED, in light of the opinion of the United States Court of Appeals for the District of Columbia Circuit in *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), we consider our obligations met from the writ of mandamus issued in *In re Core Communications, Inc. on Petition for Writ of Mandamus to the Federal Communications Commission*, D.C. Cir. No. 07-1446 (decided July 8, 2008).

370. IT IS FURTHER ORDERED that this ORDER ON REMAND AND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING shall become effective 30 days after publication of the text of a summary thereof in the Federal Register, pursuant to 47 C.F.R. §§ 1.4, 1.13, except for the information collections, which require approval by OMB under the PRA and which shall become effective after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date(s).

371. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this REPORT AND ORDER AND ORDER ON REMAND, including the Final Regulatory Flexibility Analyses and Final Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

372. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this FURTHER NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Analyses and Initial Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

[899] *See* 44 U.S.C. § 3506(c)(4).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX B

Narrow Universal Service Reform Proposal

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122

REPORT AND ORDER

Adopted: [insert date] **Released: [insert date]**

By the Commission

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I. INTRODUCTION

1. In enacting the Telecommunications Act of 1996 (1996 Act),[1] Congress sought to introduce competition into local telephone service, which traditionally was provided through regulated monopolies. Recognizing that in introducing such competition, it was threatening the implicit subsidy system that had traditionally supported universal service, it directed the Commission to reform its universal service program to make support explicit and sustainable in the face of developing competition.

2. The resulting development of competition and the rapid development of Internet protocol (IP)-based networks have challenged the outdated regulatory assumptions underlying our universal service programs, forcing us to reassess our existing approaches. We have seen unprecedented growth in the universal service fund, driven in significant part by increased support for competitive eligible telecommunications carriers (ETCs). The growth of competition also has eroded the universal service contribution base as the prices for interstate and international services have dropped, and, with the growth of the Internet, the very definition of interstate and international traffic has been called into question.

3. At the same time, universal service distributions have continued to grow to support legacy telecommunications networks. In many cases, support is used to offset the increasing revenue losses to these incumbent carriers as the gap between legacy technology and more efficient technologies has widened. Moreover, our method of distributing support even to new competitive carriers is not designed to bring those competitive choices to all Americans, but, rather, it has created incentives for multiple competitive carriers to avail themselves of "identical support" in areas where the legacy network provider receives the largest subsidies.

4. In short, we are spending more and more of contributors' universal service dollars, with less and less to show for it. That stops today. Today we adopt a comprehensive approach that stabilizes the universal service fund and directs universal service dollars to the most efficient provider so that Americans in rural and high-cost areas can have access to reasonably comparable services at affordable rates. First, we cap the high-cost fund, and move expeditiously to adopt a reverse auction approach to better target high-cost support to high-cost areas. Then we broaden and stabilize our universal service contribution base through equitable and non-discriminatory contributions.

II. REFORM OF HIGH-COST UNIVERSAL SERVICE SUPPORT

A. Background

5. The 1996 Act amended the Communications Act of 1934 (the Act) with respect to the provision of universal service.[2] Congress sought to preserve and advance universal service, while at the same time opening all telecommunications markets to competition.[3] Section 254(b) of the Act directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish.[4] Among other things, section 254(b) directs that there should be specific,

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

[2] 47 U.S.C. § 254 (added by the 1996 Act).

[3] 47 U.S.C. § 254.

[4] *See* 47 U.S.C. § 254(b).

predictable, and sufficient federal and state universal service support mechanisms; quality services should be available at just, reasonable, and affordable rates; and access to advanced telecommunications and information services should be provided in all regions of the nation.[5]

6. The Commission implemented the universal service provisions of the 1996 Act in the 1997 *Universal Service First Report and Order*.[6] In considering methods to determine universal service support in rural, insular, and high-cost areas, the Commission examined the use of competitive bidding, and identified several advantages of competitive bidding as a method for allocating high-cost universal service support.[7] First, the Commission found that "a compelling reason to use competitive bidding is its potential as a market-based approach to determining universal service support, if any, for any given area."[8] Second, "by encouraging more efficient carriers to submit bids reflecting their lower costs, another advantage of a properly structured competitive bidding system would be its ability to reduce the amount of support needed for universal service."[9] Despite these advantages, the Commission determined that the record at the time was insufficient to support adoption of a competitive bidding mechanism.[10] Moreover, the Commission found it unlikely that competitive bidding mechanisms would be useful at that time because there likely would be no competition in a significant number of rural, insular, or high-cost areas in the near future.[11] The Commission, therefore, declined to adopt a competitive bidding mechanism at that time, but found that competitive bidding warranted further consideration as a potential mechanism for determining levels of high-cost support in the future.[12]

7. Pursuant to section 254(e) of the Act, an entity must be designated as an ETC to receive high-cost universal service support.[13] ETCs may be incumbent local exchange carriers (LECs), or non-incumbent LECs, which are referred to as "competitive ETCs."[14] Under the existing high-cost support distribution mechanism, incumbent LEC ETCs receive high-cost support for their intrastate services

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[5] 47 U.S.C. § 254(b)(1), (2), (5).

[6] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8780–88, paras. 1–20 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

[7] *Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320.

[8] *Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320 (agreeing with the Joint Board). The Commission also agreed with the Joint Board that "competitive bidding is consistent with section 254, and comports with the intent of the 1996 Act to rely on market forces and to minimize regulation." *Id.* at 8951, para. 325.

[9] *Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320 ("In that regard, the bidding process should also capture the efficiency gains from new technologies or improved productivity, converting them into cost savings for universal service.").

[10] *See Universal Service First Report and Order*, 12 FCC Rcd at 8949–50, paras. 322–23. Only GTE had proposed a detailed competitive bidding plan, which it characterized as an outline rather than a final proposal. *See* GTE's Comments in Response to Questions, CC Docket No. 96-45, Attach. 1 (filed Aug. 2, 1996).

[11] *See Universal Service First Report and Order*, 12 FCC Rcd at 8950, para. 324.

[12] *See Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320.

[13] 47 U.S.C. § 254(e). The statutory requirements for ETC designation are set out in section 214(e) of the Act. 47 U.S.C. § 214(e).

[14] *See* 47 C.F.R. § 54.5 ("A 'competitive eligible telecommunications carrier' is a carrier that meets the definition of 'eligible telecommunications carrier' below and does not meet the definition of an 'incumbent local exchange carrier' in § 51.5 of this chapter.").

based on their costs.[15] Competitive ETCs, on the other hand, receive support for each of their lines based on the per-line support the incumbent LEC receives in the service area.[16] This support to competitive ETCs is known as "identical support." The Commission's universal service high-cost support rules do not distinguish between primary and secondary lines; therefore, high-cost support may go to a single end user for multiple connections.[17] Further, the Commission's rules may result in multiple competitors in the same high-cost area receiving identical per-line support.

8. High-cost support for competitive ETCs has grown rapidly over the last several years, which has placed extraordinary pressure on the federal universal service fund.[18] In 2001, high-cost universal service support totaled approximately $2.6 billion.[19] By 2007, the amount of high-cost support had grown to approximately $4.3 billion per year.[20] In recent years, this growth has been due mostly to increased support provided to competitive ETCs, which pursuant to the identical support rule receive high-cost support based on the incumbent LEC's per-line support. Competitive ETC support, in the six years from 2001 through 2007, has grown from under $17 million to $1.18 billion—an annual growth rate of over 100 percent.[21] This "funded competition" has grown significantly in a large number of rural, insular, or high-cost areas; in some study areas, more than 20 competitive ETCs currently receive support.[22]

9. To address the growth in competitive ETC support, the Joint Board recommended an

[15] Non-rural incumbent LEC ETCs receive support for their intrastate supported services based on the forward-looking economic cost of providing the services. 47 C.F.R. § 54.309. Rural incumbent LEC ETCs receive support based on their loop costs, as compared to a national average. 47 C.F.R. Part 36, sbpt. F; 47 C.F.R. § 54.305. Incumbent LEC ETCs that serve study areas with 50,000 or fewer lines receive support based on their local switching costs. 47 C.F.R. § 54.301. Additionally, incumbent LEC ETCs that are subject to price cap or rate-of-return regulation receive interstate access support based on their revenue requirements. 47 C.F.R. Part 54, sbpts. J, K.

[16] 47 C.F.R. § 54.307(a).

[17] *See Universal Service First Report and Order*, 12 FCC Rcd at 8828–30, paras. 94–96.

[18] Support for the fund derives from assessments paid by providers of interstate telecommunications services and certain other providers of interstate telecommunications. *See* 47 C.F.R. § 54.706. Fund contributors are permitted to, and almost always do, pass those assessments though to their end-user customers. *See* 47 C.F.R. § 54.712. Fund assessments paid by contributors are determined by applying the quarterly contribution factor to the contributors' contribution base revenues. In the second quarter of 2007, the contribution factor reached 11.7%, which is the highest level since its inception. *See Proposed Second Quarter 2007 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 5074, 5077 (OMD 2007). The contribution factor has since declined to 11.4% in the fourth quarter of 2008. *Proposed Fourth Quarter 2008 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 08-2091 (OMD 2008).

[19] *See* FCC, UNIVERSAL SERVICE MONITORING REPORT, tbl. 3.2 (2007) (2007 UNIVERSAL SERVICE MONITORING REPORT), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-279226A1.pdf.

[20] UNIVERSAL SERVICE ADMINISTRATIVE COMPANY, 2007 ANNUAL REPORT 43 (2007) (USAC 2007 ANNUAL REPORT), *available at* http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2007.pdf.

[21] 2007 UNIVERSAL SERVICE MONITORING REPORT at tbl. 3.2; USAC 2007 ANNUAL REPORT at 45.

[22] *See* USAC Quarterly Administrative Filings for 2008, Fourth Quarter (4Q) Appendices, HC03—Rural Study Areas with Competition—4Q2008, *available at* http://www.usac.org/about/governance/fcc-filings/2008/Q4/HC03%20-%20Rural%20Study%20Areas%20with%20Competition%20-%204Q2008.xls (showing 24 competitive ETCs in the study area of incumbent LEC Iowa Telecom North (study area code 351167), and 22 competitive ETCs in the study area of incumbent LEC Iowa Telecom Systems (study area code 351170)).

interim cap on the amount of high-cost support available to competitive ETCs, pending comprehensive high-cost universal service reform. The Commission adopted this recommendation in 2008.[23]

10. For the past several years, the Joint Board and the Commission have been exploring ways to reform the Commission's high-cost program. In the most recent high-cost support comprehensive reform efforts, the Joint Board issued a recommended decision on November 20, 2007.[24] The Joint Board recommended that the Commission address reforms to the high-cost program and make "fundamental revisions in the structure of existing Universal Service mechanisms."[25] Specifically, the Joint Board recommended that the Commission should: (1) deliver high-cost support through a provider of last resort fund, a mobility fund, and a broadband fund;[26] (2) cap the high-cost fund at $4.5 billion, the approximate level of 2007 high-cost support;[27] (3) reduce the existing funding mechanisms during a transition period;[28] (4) add broadband and mobility to the list of services eligible for support under section 254 of the Act;[29] (5) eliminate the identical support rule;[30] and (6) "explore the most appropriate auction mechanisms to determine high-cost universal service support."[31]

11. On January 29, 2008, the Commission released three notices of proposed rulemaking addressing proposals for comprehensive reform of high-cost universal service support.[32] In the *Identical Support NPRM*, the Commission sought comment on the Commission's rules governing the amount of high-cost universal service support provided to competitive ETCs.[33] It tentatively concluded that the

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[23] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No.96-45, Recommended Decision, 22 FCC Rcd 8998, 8999–9001, paras. 4–7 (JB 2007) (*Interim Cap Recommended Decision*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*). As recommended by the Joint Board, the Commission capped competitive ETC support for each state. *Interim Cap Recommended Decision*, 22 FCC Rcd at 9002, para. 9; *Interim Cap Order*, 23 FCC Rcd at 8846, paras. 26–28. The Commission set the cap at the level of support competitive ETCs were eligible to receive during March 2008. *Interim Cap Order*, 23 FCC Rcd at 8850, para. 38.

[24] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (JB 2007) (*Comprehensive Reform Recommended Decision*).

[25] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20478, para. 1.

[26] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20480–81, para. 11.

[27] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20484, para. 26.

[28] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20484, para. 27.

[29] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20481–82, paras. 12–18.

[30] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20486, para. 35.

[31] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20478, paras. 1–6.

[32] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (*Reverse Auctions NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (*Joint Board Comprehensive Reform NPRM*) (collectively the *High-Cost Reform NPRMs*).

[33] *Identical Support NPRM*, 23 FCC Rcd at 1468, para. 1.

Commission should eliminate the identical support rule.[34] The Commission also tentatively concluded that support to a competitive ETC should be based on the competitive ETC's own costs of providing the supported services, and it sought comment on how the support should be calculated, the reporting obligations to be applied, and whether the Commission should cap such support at the level of the incumbent LEC's support.[35] In the *Reverse Auctions NPRM*, the Commission tentatively concluded that reverse auctions offer several potential advantages over current high-cost mechanisms and sought comment on whether they should be used as the disbursement mechanism to determine the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas, and it sought comment on how to implement reverse auctions for this purpose.[36] The Commission also sought comment on a number of specific issues regarding auctions and auction design.[37] The Commission also released the *Joint Board Comprehensive Reform NPRM*, seeking comment on the Joint Board's Comprehensive Reform Recommended Decision and incorporating by reference the *Identical Support NPRM* and the *Reverse Auctions NPRM*.[38] The discussion that follows represents our response to the Joint Board's *Comprehensive Reform Recommended Decision*, pursuant to section 254(a)(2).[39]

B. Discussion

12. Today we comprehensively reform the high-cost universal service support mechanism. First, we cap the overall size of the high-cost mechanism to protect customers in all areas of the nation from increasing universal service contribution assessments. Second, we conclude that we will use a reverse auction to distribute both incumbent LEC ETC and competitive ETC support, with such auctions to conclude within one year of the effective date of the order.

13. The requirements that we adopt for disbursement of high-cost universal service support do not apply to providers operating in Alaska, Hawaii, or any U.S. Territories and possessions.[40] We find that these areas have very different attributes and related cost issues than do the continental states.[41] For

[34] *Identical Support NPRM*, 23 FCC Rcd at 1468, para. 1.

[35] *Identical Support NPRM*, 23 FCC Rcd at 1473–78, paras. 12–25.

[36] *Reverse Auctions NPRM*, 23 FCC Rcd at 1495, para. 1.

[37] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500–12, paras. 10–50.

[38] *Joint Board Comprehensive Reform NPRM*, 23 FCC Rcd at 1531, para. 1.

[39] 47 U.S.C. § 254(a)(2). Pursuant to that section, the Commission shall complete any proceeding to implement a Joint Board recommendation within one year after receiving it. The Commission has acted on the *Comprehensive Reform Recommended Decision* prior to the November 20, 2008 one-year statutory deadline.

[40] Providers operating in U.S. Territories and possessions, such as Puerto Rico and Guam, are not subject to the requirements adopted in this order. *See* Letter from Earl Comstock, Comstock Consulting LLC, to Marlene Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-377 at 1 (dated Oct. 15, 2008) (asking the Commission to recognize the higher costs and lower income levels in Puerto Rico in any reform efforts it may take); Letter from Eric N. Votaw, Vice President-Marketing & Regulatory, GTA Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 99-68, 96-45, WC Docket No. 05-337 at 1–2 (filed Oct. 24, 2008) (asking the Commission to recognize that Guam's costs are higher than the continental United States and that Guam should be treated separately, along with Alaska and Hawaii, for reform purposes).

[41] *E.g.*, *Verizon Commc'ns, Inc., Transferor, and América Móvil, S.A. de C.V., Transferee*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6211, para. 36 (2007) (*Verizon/América Móvil Transfer Order*) (describing "difficult to serve terrain and dramatic urban/rural differences" in Puerto Rico); *Integration of Rates and Services for Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, CC Docket No.

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this reason,[42] we are exempting providers in Alaska, Hawaii and U.S. Territories and possessions from the requirements and rules adopted herein with respect to the disbursement of high-cost support, and we will address changes to the high-cost support disbursement mechanism in these areas in a subsequent proceeding.[43]

1. Controlling the Growth of the High-Cost Fund

14. Consistent with the recommendation of the Joint Board, we cap the total amount of high-cost universal service support at 2007 levels.[44] As the Joint Board recognized, high-cost support currently accounts for more than half of total federal universal service support.[45] Since 1997, when the Commission implemented the universal service requirements of section 254 of the Act, high-cost support has increased by 240 percent.[46] Although, earlier this year, we took an initial step to address high-cost fund growth by capping support to competitive ETCs, that cap was an interim, emergency measure, pending a closer examination of the steps necessary to achieve comprehensive reform.[47] Many commenters have urged the Commission to cap the overall amount of high-cost support, rather than limiting the cap only to competitive ETCs.[48] Although other commenters oppose the adoption of a cap on

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83-1376, Supplemental Order Inviting Comments, 4 FCC Rcd 395, 396, paras. 7–8 (1989) (*Rates and Services Integration Order*) (describing the unique market conditions and structure in Alaska); Letter from Brita D. Strandberg, Counsel for General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket No. 05-337 at 2 (Oct. 3, 2008) (discussing Alaska's particular service needs and network architecture).

[42] *Cf. The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, IB Docket No. 06-123, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8842, 8860, para. 47 (2007) (*Policies and Service Rules for the Broadcasting-Satellite Service Order*) ("The Commission is committed to establishing policies and rules that will promote service to all regions in the United States, particularly to traditionally underserved areas, such as Alaska and Hawaii, and other remote areas.").

[43] The rules and requirements adopted in this order for universal service contributions will apply to these areas.

[44] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20478, 20481, 20484, paras. 2, 11, 26.

[45] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20484, para. 26. In 2007, total federal universal service disbursements amounted to approximately $6.95 billion. Of that amount, approximately $4.29 billion, 62%, was disbursed as high-cost support. USAC 2007 ANNUAL REPORT at 51.

[46] *See* 2007 UNIVERSAL SERVICE MONITORING REPORT at 3-14, tbl. 3.1 (high-cost support in 1997 was approximately $1.26 billion, compared with approximately $4.29 billion in 2007). Even taking into account the fact that additional interstate support mechanisms, Interstate Access Support (IAS) and Interstate Common Line Support (ICLS), were created in 2000 and 2001, respectively, high-cost support has still increased by more than 45%, from approximately $2.94 billion in 2002 to its current level of approximately $4.29 billion. *Id.*

[47] *See Interim Cap Order*, 23 FCC Rcd at 8834, para. 1.

[48] *See* CenturyTel *High-Cost Reform NPRMs* Comments at 18 (existing high-cost support mechanisms should be frozen at the study area level or on a statewide basis to provide funding certainty and encourage investment); Chinook *High-Cost Reform NPRMs* Comments, Attach. at 5–6 (any cap on universal service support should apply to all ETCs, including incumbent LECs); Connecticut Dep't of Pub. Util. Control *High-Cost Reform NPRMs* Comments at 5 (supporting a cap on high-cost support set at the 2007 level); Florida PSC *High-Cost Reform NPRMs* Comments at 2 (supporting the recommendation to cap the overall size of the high-cost fund); Information Technology Industry Council (ITI) *High-Cost Reform NPRMs* Comments at 7 (an overall cap should be applied to control the size of the high-cost mechanism); NCTA *High-Cost Reform NPRMs* Comments at 19 (the Joint Board's

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the total amount of high-cost support or on the amount of support available to incumbent LEC ETCs,[49] we find that, to manage the high-cost support mechanism effectively, we must control its growth.[50]

15. We find it necessary to cap the high-cost mechanism as a first step toward fulfilling our statutory obligation to create specific, predictable and sufficient universal service support mechanisms.[51] As the United States Court of Appeals for the Fifth Circuit held in *Alenco*: "[t]he agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service."[52] The *Alenco* court also found that "excessive funding may itself violate the sufficiency requirements,"[53] and the United States Court of Appeals for the Tenth Circuit has stated that "excessive subsidization arguably may affect the affordability of telecommunications services for unsubsidized users, thus violating the principle in [section] 254(b)(1)."[54] Given the excessive growth in high-cost support, we find it necessary to cap this mechanism to ensure that unsubsidized users who contribute to the fund are not harmed by excessive subsidization.

16. In addition to capping the overall high-cost fund at the total amount of high-cost support disbursed by the Universal Service Administrative Company (USAC) for 2007, consistent with the Joint Board's recommendation, we take a number of other steps to limit the growth of high-cost support. We also eliminate the identical support rule for competitive ETCs.

17. Consistent with section 254(b)(5) of the Act, we find that capping high-cost support and

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proposal to cap the overall size of the high-cost mechanism is "a welcome dose of fiscal responsibility"); National Consumer Law Center *Joint Board Comprehensive Reform NPRM* Comments at 2–3 (supporting the Joint Board's proposal to cap the overall high-cost fund); Verizon/Verizon Wireless *High-Cost Reform NPRMs* Comments at 2–3, 6–9 (Commission should cap the overall high-cost fund).

[49] *See* Frontier *High-Cost Reform NPRMs* Comments at 6–7; JSI *High-Cost Reform NPRMs* Comments at 6; Montana Telecommunications Ass'n *High-Cost Reform NPRMs* Comments at 21–22; NECA *High-Cost Reform NPRMs* Comments at 17–20; TCA *High-Cost Reform NPRMs* Comments at 10–11; TDS *High-Cost Reform NPRMs* Comments at 8–9; Missouri Small Telephone Company Group (MSTC) *High-Cost Reform NPRMs* Reply at 5–7; Utah Rural Telecom Ass'n *High-Cost Reform NPRMs* Reply at 5.

[50] 47 U.S.C. § 254(b)(5); *see* CenturyTel *High-Cost Reform NPRMs* Comments at 18; Comcast *High-Cost Reform NPRMs* Comments at 3, 11; Florida PSC *High-Cost Reform NPRMs* Comments at 8–9; National Consumer Law Center *Joint Board Comprehensive Reform NPRM* Comments at 2; NCTA *High-Cost Reform NPRMs* Comments at 4–6; New Jersey Division of Rate Counsel *High-Cost Reform NPRMs* Comments at 52–54; Oregon PUC *High-Cost Reform NPRMs* Comments at 2–3; Sprint Nextel *High-Cost Reform NPRMs* Comments at 3; USTelecom *High-Cost Reform NPRMs* Comments at 2; Verizon/Verizon Wireless *High-Cost Reform NPRMs* Comments at 7; New Jersey Division of Rate Counsel *High-Cost Reform NPRMs* Reply at 64–65; Sprint Nextel *High-Cost Reform NPRMs* Reply at 8–9; State Commissioners *High-Cost Reform NPRMs* Reply at 2; Texas Office of Public Utility Counsel *Joint Board Comprehensive Reform NPRM* Reply at 2; Virgin Mobile *High-Cost Reform NPRMs* Reply at 3–4. The Commission has already implemented caps on the schools and libraries and rural health care universal service mechanisms. *Universal Service First Report and Order*, 12 FCC Rcd at 9054, 9140, paras. 529, 704 (establishing a $2.25 billion annual cap for the schools and libraries mechanism and a $400 million annual cap for the rural health care mechanism); *see also* 47 C.F.R. §§ 54.507(a), 54.623(a).

[51] 47 U.S.C. § 254(b)(5); *see also Universal Service First Report and Order*, 12 FCC Rcd at 9054, 9140, paras. 529, 704.

[52] *Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 620–21 (5th Cir. 2000) (*Alenco*).

[53] *Alenco*, 201 F.3d at 620.

[54] *Qwest Commc'ns Int'l Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005).

using a reverse auction to distribute that support to an entity capable of meeting all ETC requirements at or below the capped amount will enable ETCs to predict the specific level of support that they will receive should they choose to participate in the program.[55] In fact, through the reverse auction process, it will be the bidders, not the Commission, that determine how much support they need to offer service. Finally, as discussed below, if the reverse auction process does not yield a winning bidder, the Commission will reexamine whether it needs to take further action with regard to this situation, should it arise.

2. Reverse Auctions

18. We sought comment in our *Reverse Auctions NPRM* on the merits of using reverse auctions, a form of competitive bidding, to decide how much high-cost support to provide to ETCs serving rural, insular, and high-cost areas.[56] In a reverse auction, support generally would be determined by the lowest bid to serve the auctioned area.[57] We conclude that using a reverse auction method for identifying both the recipient of high-cost support for a study area, as well as the amount of support, is appropriate because the winning bid should approach the minimum level of subsidy required to achieve our universal service goals.[58] In contrast, a support mechanism based on cost or on a cost model provides little incentive for an ETC to provide supported services at the minimum possible cost.[59] In addition, a reverse auction provides a fair and efficient means of eliminating or reducing the subsidization of multiple ETCs in a given region.[60] For these reasons, we find that a reverse auction offers advantages over the current high-cost support distribution mechanisms and we adopt a reverse auction plan, as discussed below.[61]

19. In the *Identical Support NPRM*, the Commission tentatively concluded that it should eliminate the current identical support rule for competitive ETCs, because the rule bears no relationship to the amount of money competitive ETCs have invested in rural and other high-cost areas of the country.[62]

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[55] 47 U.S.C. § 254(b)(5).

[56] *See Reverse Auctions NPRM*, 23 FCC Rcd at 1500, para. 10.

[57] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500, para. 11.

[58] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500, para. 11; *see* Connecticut Commission *High-Cost Reform NPRMs* Comments at 7 (supports reverse auctions as a means of controlling and reducing the size of the universal service fund, while putting the burden on providers to estimate bid amounts); Comcast *High-Cost Reform NPRMs* Comments at 7 (noting that the use of reverse auctions could reduce the size of the high-cost fund significantly).

[59] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500, para. 11; *see* Letter from Grover Norquist, Americans for Tax Reform, to Marlene Dortch, Secretary, FCC, CC Docket No. 96-45 and WC Docket No. 05-337 at 1 (filed Apr. 14, 2008) (reverse auctions will create incentives to invest in rural communities and will not finance and subsidize wasteful carriers).

[60] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500, para. 11.

[61] Several commenters, in particular those representing rural telephone companies, oppose the use of reverse auctions to award high-cost support to carriers of last resort in rural areas. *See, e.g.*, ATA *High-Cost Reform NPRMs* Comments at 13–15; Alexicon *Reverse Auctions NPRM* Comments at 2–3; NTCA *High-Cost Reform NPRMs* Comments at 30-46; OPASTCO *High-Cost Reform NPRMs* Comments at 16-21. None of these commenters, however, present a compelling reason justifying why we should not ensure that universal service funds are properly spent where needed to further the goals of universal service. If these companies are making efficient use of these funds today, there is no reason that they cannot effectively compete in a reverse auction to remain the provider of last resort.

[62] *Identical Support NPRM*, 23 FCC Rcd at 1470, para. 5.

In that notice, the Commission tentatively concluded that a competitive ETC should receive high-cost support based on its own costs, which better reflect real investment in rural and other high-cost areas of the country, and which create greater incentives for investment in those areas.[63]

20. In this order, we adopt the first tentative conclusion, and eliminate the identical support rule. However, we reject our tentative conclusion that a competitive ETC should receive high-cost support based on its own costs, and we conclude, instead, that support for competitive ETCs should be awarded in the same manner as incumbent LEC ETC support, via reverse auction.[64]

21. To implement the reverse auctions, there are several issues that must be addressed. We describe in this part: (1) the geographic area to be auctioned; (2) the reserve price for the reverse auction; (3) what a winning bidder will receive; (4) how the winning bidder will be selected; and (5) the qualifications a bidder must demonstrate before it may participate in a reverse auction.

a. Geographic Area

22. In the *Reverse Auctions NPRM*, we sought comment on whether we should use the study area[65] as the geographic area for reverse auctions.[66] We observed that high-cost support today is generally based on the wireline incumbent LEC's study area.[67] We tentatively concluded that the wireline incumbent LEC's study area would be the appropriate geographic area on which to base reverse auctions.[68] We adopt our tentative conclusion that the study area is the best geographic area to use for several reasons. First, if we allowed bidders to bid to provide service in smaller geographic areas, we would encourage bidders to bid on areas that are easier or cheaper to serve, leaving our most difficult-to-serve populations still without comparable service.[69] Conversely, if we required bidders to bid on even larger geographic areas, we might discourage bidders from entering the auction because of the difficulty in committing to serve a larger area. Although some commenters oppose using the incumbent LEC's

[63] *Identical Support NPRM*, 23 FCC Rcd at 1470, para. 5.

[64] As of the effective date of this order, a competitive ETC will no longer receive high-cost support based on the identical support rule, and will receive high-cost support only to the extent it is a winning bidder in a reverse auction.

[65] A study area is a geographic segment of an incumbent LEC's telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. *Direct Communications Cedar Valley, LLC and Qwest Corporation Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules, Petition for Waiver of Section 69.2(hh) and 69.605(c) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 19180, 19181, para. 2 (WCB 2005). Section 54.207 of the Commission's rules provides that a rural telephone company's service area will be its study area "unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this Act, establish a different definition of service area for such company." 47 C.F.R. § 54.207(b); 47 U.S.C. § 214(e)(5).

[66] *See Reverse Auctions NPRM*, 23 FCC Rcd at 1503, para. 20.

[67] *Reverse Auctions NPRM*, 23 FCC Rcd at 1503, para. 20.

[68] *Reverse Auctions NPRM*, 23 FCC Rcd at 1504, para. 21.

[69] Thus, we disagree with commenters' arguments that we should hold auctions for small geographic areas, such as counties, census block groups, or zip codes. *See, e.g.*, Comcast *High-Cost Reform NPRMs* Comments at 9; NCTA *High-Cost Reform NPRMs* Comments at 16; SouthernLINC *High-Cost Reform NPRMs* Comments at 24–25; TracFone *High-Cost Reform NPRMs* Comments at 6.

study area as the auction area,[70] use of the study area is consistent with the area on which support is currently based, and it permits a rational basis on which to set the reserve price for the auction. Finally, selecting smaller geographic areas for auction would increase the number of auctions to be held, potentially delaying the conduct of the auction and, therefore, the proper targeting of support to areas of need.[71] For these reasons, we conclude that the study area is the best available geographic area to consider for the auction. We will conduct a reverse auction for each study area for which the incumbent LEC receives high-cost support.

b. Reserve Price

23. In the *Reverse Auctions NPRM*, we noted that we should establish a reserve price—a maximum level of high-cost support that participants in the auction would be allowed to place as a bid.[72] We observed that a reserve price that is set too low is likely to discourage bidders from participating, while one that is set too high raises the possibility of providing too much support.[73] We conclude that the reserve price should be the amount of high-cost support received by the incumbent LEC for 2007.

24. We set the reserve price in each study area at the incumbent LEC's 2007 level of high-cost support for several reasons. First, we are capping the overall high-cost fund at this level. Setting a reserve price will help ensure that overall high-cost funding remains within the cap. In addition, setting a reserve price at this level will ensure that, even in reverse auctions for particular study areas that do not garner many bids, those bids will be made by providers who are confident that they can assume all the obligations of the carrier of last resort (COLR)[74] and provide service more efficiently than the incumbent LEC.[75] Indeed, we expect that bidders frequently will offer to provide service using newer and more efficient technologies than the incumbent LEC uses today. For these reasons, we set the reserve price at the level described above.

c. Auctioned Support

25. We will award high-cost support in each study area to a winning bidder capable of providing all supported services to the entire study area, on a COLR basis, consistent with the requirements of this order. The award amount is conditioned on the winning bidder's providing all

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[70] *See, e.g.*, Comcast *High-Cost Reform NPRMs* Comments at 8–9; NCTA *High-Cost Reform NPRMs* Comments at 16; SouthernLINC *High-Cost Reform NPRMs* Comments at 25; TracFone *High-Cost Reform NPRMs* Comments at 5.

[71] *See* Ohio PUC *Reverse Auctions NPRM* Comments at 6–7 (generally agreeing that the incumbent LEC's study area is the appropriate geographic area on which to base reverse auctions because further disaggregation could add cost and delays, and increase the opportunity for creamskimming).

[72] *Reverse Auctions NPRM*, 23 FCC Rcd at 1509, para. 36.

[73] *Reverse Auctions NPRM*, 23 FCC Rcd at 1509, para. 36.

[74] Carrier of last resort obligations for incumbent LECs are a matter of state law. Under section 214(e)(6) of the Act, when the state lacks jurisdiction, the Commission shall make the public interest determination on whether to designate a carrier an ETC. 47 U.S.C. § 214(e)(6). The ETC requirements include a requirement to provide supported services throughout the service area. 47 U.S.C. § 214(e)(1).

[75] Some commenters oppose setting the reserve price at incumbent LEC support levels, or setting any reserve price. *See* OPASTCO *High-Cost Reform NPRMs* Comments at 19–20; MSTC Group *High-Cost Reform NPRMs* Comments at 17–18; North Dakota PSC *High-Cost Reform NPRMs* Comments at 5. We find that setting the reserve price at the incumbent LEC support level will provide certainty to bidders and enable bidders with more efficient technologies to provide service at lower levels of support.

supported services as a COLR, as the incumbent LEC does today under state law, and meeting the ETC requirements set forth in the *ETC Designation Order*.[76]

26. Competitive ETCs are currently required to provide supported services throughout their service area, even though they may not be, under state law, the COLR.[77] In the *ETC Designation Order*, the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6).[78] The Commission requires that applicants seeking ETC designation from this Commission demonstrate the following: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) that it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4).[79] We find that the universal service obligations in the *ETC Designation Order* will apply to all competitive ETCs winning reverse auctions. Also, we find that, as a condition of receiving support, the auction winner must accept all of the COLR obligations of the incumbent LEC for that study area, whether such obligations are imposed on the LEC pursuant to state or federal law.

27. We recognize that a transition mechanism is needed to shift high-cost support from the incumbent LEC currently receiving it to another ETC that wins an award amount. A flash cut would be harmful in at least two ways. First, the incumbent LEC would immediately lose support upon which it may rely to maintain supported services as a carrier of last resort to consumers today.[80] It is possible that removing support from the incumbent LEC would, in some cases, jeopardize its provision of services to some users. In addition, granting a full award amount immediately to a winning ETC would provide little incentive for the competitive ETC to build out new facilities to difficult-to-serve areas until the last possible moment, as in many cases those areas will be the most expensive to serve. As a result, we conclude that, prior to the initiation of an auction, the incumbent LEC for the study area will be required to identify the distribution of support by geographic area for purposes of the auction and the transfer of support to the winning bidder. As the winning ETC builds out to those geographic areas and certifies that it complies with all its obligations under this order for that area, it will receive high-cost support for that portion of the study area, and the incumbent LEC will no longer receive such support for that area.[81] As

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[76] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*). Section 214(e)(6) of the Act gives the Commission authority to designate carriers as ETCs when those carriers are not subject to the jurisdiction of a state commission. 47 U.S.C. § 214(e)(6). The requirements in the *ETC Designation Order* currently apply only to Commission-designated ETCs, although the Commission, in that order, encouraged state commissions to adopt similar requirements. *ETC Designation Order*, 20 FCC Rcd at 6372, 6379, paras. 1, 19.

[77] *See* 47 U.S.C. § 214(e)(1).

[78] *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20.

[79] *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20; 47 U.S.C. § 214(e)(4).

[80] Competitive ETCs are not carriers of last resort, and loss of support would not jeopardize the provision of basic phone service to consumers in the study area. In fact, maintaining current levels of support to competitive ETCs pending a reverse auction is not necessary. Therefore, and consistent with our elimination of identical support to competitive ETCs, as of the effective date of this order, competitive ETCs are only entitled to support awarded via reverse auction.

[81] The amount of support to be awarded to the winning bidder most likely will be less than the amount of support received by the incumbent LEC for that same area. The transfer of support will be based on the amount of support,

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the winning bidder takes on COLR obligations and obtains high-cost support for an area, the incumbent LEC will no longer receive high-cost support for that area and will be relieved of its COLR obligations at both the state and federal levels. We require winning auction bidders to comply fully with all the requirements of this order by the end of a ten-year build-out period.

28. Finally, we address the question of transferability of the award amount. We conclude that auction winners may transfer their right to the award amount. This transfer could take one of several forms—an auction winner could be purchased by another entity, the winner could sell assets used to provide the supported services, or the auction winner could transfer just the right to the award amount itself. The transferee will, in all events, step into the shoes of the auction winner and will be responsible for meeting all obligations as if it had been the original auction winner. Any such transfer, however, must be authorized by the Commission before it is consummated.

d. Selecting a Winning Bid

29. In the *Reverse Auctions NPRM*, we sought comment on whether the reverse auction should award high-cost support to a single winner or to multiple winners.[82] We observed that if only one winner receives support, this could provide a fair and efficient means of eliminating the subsidization of multiple ETCs in a region, particularly in areas in which costs are prohibitive.[83] We tentatively concluded that universal service support auctions should award high-cost support to a single winner.[84] We now conclude that the single winner format will provide the most effective mechanism for determining the support amount sufficient to meet the universal service goals in any given area.[85] We therefore adopt our tentative conclusion to select one winner in each reverse auction.

30. We will evaluate bids simply, based on the bidder who meets all applicable service obligations at the lowest level of support. To qualify for consideration, a bid must be equal to or less than the reserve price.

31. If a particular reverse auction produces no winner, the Commission will reexamine any such study area to determine what further actions should be taken to ensure that the study area is served by a provider that will meet the applicable ETC and COLR requirements. For example, the Commission may consider disaggregating the study area on a wire center basis for reverse auction purposes. To ensure continued service to customers during the limited period of time in which the Commission examines these issues, the existing incumbent LEC will continue to have all COLR and ETC obligations, and it will continue to receive high-cost support pending transfer of such support to the winning bidder of the reverse auction. There shall be no interim support in any study area to an existing competitive ETC pending the

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relative to support for the entire study area, received by the incumbent LEC for the area to be transferred; that same relative percentage will be used to calculate the amount of award support the auction winner should receive for the same area. In no event will an incumbent LEC who is not an auction winner continue to receive support for an area once an auction winner begins to receive support for that same area.

[82] *Reverse Auctions NPRM*, 23 FCC Rcd at 1501, para. 13.

[83] *Reverse Auctions NPRM*, 23 FCC Rcd at 1501, para. 14.

[84] *Reverse Auctions NPRM*, 23 FCC Rcd at 1501, para. 14.

[85] *See, e.g.*, Florida PSC *High-Cost Reform NPRMs* Comments at 4–5; New York PSC *Identical Support and Reverse Auctions NPRMs* Comments at 2–3; Verizon/Verizon Wireless *High-Cost Reform NPRMs* Comments at 21–22, App. at 12. We disagree with commenters who support multiple winner auctions. *See, e.g.*, Alltel *High-Cost Reform NPRMs* Comments at 40–41; Atlantic Tele-Network *Identical Support and Reverse Auctions NPRMs* Comments at 13. We find that supporting a single auction winner is a more efficient use of universal service support.

completion of the reverse auction.

e. Bidder Qualifications

32. We adopt a number of conditions that bidders must meet before they can participate in any auction. We adopt these requirements to help ensure that any bidder who wins an auction will be capable of meeting the commitments that flow from being a winning bidder.

33. First, we require that a bidder be an ETC, certified by the Commission or by a state. In the *Reverse Auctions NPRM*, we tentatively concluded that an auction bidder must be an ETC covering the relevant geographic area prior to participating in the auction.[86] We hereby adopt that tentative conclusion. Winning bidders must be designated as ETCs before receiving high-cost support pursuant to sections 214 and 254 of the Act; therefore, requiring bidders to receive this designation prior to participating in an auction entails only a small additional burden. This burden is offset by the potential abuse and delay that could result if a non-ETC were to bid on and win the auction, but then be ineligible for support.[87] We note that ETCs are not required to provide all supported services with their own facilities.[88] ETCs may enter into contracts with other entities to provide some supported services in part or all of the study area.

34. As a general matter, in our spectrum auctions we require an upfront payment to deter frivolous or insincere bidding.[89] In the reverse auctions we adopt today, we are not requiring an upfront payment. Instead, we are requiring participants to demonstrate to the Commission financial capability to undertake the construction of facilities necessary to meet ETC requirements and to satisfy COLR obligations. In addition, in areas where the bidder does not currently offer telecommunications services, we will require the bidder to submit a plan demonstrating the timetable for building the necessary facilities and obtaining any required permits.

35. *Milestones for Auction Winners*. To ensure that auction winners make good progress toward meeting their obligation to become fully compliant with the requirements of this order, we require every auction winner to be capable of serving 10 percent of the potential customers in the service area by the end of year two, 25 percent by the end of year three, 50 percent by the end of year four, 65 percent by the end of year five, 75 percent by the end of year six, 85 percent by the end of year seven, 90 percent by the end of year eight, 95 percent by the end of year nine, 100 percent by the end of year ten. The absence of a milestone at the end of year one is intended to allow new service providers sufficient time to plan their network and to start deploying and marketing it within some parts of the service area. Similarly, the ascending milestones in the remaining years are intended to permit the auction winner a reasonable time in which to build its network and services while ensuring that it does not delay in reaching customers who

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[86] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500–01, para. 12; *see also, e.g.*, Florida PSC *High-Cost Reform NPRMs* Comments at 5; Indiana Util. Reg. Comm'n *High-Cost Reform NPRMs* Comments at 12; MSTC Group *High-Cost Reform NPRMs* Comments at 12; Verizon/Verizon Wireless *High-Cost Reform NPRMs* Comments, App. at 8.

[87] For this reason, we disagree with commenters who argue that we should not require bidders to be ETCs. *See* GCI *High-Cost Reform NPRMs* Comments at 89; Consumers Union (CU), *et al. High-Cost Reform NPRMs* Reply at 17.

[88] Pursuant to section 214(e)(1)(A) of the Act, a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area either by using its own facilities or by using a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC). 47 U.S.C. § 214(e)(1)(A).

[89] *See, e.g.*, *Auction of LPTV and TV Translator Digital Companion Channels Scheduled for November 5, 2008*, AU Docket No. 08-22, Public Notice, DA 08-1944, para. 53 (WTB 2008).

need this vital service. The ten-year build-out period starts on the date on which that carrier wins the auction.

36. *Consequences of Not Meeting Milestones.* For all ETCs receiving high-cost support, failure to achieve any milestone will result in loss of eligibility for support (and, where this Commission has jurisdiction over the designation of ETC status, loss of ETC status) for that service area. If the auction winner loses its eligibility for support, the study area will be subject to re-auction. If at the end of the build-out period, the ETC is not fully compliant with all its obligations under this order, the ETC will forfeit its eligibility for support and, if its ETC designation was made by this Commission, lose its ETC status.

37. *Milestone Audits.* All milestone data will be subject to audit by the Commission's Office of Inspector General and, if necessary, investigated by the Office of Inspector General, to determine compliance with the build-out requirements, the Act, and Commission rules and orders.[90] Service providers will be required to comply fully with the Office of Inspector General's audit requirements, including, but not limited to, providing full access to all accounting systems, records, reports, and source documents of the service providers and their employees, contractors, and other agents, in addition to all other internal and external audit reports that are involved, in whole or in part, in the administration of this program.[91] Such audits or investigations may provide information showing that a service provider failed to comply with the Act or the Commission's rules, and thus may reveal instances in which universal service support was improperly distributed or used.

38. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the high-cost program and to determine on a case-by-case basis whether waste, fraud, or abuse of program funds occurred and whether recovery is warranted. We remain committed to ensuring the integrity of the universal service program and will aggressively pursue instances of waste, fraud, and abuse under the Commission's procedures and in cooperation with law enforcement agencies. In doing so, we intend to use any and all enforcement measures, including criminal and civil statutory remedies, available under law.[92]

III. REFORM OF UNIVERSAL SERVICE CONTRIBUTIONS

39. In this order, we adopt a telephone numbers-based methodology under which contributors will contribute based on the number of telephone numbers they have assigned to end users (Assessable Numbers) and dedicated access connections for business customers. The new contribution methodologies will be implemented beginning on January 1, 2010.

A. Background

[90] *See Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket No. 03-109, Report and Order, 22 FCC Rcd 16372, 16383–84, para. 24 (*Comprehensive Review Report and Order*) (requiring "recipients of universal service support for high-cost providers to retain all records that they may require to demonstrate to auditors that the support they received was consistent with the Act and the Commission's rules, assuming that the audits are conducted within five years of disbursement of such support."). The term "service provider" includes any participating subcontractors.

[91] This includes presenting personnel to testify, under oath, at a deposition if requested by of the Office of Inspector General.

[92] *See, e.g.*, 41 U.S.C. §§ 51–58 (Anti-Kickback Act of 1986); 31 U.S.C. § 3729 (False Claims Act).

40. In implementing the universal service requirements of the 1996 Act, the Commission established a method for collecting funds to be disbursed through the various universal service support mechanisms. Specifically, the Commission determined that contributions to the universal service fund would be assessed on telecommunications providers based on their interstate and international end-user telecommunications revenues.[93] The Commission concluded that basing providers' universal service contributions on their revenues would be competitively neutral, easy to administer, and explicit.[94]

41. When the Commission adopted the revenue-based contribution system, assessable interstate revenues were growing. The total assessable revenue base has declined in recent years, however, from about $79.0 billion in 2000 to about $74.5 billion in 2006,[95] while universal service disbursements grew over that same time period from approximately $4.5 billion in 2000 to over $6.6 billion in 2006.[96] Declines in assessable contribution revenues combined with growth in universal service disbursements have increased the contribution factor applied to determine universal service contribution amounts.[97] This upward pressure jeopardizes the stability and sustainability of the support mechanisms, demonstrating the need for long-term fundamental reform of the contribution methodology.[98]

42. In addition, interstate end-user telecommunications service revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services.[99] The integration of local and

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[93] *See Universal Service First Report and Order*, 12 FCC Rcd at 9206–07, paras. 843–44; *Federal-State Joint Board on Universal Service; Access Charge Reform*, Sixteenth Order on Reconsideration and Eighth Report and Order in CC Docket No. 96-45 and Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679, 1685, para. 15 (1999) (*Fifth Circuit Remand Order*) (establishing a single contribution for all universal service support mechanisms based on interstate and international revenues).

[94] *Universal Service First Report and Order*, 12 FCC Rcd at 9206–08, 9211, paras. 843, 845–48, 854.

[95] *Compare* JIM LANDE & KENNETH LYNCH, FCC, 2000 TELECOMMUNICATIONS INDUSTRY REVENUES, tbl. 4 (2002), *available at* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/telrev00.pdf *with* JIM LANDE & KENNETH LYNCH, FCC, 2006 TELECOMMUNICATIONS INDUSTRY REVENUES, tbl. 4 (2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284929A1.pdf. *But see* Letter from David C. Bergmann, Chair, NASUCA Telecommunications Committee, to Chairman Kevin Martin *et al.*, FCC, WC Docket Nos. 08-152, 07-135, 06-122, 05-337, 05-195, 04-36, 03-109, 02-60, CC Docket Nos. 02-6, 01-92, 00-256, 99-68, 96-262, 96-45, 80-286, at 7 (filed Sept. 30, 2008) (NASUCA Sept. 30, 2008 *Ex Parte* Letter) (arguing that the growth in the contribution factor is "almost entirely" due to the growth in universal service disbursement requirements).

[96] *See* FCC, UNIVERSAL SERVICE MONITORING REPORT, tbl. 1.2a (2001) (2001 UNIVERSAL SERVICE MONITORING REPORT), *available at* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/mrs01-0.pdf; 2007 UNIVERSAL SERVICE MONITORING REPORT at tbl. 1.11; *see also* USAC 2007 ANNUAL REPORT at 3, 51 (detailing universal service disbursements for 2007 at approximately $6.9 billion).

[97] The contribution factor grew from 5.9% in the first quarter of 2000 to 11.3% for the fourth quarter of 2008. *See Proposed First Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 15 FCC Rcd 3660 (WCB 1999); *Proposed Fourth Quarter 2008 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 08-2091 (OMD Sept. 12, 2008) (*Fourth Quarter 2008 Contribution Factor Public Notice*).

[98] *See* 47 U.S.C. §§ 254(b), (d).

[99] Although the Commission has established safe harbors for the reporting of interstate telecommunications revenues derived from interstate telecommunications services bundled with customer premises equipment (CPE) or information services, it has not established guidelines for reporting interstate telecommunications service revenues for flat-rated bundles of wireline interstate and intrastate services. *See Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review—Review of Customer Premises Equipment and Enhanced Local Exchange*

(continued....)

long-distance wireline services into packages that allow customers to purchase buckets of long distance minutes and local service for a single price blurs the distinction between revenue derived from intrastate telecommunications service and interstate telecommunications service. Similarly, the availability of mobile wireless calling plans that allow customers to purchase buckets of minutes on a nationwide network without incurring roaming or long-distance charges also makes it difficult for providers and the Commission to identify the amount of revenue derived from interstate telecommunications service.[100] Further, migration to interconnected voice over Internet protocol (VoIP) services complicates the distinctions that serve as the basis for current contribution obligations.[101]

43. In 2001 and 2002, the Commission sought comment on modifications to the existing revenue-based contribution methodology, and on replacing that methodology with one that assesses contributions on the basis of a flat-fee charge, such as a per-line charge.[102] The Commission also sought comment on other universal service contribution methodologies, including moving to a numbers-based methodology.[103] Finally, in May 2008, the Commission encouraged commenters to refresh the record in several pending proceedings, including the contribution methodology proceeding.[104]

B. Discussion

44. The system of contributions to the universal service fund is broken. The Commission has repeatedly patched the current system to accommodate decreasing interstate revenues, a trend toward "all-you-can-eat" services that make distinguishing interstate from other revenues difficult if not impossible,

(continued from previous page)
Markets, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446–48, paras. 47–54 (2001) (*CPE Bundling Order*).

[100] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258–59, paras. 13–15 (1998) (*First Wireless Safe Harbor Order*); *see also Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24965–67, paras. 21–25 (2002) (*Second Wireless Safe Harbor Order*).

[101] *See Universal Service Contribution Methodology*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Interim Contribution Methodology Order*); *aff'd in part, vacated in part sub nom. Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

[102] *See Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001) (*2001 Contribution NPRM*); *see also Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3765, para. 31, 3766–89, paras. 34–83 (2002) (*Contribution First FNPRM*).

[103] *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24983–97, paras. 66–100 (seeking comment on capacity-based proposals that had been developed in the record and on telephone-number proposals advocated by certain parties); *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Public Notice, 18 FCC Rcd 3006 (2003) (*Contribution Staff Study*) (seeking comment on a Commission staff study that estimated potential contribution assessment levels under the then-newly modified revenue-based method and the three connection-based proposals in the further notice portion of the *Second Wireless Safe Harbor Order*).

[104] *Interim Cap Clears Path for Comprehensive Reform: Commission Poised to Move Forward on Difficult Decisions Necessary to Promote and Advance Affordable Telecommunications for All Americans*, News Release (May 2, 2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281939A1.pdf.

and changes in technology. While the service developments that precipitated these changes have enormous consumer benefits, they have also severely strained the contributions system.[105] We therefore adopt today a system of contributions that will assess all telephone numbers, and dedicated access connections for business services.

1. Legal Authority

45. The Commission has ample authority to require contributions from the variety of providers discussed below. The Commission's authority derives from several sections of the Act: section 254(d), Title I, and section 251(e). These sections of the statute provide us authority to require contributions from the kinds of service providers we address below in our discussions of the new numbers-based and business connections-based approach.

46. Section 254 is the cornerstone of the Commission's universal service program. Section 254(d) first provides that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[106] Under this "mandatory contribution" provision, every provider of telecommunications services[107] must contribute, although the Commission has authority to exempt a carrier or class of carriers if their contributions would be *de minimis*.[108]

47. Section 254(d) also provides that the Commission may require "[a]ny other provider of interstate telecommunications . . . to contribute to the preservation and advancement of universal service if the public interest so requires."[109] The Commission has relied on this "permissive authority" to require various providers of telecommunications,[110] but not necessarily telecommunications *services*,[111] to contribute. For example, the Commission has required entities that provide interstate telecommunications

[105] We agree with commenters who argue that the contribution methodology requires a comprehensive overhaul. *See e.g.*, Letter from Mary L. Henze, AT&T Services, and Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, Attach. 1 at 1 (filed Sept. 11, 2008) (AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter); Letter from Roger C. Sherman, Director, Government Affairs—Wireless Regulatory, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 04-36 at 1 (filed June 14, 2006) (Sprint Nextel June 14, 2006 *Ex Parte* Letter); Letter from Susanne A. Guyer, Senior Vice President Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 05-337, 06-122 at 2 (filed Oct. 28, 2008) (Verizon Oct. 29, 2008 *Ex Parte* Letter); Letter from Mary L. Henze, AT&T Services, and Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 06-122 at 1 (filed Oct. 20, 2008) (AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter).

[106] 47 U.S.C. § 254(d).

[107] Section 254(d) refers to "telecommunications carriers," which are defined as "any provider of telecommunications services." 47 U.S.C. § 153(44).

[108] 47 U.S.C. § 254(d).

[109] 47 U.S.C. § 254(d).

[110] "Telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43).

[111] "Telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46).

to others on a private contractual basis to contribute to the universal service fund,[112] as well as payphone aggregators.[113] Most recently, we required interconnected VoIP providers to contribute even though the Commission has not determined that they are telecommunications carriers. Specifically, in the *2006 Interim Contribution Methodology Order*, we used our permissive authority under section 254(d) to require interconnected VoIP providers to contribute, and we noted that they "provide" telecommunications to their end users.[114] We also noted that in some cases, the interconnected VoIP provider may be "providing" telecommunications even if it arranges for the end user to have access to the public switched telephone network (PSTN) through a third party.[115]

48. The Commission also has authority under Title I to require other service providers to contribute. In general, the Commission can rely on its ancillary jurisdiction under Title I when the Commission has subject matter jurisdiction over the service to be regulated, and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities."[116] The Commission relied on this authority before section 254 was added by the 1996 Act to establish a high-cost support fund,[117] which the U.S. Court of Appeals for the D.C. Circuit found to be a permissive exercise of Title I authority.[118] And more recently in the *2006 Interim Contribution Methodology Order*, the Commission relied on its ancillary jurisdiction under Title I as an additional source of authority to require contributions from interconnected VoIP providers.[119] In that order, the Commission noted that the Act grants subject matter jurisdiction over interconnected VoIP because it involves "transmission" of voice by wire or radio,[120] and that imposing contribution obligations on interconnected VoIP providers was "reasonably ancillary" to the effective performance of the Commission's responsibilities to establish

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[112] *See* 47 C.F.R. § 54.706(a); *Universal Service First Report and Order*, 12 FCC Rcd at 9183–84, paras. 794–95. We note that private service providers that provide interstate connections solely to meet their internal needs (i.e., self-providers) will not be required to contribute under the new methodology. This is consistent with our current policy. In the *Universal Service First Report and Order*, the Commission reasoned that, for self-providers of interstate telecommunications, the telecommunications is incidental to their primary non-telecommunications business. *See Universal Service First Report and Order*, 12 FCC Rcd at 9185, para. 799.

[113] *See* 47 C.F.R. § 54.706(a); *Universal Service First Report and Order*, 12 FCC Rcd at 9184–85, paras. 796–98. *But see* Letter from Robert F. Aldrich, Counsel for the American Public Communications Council (APCC), to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 01-92, Attach. (filed Oct. 23, 2008).

[114] *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7538–40, paras. 39–41; 47 C.F.R. § 54.706(a).

[115] *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 41 ("To provide this capability [telecommunications], interconnected VoIP providers may rely on their own facilities or provide access to the PSTN through others.").

[116] *See United States v. Southwestern Cable Co.*, 392 U.S. 157, 177–78 (1968); *United States v. Midwest Video Corp.*, 406 U.S. 649, 667–68 (1972); *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979); *see also American Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005).

[117] *See Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Decision and Order, 96 F.C.C.2d 781, (1984), *aff'd sub nom. Rural Tel. Coalition v. FCC*, 838 F.2d 1307 (D.C. Cir. 1988).

[118] *Rural Tel. Coalition*, 838 F.2d at 1315.

[119] *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541–43, paras. 46–49.

[120] *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 47 & n.160 (citing *IP-Enabled* Services, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) (*VoIP 911 Order*), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); 47 U.S.C. § 152(a)).

"specific, predictable, and sufficient mechanisms . . . to preserve and advance universal service."[121] In particular, the Commission noted that interconnected VoIP providers "benefit from their interconnection to the PSTN."[122]

49. In addition, Congress provided the Commission with "plenary authority" over numbering in section 251(e). Specifically, the Commission has "exclusive jurisdiction over those portions of the North American Numbering Plan [NANP] that pertain to the United States."[123] The Commission relied on its authority under section 251(e) to support its action to require interconnected VoIP providers to provide E911 services.[124] The Commission noted that it exercised its authority under section 251(e) because, among other reasons, "interconnected VoIP providers use NANP numbers to provide their services."[125]

50. These sections of the Act provide the Commission ample authority to require contributions from all providers subject to the new numbers-based and connections-based approaches described in more detail below. These methodologies may require some providers to contribute directly to universal service when in the past they may have been contributing only indirectly or not at all. For example, under the numbers-based approach, any provider who assigns an Assessable Number to an end user must contribute.[126] Providers such as VoIP providers who are not "interconnected VoIP" providers, electronic facsimile service providers, unified messaging service providers, Internet-based TRS providers, one-way and two-way paging service providers, and telematics providers may assign Assessable Numbers to and maintain the retail relationship with the end users.[127] Not all of these providers are "telecommunications carriers" subject to the mandatory contribution obligation of section 254(d). Nonetheless, we have authority to require them to contribute. First, all of these providers provide—directly or indirectly—some amount of interconnection to the PSTN, the network that universal service supports. Interconnection to the PSTN benefits the consumers of each of these types of services by facilitating communication (even if just one-way communication) between the end user and PSTN users. As we noted in the *2006 Interim Contribution Methodology Order*, interconnected VoIP providers often provide access to the PSTN via third parties[128] and this is sufficient to permit the Commission to rely on its authority to require contributions from "other provider[s] of interstate telecommunications."[129] And as we explain below, it is in the public interest (as required by section 254(d)) that these providers contribute. Furthermore, the prerequisites for the use of our Title I ancillary jurisdiction unquestionably are met here. All the services that rely on assignment of an Assessable Number to an end user come within the Commission's broad subject matter jurisdiction because they involve in some manner

[121] *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 48 (quoting 47 U.S.C. § 254(d)).

[122] *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 48.

[123] 47 U.S.C. § 251(e)(1).

[124] *See VoIP 911 Order*, 20 FCC Rcd at 10265, para. 33.

[125] *See VoIP 911 Order*, 20 FCC Rcd at 10265, para. 33.

[126] The term Assessable Number is defined below. *See infra* paras. 62-77.

[127] This list is meant to be illustrative, not exhaustive. Other providers may also have to contribute to the universal service fund based on the criteria described in this order.

[128] *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 41.

[129] 47 U.S.C. § 254(d).