Before the
Federal Communications Commission
Washington, D.C. 20554

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

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell issuing separate statements.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we seek comment on the Commission's rules governing the amount of high-cost universal service support provided to competitive eligible telecommunications carriers (ETCs). As discussed below, we tentatively conclude that we should eliminate the Commission's current "identical support" rule – also known as the "equal support rule" – which provides competitive ETCs with the same per-line high-cost universal service support amounts that incumbent local exchange carriers (LECs) receive. We seek comment on this tentative conclusion. We also seek comment on our tentative conclusion to provide support to a competitive ETC based on its own costs of providing the supported services. We then seek comment on methodologies for determining a competitive ETC's relevant costs for universal service support purposes, and other matters related to how the support should be calculated, including the appropriate reporting obligations, and whether we should cap such support at the level of the incumbent LECs.

II. BACKGROUND

2. Section 254(b) of the Communications Act of 1934, as amended, (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, including the principle that there should be specific, predictable, and sufficient federal and state universal service support mechanisms.[1] The Commission adopted the additional principle[2] that federal support mechanisms should be competitively neutral.[3] Consistent with this principle and with the Joint Board's recommendation, the Commission determined in 1997 that federal universal service support should be made available, or "portable," to all ETCs that provide supported services, regardless of the technology used.[4] Section 254(e) of the Act requires that a carrier that receives support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[5] Furthermore, pursuant to section 214(e) of the Act, an ETC must provide service and advertise its service throughout the entire service area.[6] In order to receive universal service support, competitors must obtain ETC status from the relevant state commission, or the Commission in cases where the state commission lacks jurisdiction.[7]

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[1] *See* 47 U.S.C. § 254(b). These principles also include, among other things, that: (1) quality services should be available at just, reasonable, and affordable rates; and (2) consumers in all regions of the nation should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. *Id.*

[2] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, paras. 46-48 (1997) (*First Report and Order*) (subsequent history omitted). Section 254(b)(7) of the Act allows the Commission to add to the list of universal service principles "[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act." *See* 47 U.S.C. § 254(b)(7).

[3] *First Report and Order*, 12 FCC Rcd at 8801-02, paras. 46-48.

[4] *Id.* at 8932-8934 paras. 286-290, 8944-8945 paras. 311-13; *see also Alenco Communications, Inc. v. Federal Communications Commission*, 201 F.3d 608, 621-622 (5th Cir. 2000) (" . . . portability is not only consistent with predictability, but also is dictated by the principles of competitive neutrality and the statutory command that universal service support be spent 'only for the provision, maintenance, and upgrading of facilities and services for which the [universal service] support is intended.'").

[5] 47 U.S.C. § 254(e).

[6] 47 U.S.C. § 214(e).

[7] *See* 47 U.S.C. § 254(e)(1), (e)(6).

3. Under the Commission's existing rules, a competitive ETC that serves a customer in an incumbent LEC's service area receives the same per-line amount of high-cost universal service support that the incumbent LEC would receive for serving that same customer.[8] The Commission's universal service rules do not distinguish between primary and secondary lines; therefore, multiple connections to a single end-user in high-cost areas may receive universal service support for each connection.[9]

4. High-cost support for competitive ETCs has grown rapidly over the last several years, placing extraordinary pressure on the federal universal service fund.[10] In 2006, the universal service fund provided approximately $4.1 billion per year in high-cost support.[11] In contrast, in 2001, high-cost universal service support totaled approximately $2.6 billion.[12] In recent years, this growth has been due to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the incumbent LECs receive, rather than on the competitive ETCs' own costs. While support to incumbent LECs has been flat, or has even declined since 2003,[13] competitive ETC support, in the six years from 2001 through 2006, has grown from under $17 million to $980 million – an annual growth rate of over 100 percent.[14] Competitive ETCs received $557 million in high-cost support in the first six

[8] 47 C.F.R. § 54.307(a).

[9] *See First Report and Order*, 12 FCC Rcd at 8828-8830, paras. 94-96. In addition, a competitive ETC that provides supported services utilizing unbundled network elements (UNEs) receives the lesser of the UNE price or the per-line support amount available to the incumbent LEC. 47 C.F.R. § 54.307(a)(2).

[10] 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 contribution 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 percent, 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 (Off. of Man. Dir. 2007). The contribution factor has since declined slightly to 11.0 percent in the fourth quarter of 2007. *Proposed Fourth Quarter 2007 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 07-3928 (Off. of Man. Dir., Sept. 13, 2007).

[11] Universal Service Administrative Company 2006 Annual Report, 39 (2006), available at http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2006.pdf (*USAC 2006 Annual Report*).

[12] *See Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared by the Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Table 3.2 (2006) (*Universal Service Monitoring Report*).

[13] Incumbent LECs received $3.129 billion in high-cost support in 2003; $3.153 billion in 2004; $3.186 billion in 2005; and $3.116 billion in 2006. *Universal Service Monitoring Report*, at Table 3.2 (for 2003, 2004, and 2005 data); *USAC 2006 Annual Report* at 41 (for 2006 data). In 2001, much of the growth in high-cost support was attributable to removing implicit subsidies from access charges and the inclusion of these amounts in explicit universal service mechanisms adopted in the *CALLS Order* and the *MAG Plan Order*. *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) (*MAG Plan Order*), *recon. pending*.

[14] *Universal Service Monitoring Report*, at Table 3.2; *USAC 2006 Annual Report* at 41.

months of 2007.[15] Annualizing this amount projects that they will receive approximately $1.11 billion in 2007.

III. DISCUSSION

A. Basis of Support for Competitive ETCs

5. To ensure the sufficiency of the universal service mechanism,[16] we believe that the Commission must fundamentally reform how we distribute support under the existing high-cost mechanism. We therefore tentatively conclude that we should eliminate the Commission's current identical support rule for competitive ETCs, which bears no relationship to the amount of money such competitive ETCs have invested in rural and other high-cost areas of the country.[17] We further tentatively conclude 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 creates greater incentives for investment in such areas.

6. In its 1996 *Recommended Decision*, the Joint Board recommended *inter alia* that the Commission should "establish 'competitive neutrality' as an additional principle upon which it shall base policies for the preservation and advancement of universal service."[18] The Joint Board did not define what it meant by "competitive neutrality," however. The Joint Board further recommended that the support payments to incumbent LECs be made "portable" to competitive ETCs. Specifically, it recommended that "[a] CLEC should be allowed to receive support payments to the extent that it is able to capture subscribers formerly served by carriers eligible for frozen support payments or to add new customers in the incumbent LEC's study area."[19] The Joint Board also recommended that high-cost support be limited to "a single connection to a subscriber's principal residence."[20]

7. In May 1997, the Commission adopted the majority of the Joint Board's recommendations.[21] First, it adopted "competitive neutrality" as a principle for universal service support. The Commission provided the following very general definition of competitive neutrality: "competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage or disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another."[22] The Commission did not explain what it meant to "unfairly advantage or disadvantage one provider over another," however. In addition, the Commission acknowledged that, "given the

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[15] *See* Universal Service Administrative Company, *Universal Service Fund Facts – High Cost Quarterly Program Statistics; High Cost Program Support Distribution By CETCs & ILECs 1998 Through 2Q2007*, http://www.universalservice.org/_res/documents/about/pdf/fund-facts/HC%20CETC-ILEC%20Distribution.pdf (July 23, 2007).

[16] *See* 47 U.S.C. § 254(h)(5).

[17] *See* 47 C.F.R. § 54.307.

[18] *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 101 at para. 23 (Fed-State Jt. Bd. 1996) (hereinafter *First Recommended Decision*).

[19] *Id.* at 238, para. 296. The Joint Board had recommended that support for rural carriers be frozen at the per-line amounts they were receiving at the time until rural carriers were gradually shifted to a proxy-based methodology. *See id.* at 151, paras. 28-29. The Commission declined to adopt this recommendation. *First Report and Order*, 12 FCC Rcd at 8937-38, para. 297.

[20] *First Recommended Decision*, 12 FCC Rcd at 132, para. 89.

[21] *First Report and Order*, 12 FCC Rcd 8776.

[22] *Id.* at 8801, para. 47.

complexities and diversity of the telecommunications marketplace it would be extremely difficult to achieve strict competitive neutrality."[23]

8. The Commission also adopted the Joint Board's recommendation that it make incumbent carriers' support payments "portable to other eligible telecommunications carriers."[24] In justifying this portability requirement, both the Joint Board and Commission made clear that they envisioned that competitive ETCs would compete directly against incumbent LECs and try to take existing customers from them. Thus, for example, the Commission explained:

> A competitive carrier that has been designated as an eligible telecommunications carrier shall receive universal service support to the extent that it *captures* subscribers' lines *formerly served by* an incumbent LEC or new customer lines in that incumbent LEC's study area. At the same time, the incumbent LEC will continue to receive support for the customer lines it *continues to serve*.[25]

9. The predictions of the Joint Board and the Commission have proven inaccurate, however. First, they did not foresee that competitive ETCs might offer supported services that were not viewed by consumers as substitutes for the incumbent LEC's supported service. Second, wireless carriers, rather than wireline competitive LECs, have received a majority of competitive ETC designations, serve a majority of competitive ETC lines, and have received a majority of competitive ETC support.[26] These wireless competitive ETCs do not capture lines from the incumbent LEC to become a customer's sole service provider, except in a small portion of households.[27] Thus, rather than providing a complete substitute for traditional wireline service, these wireless competitive ETCs largely provide mobile wireless telephony service in addition to a customer's existing wireline service.

10. This has created a number of serious problems for the high-cost fund, and calls into question the rationale for the identical support rule. First, instead of competitive ETCs competing against the incumbent LECs for a relatively fixed number of subscriber lines, the certification of wireless competitive ETCs has led to significant increases in the total number of supported lines.[28] Because the majority of households do not view wireline and wireless services to be direct substitutes,[29] many

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[23] *Id.* at 8802, para. 48.

[24] *Id.* at 8832, para. 287; 8944, para. 311.

[25] *Id.* at 8932, para. 287 (emphasis added); *see also id.* at 8944, para. 311; *First Recommended Decision*, 12 FCC Rcd at 238, para. 296.

[26] *See* Letter from Jeffrey A. Eisenach, Chairman, Criterion Economics, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337, Attach. The Effects of Providing Universal Service Subsidies to Wireless Carriers at 16-18, App. B (filed June 13, 2007) (Criterion Report) (claiming that, in 2006, 68 percent – 192 out of 281 – of all competitive ETC service areas were wireless service areas, and that 94 percent – $770.5 million out of $820.5 million – of all competitive ETC support went to wireless competitive ETCs).

[27] *See 2006 Commercial Mobile Services Report*, 21 FCC Rcd at 11027, para. 205 (citing survey reporting that only approximately 8 percent of U.S. households relied exclusively on wireless phones in 2005).

[28] Between November 1, 2002, and August 2, 2007, the total number of lines served by all ETCs receiving Interstate Common Line Support (ICLS) or Interstate Access Support (IAS), including competitive ETCs and incumbent LECs, increased by approximately 35.6 million. Competitive ETC line counts, which grew by approximately 27.9 million during that period, drove the increase. *See* Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2007*, App. HC09, HC12 (filed August 2, 2007); Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2003*, App. HC08, HC14 (filed Nov. 1, 2002).

[29] *See Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion

(continued....)

households subscribe to both services and receive support for multiple lines, which has led to a rapid increase in the size of the fund.[30] In addition, the identical support rule fails to create efficient investment incentives for competitive ETCs.[31] Because a competitive ETC's per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act's universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas.[32] Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their networks.

11. For these and other reasons, numerous parties and the Joint Board have recommended that the Commission consider abandoning the identical support rule and replacing it with a requirement that competitive ETCs receive support based on their own costs. Since 2004, several parties have recommended that the Commission make such a change.[33] More recently, on May 1, 2007, the Joint Board issued a recommended decision that "recommend[ed] the Commission consider abandoning the identical support rule"[34] and also issued a public notice that sought comment on comprehensive high-cost reform, including "whether the Commission should replace the current identical support rule with a requirement that competitive ETCs demonstrate their own costs in order to receive support."[35] The Joint Board also sought comment on other possible avenues of comprehensive high-cost reform.[36]

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and Order, 22 FCC Rcd 5207, 5218, para. 17 (2007) (stating that a majority of presubscribed interexchange customers also subscribe to mobile wireless service); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, 11027, para. 203 (2006) (citing survey reporting that approximately 8 percent of U.S. households relied exclusively on wireless phones in 2005).

[30] *See* Congressional Budget Office, *Factors that May Increase Future Spending from the Universal Service Fund* 12 (2006) ("The fact that wireless entrants are providing additional telephone service rather than replacement service in many cases is part of the reason that total spending for support grows when wireless carriers enter a market covered by the USF.").

[31] Efficient investment by ETCs would lower the amount of high-cost support necessary, helping to keep universal service support sufficient. *See* 47 U.S.C. § 254(b)(5).

[32] *See* 47 U.S.C. § 254(b)(3).

[33] *See, e.g.*, Reply Comments of the Rural Telecommunications Associations, CC Docket No. 96-45 at 11-15 (filed Sept. 21, 2004); Reply Comments of the Mid-Sized Carrier Coalition, CC Docket No. 96-45, 23-27 (filed Sept. 21, 2004); Comments of the Coalition of State Telecommunications Association and Rural Telephone Companies, CC Docket No. 96-45 at 17-18 (filed Aug. 6, 2006), Initial Comments of the National Telecommunications Cooperative Association, CC Docket No. 96-45 at 13-14 (filed Aug. 6, 2004).

[34] *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, 9001, para. 6 (Fed.-State Jt. Bd. 2007) (*2007 Recommended Decision*).

[35] *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 9023, 9026, para. 7 (Fed-State Jt Bd. 2007) (*2007 Joint Board Public Notice*).

[36] *Id.* at 9024-27, paras. 3-8. We hereby incorporate the record that has been and will continue to be filed in response to the *2007 Joint Board Public Notice* into this proceeding, including without limitation all submissions made on eliminating the identical support rule and on any of the other comprehensive high-cost reform issues identified in that Public Notice. Any party wishing to update the comments it filed in response to the Public Notice in this proceeding may do so.

12. Given the near-unanimous support of Joint Board members for the Commission moving to eliminate the identical support rule,[37] and for the reasons set forth above, we tentatively conclude that the goal of universal service will be better served if we eliminate the identical support rule and instead provide support based on the competitive ETCs' own costs. We tentatively conclude that such a change in policy is further justified by the failure of the identical support rule to reward investment in communications infrastructure in rural and other high-cost areas.[38] Additionally, we tentatively conclude that we should require competitive ETCs that seek high-cost support to file cost data demonstrating their costs of providing service in high-cost service areas. We seek comment on whether this proposal is consistent with the goal of competitive neutrality, given that the majority of competitive ETCs generally do not sell services that consumers view as direct substitutes for wireline services. To the extent that commenters argue that elimination of the identical support rule would be inconsistent with the goal of competitive neutrality, we seek comment on whether such a minimal departure is compensated by the potential stabilization of the high-cost fund and improved investment incentives that would result from the rule change. We seek comment on the above analysis and on these proposals.

B. Determination of Costs for Competitive ETCs

13. We tentatively conclude that competitive ETCs should file cost data showing their own per-line costs of providing service in a supported service area in order to receive high-cost universal service support. Specifically, we propose that each competitive ETC should file cost data with the Commission or the relevant state commission – whichever approved, or subsequently approves, its ETC application – on an annual basis and line-count data on a quarterly basis. We further propose that competitive ETCs have the option of updating their cost data on a quarterly basis, as do rural incumbents today.[39] Only if the cost data is approved by the relevant state commission or the Commission may the competitive ETC then file the cost data submission with the Universal Service Administrative Company (USAC). We seek comment on these tentative conclusions. Additionally, we invite parties to submit detailed cost data proposals or, in the case of competitive ETCs, actual cost data that would enable us to compare their costs for supported services in high-cost areas to those of incumbent LECs for those same areas. We note that Advocates for Regulatory Action submitted a proposal to replace the identical support rule with wireless carrier actual costs (the WiCAC Proposal), and we seek comment on that proposal.[40]

1. Methods for Examining Competitive ETC Costs

14. Consistent with our tentative conclusions above, a competitive ETC would be required to report sufficient cost information to allow the Commission or the state commissions to evaluate competitive ETC's costs for purposes of determining high-cost support. We seek comment on the manner in which competitive ETCs should be required to report their costs.

15. *Disaggregation*. Incumbent LECs are required to separate their network costs into components pursuant to Part 32 of the Commission's rules.[41] Rural incumbent LECs receive high-cost

[37] *2007 Recommended Decision*, 22 FCC Rcd at 9003, para. 12.

[38] *See* Criterion Report at 42. Eliminating the identical support rule to compensate competitive ETCs more directly for their investments will help to ensure that quality services will be available to the competitive ETC's customers at affordable rates, and that access to telecommunications services are available in all areas of the nation, including rural and high-cost areas. *See* 47 U.S.C. §§ 254(b)(1) and (3).

[39] *See* 47 C.F.R. §§ 36.611, 36.612.

[40] Letter from Jeffrey H. Smith, Advocates for Regulatory Action, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337 and CC Docket No. 96-45 (filed July 12, 2007) (WiCAC Proposal Letter).

[41] 47 C.F.R. Part 32.

loop support (HCLS) on a per-line basis based on costs assigned to the common line network component, and non-rural incumbent LECs receive high-cost model support (HCMS) on a per-line basis for the common line, local switching, and local transport network components. Although traditionally we have not regulated the manner in which non-dominant carriers record their costs and revenues, we seek comment here on whether we should require competitive ETCs seeking high-cost support to separate costs into network components in a similar manner, so that their costs can be compared to the incumbent LECs' cost benchmarks for purposes of determining whether competitive ETCs qualify for high-cost support. We further seek comment on whether the Commission should develop a system of accounts for competitive ETCs, including wireless carriers, that mirror the Part 32 rules applicable to incumbent LECs.[42] For example, the WiCAC Proposal would utilize 23 specific Part 32 accounts to calculate wireless competitive ETC costs.[43] We seek comment on the WiCAC Proposal's use of Part 32 accounts specifically to determine wireless competitive ETC costs. We also seek comment generally on other possible methods of identifying the network components and associated costs in a wireless network that are equivalent to a wireline carrier's local loop, switching, and transport components. We also seek comment on whether, if we require disaggregation of costs into network components, competitive ETCs should be able to recover costs for different network components for non-rural service areas than for rural service areas.[44] Finally, we seek comment on whether the Commission should consider any limitations on the total per-line support available to ETCs in a designated area.[45]

16. *Geographic Disaggregation*. We further seek comment on whether, because competitive ETCs will, in general, operate in multiple study areas of incumbent carriers, it will be necessary to disaggregate each competitive ETC's cost by relevant competitive ETC service area, and by the relevant incumbent LEC study area, wire center, or disaggregation zone.[46] We seek comment on whether the default methodology for such geographic disaggregation should be to allocate costs (total or by individual network component) in proportion to the active telephone numbers employed or the number of customers served in each study area. As an alternative, if a competitive ETC can demonstrate that it has maintained separate cost accounts by individual study area, then these accounts can be used to report cost for each study area individually. We seek comment on these issues. We also seek comment on how to best ensure that a competitive ETC does not inflate the costs being allocated to high-cost areas as compared to lower

[42] We note that the Part 32 rules apply differently to incumbent LECs based on their sizes, with less stringent requirements for smaller incumbent LECs. *See* 47 C.F.R. § 32.11. We seek comment on whether similar treatment should be applied to smaller competitive ETCs.

[43] WiCAC Proposal Letter at 3-5, 9-17.

[44] For example, an incumbent LEC that receives support under the rural HCLS mechanism receives support based on its loop costs, whereas an incumbent LEC that receives support under the non-rural HCMS mechanism receives support based on forward-looking loop, local switching, and local interoffice transport costs. *See* 47 C.F.R. § 36.631, 54.309. We seek comment on whether a competitive ETC seeking HCMS in a non-rural area should receive support based on the costs that would be equivalent to incumbent LECs' local loop, local switching, and local transport costs, while one seeking HCLS in a rural area should receive support based on the costs that would be equivalent to incumbent LECs' local loop costs only. To the extent the Commission concludes that competitive ETCs may continue to seek support for local switching costs (in those areas where local switching support is available to the incumbent LEC) in rural areas, we seek comment on whether this support should be based on costs equivalent to the incumbent LEC's switching costs. *See infra* para. 24.

[45] *See infra* section III.D.

[46] Disaggregation is the subdivision of a study area into relatively high- and low-cost areas for the purpose of targeting universal service support to the high-cost areas. The subdivisions are disaggregation zones. *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11299-309, paras. 136-64 (2001).

cost areas for which the competitive ETC may not be seeking support. For example, should we require that a competitive ETC identify total costs for all study areas or wire centers as well as the specific costs which the competitive ETC is associating with the study or services areas or wire centers for which it is seeking support?

17. *Wireless-Specific Costs*. We tentatively conclude that wireless spectrum costs should be included in high-cost support cost submissions only to the extent that the competitive ETC actually paid for the spectrum, either through an auction or by purchasing it on the open market. We also tentatively conclude that a carrier should not be able to assign a market value or opportunity costs to spectrum. Thus, a wireless provider that obtained spectrum at auction would be able to include the price it paid for the spectrum at auction, but if a carrier obtained its spectrum through a lottery, it would not be able to recover any costs for the spectrum from the high-cost universal service mechanisms.[47] Further, we tentatively conclude that wireless handsets should not be treated as an allowed expense, both because they are more akin to traditional customer-owned telephones in a wireline network than to the network interface device, and because the handsets are purchased by subscribers rather than leased to customers by carriers. We seek comment on these tentative conclusions.

2. Cost Reporting Requirements

18. To aid the Commission and state commissions in their review of competitive ETC cost submissions, we propose a general set of rules to govern the cost data submitted by competitive ETCs. We tentatively conclude that the competitive ETCs should use Generally Accepted Accounting Principles (GAAP) and, with the exceptions discussed below, the accounting methodologies should be the same as those used to provide information about the company's performance to external parties, such as investors and creditors. The cost of capital should be assumed to be 11.25 percent, which is the average cost of capital used in the Commission's forward-looking model and in other regulatory proceedings.[48] Depreciation expense should be computed in a manner consistent with GAAP, and, in addition, the same depreciation schedules used by the competitive ETC in any other financial reports must be used for purposes of determining total network cost for universal service support purposes. Operating and maintenance expense should be based on actual expenses incurred. The allocation for corporate overhead should be comparable to the limitations imposed on rural and non-rural carriers. Specifically, for rural carriers the amount of corporate operations expenses included in determining high-cost loop support is the lesser of actual expenses or the amount calculated under the formulas in section 36.622(a)(4) of the Commission's rules.[49] For non-rural carriers, the input value for common support services expenses is $7.32 per line, per month.[50] Consistent with the approach under the HCMS rules, corporate operations expenses for competitive ETCs serving non-rural study areas would be the lesser of actual expenses or $7.32 per line, per month. Further, any costs not kept in separate books of account should be identified and allocated to the appropriate study area based on active telephone numbers employed or the number of

[47] Similarly, obtaining spectrum by purchasing a company or the assets of a company does not in and of itself qualify the spectrum for inclusion in high-cost support costs.

[48] *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, Order, 5 FCC Rcd 7507 (1990) (prescribing authorized rate of return at 11.25 percent); *MAG Plan Order*, 15 FCC Rcd at 19700-02, paras. 206-10 (retaining 11.25 percent authorized rate of return). The Commission's High-Cost Proxy Model, used to calculated HCMS, assumes an 11.25 rate of return. *See Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, 14 FCC Rcd 20156, 20347, para. 432 (1999) (*Tenth Report and Order*), *affirmed*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2003).

[49] *See* 47 C.F.R. § 36.622(a)(4).

[50] *See Tenth Report and Order*, 14 FCC Rcd at 20321, para. 382 & n.844. Rather than using the $7.32 directly as an input value, however, the model uses this amount, annualized and adjusted for uncollectibles, or $92.46316.

customers served.[51] All elements of the cost report will be subject to audit. We seek comment on these observations, proposals, and tentative conclusions.

19. It may be necessary to adopt additional requirements concerning the manner in which competitive ETCs are allowed to report their costs. For example, although spectrum acquired through an auction or purchased on the open market may be a legitimate business expense, it is not clear that we should allow carriers to earn a return of 11.25 percent on these investments in perpetuity if spectrum costs are not depreciated.[52] In addition to those issues identified above, other issues may arise due to fundamental differences between wireline and wireless network design. We seek comment on these issues. We also seek comment on whether we should adopt any additional requirements on the competitive ETC cost submissions.[53]

C. Calculation of Support

20. As noted above, we seek comment on whether a competitive ETC should receive high-cost universal service support based on its own costs by applying the same benchmarks that are applied to the incumbent LEC's costs to determine its support. For example, in the case of a competitive ETC providing service in a non-rural study area, a cost per line would be developed, which would be compared to the benchmark threshold for support calculated by the High-Cost Proxy Model. For competitive ETCs providing service to rural study areas, a cost per line would be developed for each competitive ETC for each incumbent study area that it serves. Support could be determined by comparing the competitive ETC's cost per loop incurred to provide the supported services to the national average cost per loop developed by the National Exchange Carrier Association (NECA) pursuant to section 36.613 of the Commission's rules, as adjusted to accommodate the cap on incumbent high-cost loop support.[54] We seek comment on this methodology and other possible methodologies for providing support to competitive ETCs serving rural areas. Similarly, we seek comment on a methodology for developing support based on wireless costs for competitive ETCs serving non-rural areas. We also seek comment on whether we should develop a method of estimating wireless competitive ETCs' forward-looking economic costs analogous to the High-Cost Proxy Model the Commission currently uses to calculate HCMS.

21. HCLS and HCMS both are calculated in terms of per-line support. Because a competitive ETC may have few or no lines when it first receives its ETC designation, performing a calculation of per-line support at the initial time of market entry likely would result in a considerable upward bias in the resulting support amount. We therefore seek comment on whether a competitive ETC should be required to project its subscribership for some future point in time when performing its cost submissions. To the extent that we require such subscribership projections, we seek comment on how far into the future a competitive ETC should be required to project (e.g., 3 years, 5 years). We also seek comment on whether, and when, it would be appropriate to switch from projected future subscribership to

[51] *See infra* Section II.B.3.

[52] *See* Financial Accounting Standards Board, *Statement of Financial Accounting Standards No. 142: Goodwill and Other Intangible Assets* (June 2001) (providing that an intangible asset with an indefinite useful life shall not be amortized, but rather evaluated for impairment of value each reporting period); *see also, e.g.*, Alltel Corporation, Form 10-K, at F-25-26 (Feb. 20, 2007) ("In accordance with SFAS No. 142, 'Goodwill and Other Intangible Assets,' Alltel tests its goodwill and other indefinite-lived intangible assets for impairment at least annually, which requires the Company to determine the fair value of these intangible assets, as well as the fair value of its reporting units. . . . The Company's indefinite-lived intangible assets consist of its cellular and PCS licenses.").

[53] We seek comment on whether the methods for determining competitive ETC costs discussed above would significantly economically affect smaller competitive ETCs. If so, we seek comment on alternative methods for smaller competitive ETCs to submit information that would allow the Commission and the state commissions adequately to assess these companies' costs for purposes of determining high-cost support.

[54] *See* 47 C.F.R. §§ 36.613, 36.622(c).

actual subscribership. Further, for wireless ETCs, we seek comment on whether subscribership should be based on the number of handsets or on some other statistic, such as individual billing accounts.

22. We also seek comment on whether the Commission should examine wireless competitive ETC costs independently from wireline LEC costs for purposes of determining high-cost support. Wireless networks may be very different from wireline networks, potentially resulting in very different costs. We seek comment on methods for reviewing and determining wireless high-cost support on a separate basis from the existing wireline mechanisms, and whether adopting such a separate wireless high-cost support mechanism comports with the goal of competitive neutrality.

23. We tentatively conclude that competitive ETCs should no longer receive Interstate Access Support (IAS) and Interstate Common Line Support (ICLS). IAS and ICLS were created by the Commission in order to maintain the Commission's cap on subscriber line charge (SLC) rates that incumbent LECs may charge end users, while eliminating the implicit support found in common line access charges, imposed by incumbent LECs on interexchange carriers, that previously preserved the lower SLC rates.[55] Some parties previously have argued that, because competitive ETCs' rates generally are not regulated and they are not subject to SLC caps, they are able to recover their revenues from end users and have no need to recover additional interstate revenues from access charges or from universal service, and therefore should not be eligible for support under IAS or ICLS.[56] We tentatively conclude that permitting competitive ETCs to receive IAS or ICLS is inconsistent with how competitive ETCs recover their costs or set rates. We seek comment on these tentative conclusions.

24. Similarly, we seek comment on whether competitive ETCs should no longer receive Local Switching Support (LSS). The Commission created LSS in the *First Report and Order* by removing the existing Dial Equipment Minutes weighting subsidy from the access rate structure and, instead, providing carriers explicit support from the universal service fund.[57] LSS therefore includes a number of assumptions regarding switching costs, such as the economies of scope and scale, that are not likely to be accurate for competitive ETCs. We seek comment on whether LSS should no longer be available to competitive ETCs.[58] Accordingly, if competitive ETCs no longer receive IAS, ICLS, and LSS, competitive ETCs would be permitted to receive high-cost support only for their local loop-equivalent costs, to the extent such costs can be shown to be high-cost. We seek comment on whether to limit competitive ETC support in this manner.

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[55] *See CALLS Order*, 15 FCC Rcd at 12975-76, paras. 31-32; *MAG Order*, 16 FCC Rcd at 19667-69, paras. 128-31.

[56] *See* Letter from Mary L. Henze, Senior Director Federal Regulatory, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337, CC Docket No. 96-45, Attach. (filed Mar. 22, 2007).

[57] *Universal Service First Report and Order*, 12 FCC Rcd at 8940-41 paras. 303-04.

[58] We also note that the Commission and the Joint Board are currently considering reform of high-cost support, including LSS, for rural carriers. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538 (2004) (requesting recommendations from the Joint Board regarding reform of rural high-cost support mechanisms); *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (Fed.-State Jt. Bd. 2004); *Federal State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 14267 (Fed.-State Jt. Bd. 2005); *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, Public Notice, 21 FCC Rcd 9292 (Fed.-State Jt. Bd. 2006); *2007 Joint Board Public Notice*, 22 FCC Rcd at 9024, para. 3.

D. Ceiling on Competitive ETC Per-Line Support

25. We seek comment on whether we should establish a ceiling on the per-line high-cost support that a competitive ETC may receive. An incumbent LEC's HCMS is limited by the forward-looking estimated costs produced by the model, even if the incumbent LEC's actual costs are higher. For competitive ETCs providing service in non-rural study areas, we seek comment on setting the ceiling at the per-line HCMS that the incumbent LEC receives in a particular wire center. For competitive ETCs providing service in rural areas, we seek comment on setting the ceiling at the amount that the incumbent LEC receives from HCLS or, in the alternative, at the sum of the per-line HCLS and LSS that the incumbent receives.[59] Adopting a ceiling for competitive ETCs at the level of incumbent LEC support could avoid rewarding competitive ETCs for being inefficient and reduce incentives for competitive ETCs to inflate their costs. We seek comment on this analysis, as well as on whether there are any other approaches for adopting a ceiling for competitive ETC funding.

E. Other Issues

26. We also seek comment regarding the sufficiency of the Commission's existing use certifications with respect to competitive ETCs. Section 254(e) of the Act requires that "[a] carrier that receives [universal service support] shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[60] Currently, the Commission requires each state to file an annual certification stating that all federal high-cost universal service support provided to LECs or competitive ETCs within the state will be used only for the purposes for which the support is intended.[61] The Commission also requires that each LEC or competitive ETC receiving IAS or ICLS must file a certification that the high-cost support received pursuant to those mechanisms will be used for the intended purpose.[62] Some parties contend, however, that wireless competitive ETCs are not using their universal service support to promote universal service goals.[63] We seek comment on whether these certifications, as well as the Commission's rules requiring competitive ETCs to submit five-year build out plans (beginning October 1, 2006),[64] provide sufficient protection against misuse of universal service support by competitive ETCs. We request that parties arguing that stronger protections are necessary identify with specificity any recommended additional protections.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

27. As required by the Regulatory Flexibility Act of 1980, as amended,[65] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this notice of proposed rulemaking, of the possible significant economic impact on a substantial number of small entities by the policies and rules

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[59] If the Commission ultimately concludes that competitive ETCs are not eligible for LSS, the ceiling would be set at the per-line support amounts that the incumbent LEC receives from the HCLS.

[60] 47 U.S.C. § 254(e).

[61] 47 C.F.R. §§ 54.313, 54.314.

[62] 47 C.F.R. §§ 54.809, 54.904.

[63] *See* Rural ILECs Petition for Revocation of Sprint/Nextel's ETC Designation in Virginia or, Alternatively, Motion to Show Cause, CC Docket No. 96-45 (filed June 4, 2007). On July 9, 2007, the Wireline Competition Bureau sought comment on this petition. *Comment Sought on a Petition by TDS Telecommunications Corp., Fairpoint Communications, Inc., and Burke's Garden Telephone Company for Revocation of Spring/Nextel's ETC Designation in Virginia, or, Alternatively, Motion to Show Cause*, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 12727 (Wireline Comp. Bur. 2007).

[64] 47 C.F.R. § 54.202 (a)(1)(ii).

[65] 5 U.S.C. § 603.

proposed in this notice of proposed rulemaking. The IRFA is in the attached Appendix A. 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 of proposed rulemaking. The Commission will send a copy of the notice of proposed rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[66] In addition, the notice of proposed rulemaking and IRFA (or summaries thereof) will be published in the Federal Register.[67]

B. Paperwork Reduction Act Analysis

28. This document contains proposed new 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.[68] Public and agency comments are due 60 days after this notice of proposed rulemaking is published in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[69]

C. *Ex Parte* Presentations

29. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[70] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the 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 is generally required.[71] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.[72]

D. Comment Filing Procedures

30. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[73] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies.[74]

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[66] *See* 5 U.S.C. § 603(a).

[67] *Id.*

[68] Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

[69] Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

[70] 47 C.F.R. §§ 1.1200-1.1216.

[71] 47 C.F.R. § 1.1206(b)(2).

[72] 47 C.F.R. § 1.1206(b).

[73] 47 CFR §§ 1.415, 1.419.

[74] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-115, Report and Order, 13 FCC Rcd 11322 (1998).

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

  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, 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.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  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, Office of the Secretary, Federal Communications Commission.

  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 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.

  - 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.

  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

- People with Disabilities: 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), 202-418-0432 (tty).

31. In addition, one copy of each pleading must be sent to each of the following:

(1) The Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; website: www.bcpiweb.com; phone: 1-800-378-3160;

(2) Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554; e-mail: Antoinette.Stevens@fcc.gov.

32. For further information regarding this proceeding, contact Ted Burmeister, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7389, or theodore.burmeister@fcc.gov, or Katie King, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-7491, or katie.king@fcc.gov.

V. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201-205, 214, 254, 403 and sections 1.1, 1.411-1.419, and 1.1200-1.1216 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.411-1.419, 1.1200-1.1216, this Notice of Proposed Rulemaking IS ADOPTED.

34. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (Notice). 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 in paragraph 30 of the item. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. Over the last few years, the size of the universal service fund has grown rapidly, threatening the sustainability of the fund.[4] This growth has been driven largely by the increase in high-cost universal service support for competitive eligible telecommunications carriers (ETCs).[5] The increase in high-cost support to competitive ETCs is, in turn, a product of the growing number of competitive ETC lines (due to both new designations of competitive ETCs and growth in subscribership to wireless services), the availability of support for multiple lines per household, and the identical support rule, which provides that each competitive ETC receives the same per-line support amount that the incumbent local exchange carrier (LEC) receives.[6] In the Notice, the Commission tentatively concludes that the identical support rule should be eliminated because it bears no relationship to the amount of money competitive ETCs have invested in rural and other high-cost areas of the country.[7] The Commission seeks comment on its tentative conclusion to provide support based on a competitive ETC's own costs as a means of constraining the growth of the universal service fund and providing appropriate investment incentives for competitive ETCs.[8]

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, and sections 1.1, 1.411-1.419, and 1.1200-1.1216 of the Commission's rules.[9]

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

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *Id.*

[4] *See* Notice, para. 4.

[5] *Id.*

[6] *Id.*, paras. 5-12.

[7] *Id.* para. 5.

[8] *Id.* paras. 5-12.

[9] 47 U.S.C. §§ 151, 152, 154(i)-(j), 201-205, 214, 254, 403; 47 C.F.R. §§ 1.1, 1.411-1.419, 1.1200-1.1216

the number of small entities that may be affected by the rules, if adopted.[10] The RFA generally defines the term "small entity"[11] as having the same meaning as the terms "small business,"[12] "small organization,"[13] and "small governmental jurisdiction."[14] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[15] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[16] Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[17] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[18] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[19]

5. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report.[20] The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,[21] Paging,[22] and Cellular and Other Wireless Telecommunications.[23] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

1. Wireline Carriers and Service Providers

6. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard

[10] 5 U.S.C. § 604(a)(3).

[11] 5 U.S.C. § 601(6).

[12] 5 U.S.C. § 601(3).

[13] 5 U.S.C. § 601(4).

[14] 5 U.S.C. § 601(5).

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

[16] 15 U.S.C. § 632.

[17] *See* SBA, Programs and Services, SBA Pamphlet No. CO-0028, at 40 (July 2002).

[18] 5 U.S.C. § 601(4).

[19] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[20] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, page 5-5 (February 2007) (*Trends in Telephone Service*). This source uses data collected as of October 20, 2005.

[21] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

[22] *Id.* § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

[23] *Id.* § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

(e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[24] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[25] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

7. *Incumbent LECs*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[26] According to Commission data,[27] 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

8. *Competitive LECs, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[28] According to Commission data,[29] 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than 1,500 employees.[30] In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are "Other Local Service Providers." Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

2. Wireless Carriers and Service Providers

9. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"[31] and "Cellular and Other

[24] 15 U.S.C. § 632.

[25] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[26] 13 C.F.R. § 121.201, NAICS code 517110.

[27] *Trends in Telephone Service* at Table 5.3.

[28] 13 C.F.R. § 121.201, NAICS code 517110.

[29] *Trends in Telephone Service* at Table 5.3.

[30] *Id.*

[31] 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

Wireless Telecommunications."[32] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[33] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[34] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[35] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[36] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

10. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.[37] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[38] According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.[39] We have estimated that 221 of these are small under the SBA small business size standard.

3. Satellite Service Providers

11. *Satellite Telecommunications and Other Telecommunications*. There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.[40]

12. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[41] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[42] Of this total, 307

[32] 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

[33] U.S. Census Bureau, 2002 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517211 (issued Nov. 2005).

[34] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[35] U.S. Census Bureau, 2002 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517212 (issued Nov. 2005).

[36] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[37] 13 C.F.R. § 121.201, NAICS code 517212.

[38] *Id.*

[39] *Trends in Telephone Service* at Table 5.3.

[40] 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

[41] U.S. Census Bureau, 2002 NAICS Definitions, "517410 Satellite Telecommunications"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[42] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (continued....)

firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[43] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

13. The second category of Other Telecommunications "comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems."[44] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[45] Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[46] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

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

14. This Notice seeks comment on whether to calculate support for competitive ETCs based on their own costs.[47] If the Commission ultimately adopts such a method for determining high-cost support for competitive ETCs, it will likely require competitive ETCs to begin recording and reporting their cost data in order to receive high-cost support. Specifically, the Notice seeks comment on how such costs should be identified and reported, and proposes that the costs must be reported to the Commission or the relevant state authority for approval before submission to the universal service administrator for use in calculating and disbursing support.[48]

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

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.[49]

16. This Notice seeks comment generally on how competitive ETCs should identify and report their costs and how to calculate their high-cost universal service support.[50] Furthermore, the Notice

(...continued from previous page)
(Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

[43] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[44] U.S. Census Bureau, 2002 NAICS Definitions, "517910 Other Telecommunications"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[45] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

[46] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[47] Notice, para. 12.

[48] Notice, paras. 14-26.

[49] *See* 5 U.S.C. § 603(c).

[50] Notice at paras. 14-26.

specifically seeks comment on whether less stringent cost accounting requirements should apply to smaller competitive ETCs.[51] The Notice seeks comment on whether the methods for determining competitive ETC costs discussed therein would significantly economically affect smaller competitive ETCs.[52] If so, the Notice seeks comment on alternative methods for smaller competitive ETCs to submit information that would allow the Commission and the state commissions adequately to assess these companies' costs for purposes of determining high-cost support.[53] The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice, in reaching its final conclusions and taking action in this proceeding. Moreover, the Notice seeks comment on whether to eliminate or retain the existing identical support rule, but tentatively concludes that the existing rule threatens the sufficiency of the universal service fund.[54] The Notice seeks comment on whether replacing the existing rule with a support mechanism that provides support to competitive ETCs based on their own costs may have a significant economic impact on some competitive ETCs, and, if so, seeks comment on alternative methods for smaller competitive ETCs to report their costs to the Commission and the state commissions.[55]

F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

17. None.

[51] *Id.*, para. 15 n.40.

[52] *Id.*, para. 19 n.53.

[53] *Id.*

[54] *Id.*, para. 12.

[55] *Id.*, para. 19 n.50.

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*).

Today, the Commission adopts several proposals to reform the high-cost universal service program. It is essential that we take actions that preserve and advance the benefits of the universal service program.

The United States and the Commission have a long history and tradition of ensuring that rural areas of the country are connected and have similar opportunities for communications as other areas. Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services.

Changes in technology and increases in the number of carriers that receive universal service support, however, have placed significant pressure on the stability of the Fund. A large and rapidly growing portion of the high-cost support program is now devoted to supporting multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. These additional networks don't receive support based on their own costs, but rather on the costs of the incumbent provider, even if their costs of providing service are lower. In addition to recommending an interim cap, the Joint Board has recognized the problems of maintaining this identical support rule.

I am supportive of several means of comprehensive reform for the universal service program. I have circulated among my colleagues at the Commission an Order that adopts the recommendation of the Joint Board to place an interim cap on the amount of high-cost support available to competitive ETCs. And today we adopt a Notice of Proposed Rulemaking that would require that high-cost support be based on a carrier's own costs in the same way that rural phone companies' support is based. I'm supportive of both measures as a means to contain the growth of universal service in order to preserve and advance the benefits of the fund and protect the ability of people in rural areas to continue to be connected.

I continue to believe the long-term answer for reform of high-cost universal service support is to move to a reverse auction methodology. I believe that reverse auctions could provide a technologically and competitively neutral means of controlling the current growth in the fund and ensuring a move to most efficient technologies over time. Accordingly, I am pleased that we adopt today's Notice of Proposed Rulemaking to use reverse auctions to distribute universal service support.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN FCC 08-22
APPROVING IN FCC 08-4
APPROVING IN PART, DISSENTING IN PART IN FCC 08-5

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*) (Approving in Part, Dissenting in Part).

The Commission adopts and seeks comment on three Notices of Proposed Rulemaking concerning: the Federal-State Joint Board on Universal Service's (Joint Board) recommendation on comprehensive reform of the high-cost Universal Service support mechanism; the elimination of the "Identical Support" rule; and the merits of using reverse auctions in distributing high-cost support to eligible telecommunications carriers (ETCs). I am pleased that the Commission today initiates all three NPRMs simultaneously as I have long believed that Universal Service reform must be done in a comprehensive, systematic manner. I write here to express my views on all three proceedings.

I continue to believe that there are a variety of ways to promote Universal Service and at the same time ensure the sustainability and integrity of the fund. I believe much would be accomplished if the Commission were to include broadband on both the distribution and contribution side of the ledger; eliminate the Identical Support rule; and increase its oversight and auditing of the high-cost fund. Additionally, Congressional authorization to permit the assessment of Universal Service contributions on intrastate as well as interstate revenue would be a valuable tool for supporting broadband.

That being said, the Joint Board made an assortment of recommendations of its own. I agreed with some of them and not with others. In my view, the most important part of the recommendation is its inclusion of broadband as part of USF for the 21st Century. My views on the recommendation are explained in further detail in my statement that accompanied the Joint Board's recommendation and which is attached as an appendix to the NPRM adopted today. I believe the recommendation merits further action by the Commission, and therefore, I am pleased to support the NPRM initiated today.

Let me briefly take this opportunity to thank the members of the Joint Board who worked tirelessly on the difficult task of developing a comprehensive proposal for the FCC's consideration. I congratulate Chairwoman Tate for her leadership in bringing these recommendations to the Commission. We are all deeply indebted to her co-chair, Commissioner Ray Baum of Oregon, for his tireless and energetic work in shepherding the Joint Board toward consensus on many items. And I want to pay tribute to the always visionary yet practical efforts of the indefatigable Billy Jack Gregg whose endless good counsel is sewn throughout the Joint Board's recommendations.

With regard to the NPRM on the Identical Support rule, it is clear to me that the costs of investing and maintaining wireless and wireline infrastructure are inherently different. I believe that wireless can and should be a part of Universal Service, but the time has come to put an end to the irrational and costly system of supporting wireless carriers based on the cost of wireline incumbents. I therefore am supportive

of the tentative conclusion that we eliminate this rule. The NPRM is particularly important because it seeks comment on how best to replace this rule and in particular the methodologies by which CETCs should be able to recover costs for Universal Service support purposes.

The NPRM on reverse auctions is much more of a mixed bag. On the one hand, I support the Commission's decision to seek comment on the merits of reverse auctions as a method for distributing high-cost Universal Service support. The Joint Board spent a great deal of time examining the use of reverse auctions, but I must say that our review raised in my mind many more questions than it answered. For instance, how do we ensure that the winning bidder provides adequate quality of service? What happens if the winner later decides it is no longer profitable to continue its operation? And who will be responsible for establishing the rules and enforcing them? Ironically, this purportedly market-based approach strikes me as hyper-regulatory. For these reasons, I must dissent from the NPRM's tentative conclusion that the Commission should develop an auction mechanism to determine high-cost support. I believe that the options I outlined above—including broadband as part of Universal Service; elimination of the Identical Support rule; stepped-up accounting oversight; and Congressional action to enable Universal Service collections on an intrastate as well as an interstate basis provide a more effective and less disruptive approach to Universal Service reform.

The good news is that these three items, particularly the Joint Board recommendation, put the urgent need for comprehensive Universal Service reform squarely in front of the Commission. I hope the FCC will deal with these recommendations expeditiously and comprehensively. This is no place for piecemeal actions. We need to think expansively and creatively about implementing the path-breaking broadband decision that has now been presented to us. This country desperately needs a comprehensive broadband strategy. The Joint Board recommendation provides the opportunity for the FCC to move toward such a strategy, working with our own rules and making suggestions to Congress in those areas where legislative action may be required to ensure such a strategy. I am looking forward to working with my colleagues in order to turn these proposals into workable solutions.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN,
APPROVING IN FCC 08-22
APPROVING IN FCC 08-4
CONCURRING IN PART, DISSENTING IN PART IN FCC 08-5

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*) (Concurring in Part, Dissenting in Part).

Through these Notices, the Commission seeks comment on potentially profound changes to the Universal Service High Cost program. While I am not without reservations about some of the proposals in these items, I am pleased that the Commission is engaging in serious consideration of how to preserve and advance universal service, one of the bedrock principles of U.S. telecommunications policy. I am particularly encouraged that the Commission is seeking comment on the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), and I thank the members of the Joint Board for their considerable efforts to bring us this Recommended Decision.

Congress and the Commission recognized early on that the economic, social, and public health benefits of the telecommunications network are increased for all subscribers by the addition of each new subscriber. In Section 254 of the Communications Act, Congress affirmed the broad principle that "consumers in all regions of the nation . . . should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." Implementing universal service as intended by Congress in Section 254 of the Act is among the highest priorities for the Commission.

The task before us – ensuring the continued vitality of universal service – is particularly important as technology and the marketplace continue to evolve. Our choices in this proceeding will have a dramatic effect on the ability of communities and consumers in Rural America to thrive and grow with the rest of the country. History has shown that many rural consumers would be left behind if it weren't for the support made available through our universal service policies.

The Joint Board's Recommended Decision for comprehensive reform of the high cost support mechanism – and, in particular, the decision to include broadband as a supported service – is a landmark development. I have long argued that the universal service fund is an integral component of our efforts to meet the broadband challenge. So, the decision to embrace broadband, through the list of supported services and through targeted funding for unserved areas, and the recognition of the effectiveness of the current High Cost Loop Fund in supporting the capital costs of providing broadband-capable loop facilities for rural carriers are encouraging developments.

I must express a degree of reservation over the amount of support allocated to the Broadband Fund, among other limitations on support. Maintaining our commitment to connectivity, particularly in the broadband age, is more important than ever, and the Commission must start to provide realistic

assessments of what will be required. To that end, I am also concerned about the impact of reverse auctions and whether such mechanisms can provide adequate incentives for build out in Rural America. For these reasons, I dissent from the tentative conclusions in the separate Reverse Auctions Notice. While I appreciate the majority's willingness to flesh out details of their reverse auction proposal, I cannot support these premature tentative conclusions, and would have preferred a more balanced presentation of the potential disadvantages of such an approach.

There remain many questions about the Recommended Decision and details to be vetted. While I reserve judgment on many of the proposals, there is much here that warrants careful consideration. The Joint Board has wrestled with many difficult issnes, including the unique role of providers of last resort, compensation for multiple providers, and the role of the States in fostering universal service, and I look forward to seeking comment on their recommendations. I agree with the Joint Board's recommendation on the identical support rule and support the separate Notice seeking comment on alternative approaches.

As we move forward with these proceedings at the Commission, I would like to express my sincere gratitude to all the members and staff of the Joint Board. The Joint Board, and the many parties who participated in those proceedings, engaged in a long and arduous effort to bring us these recommendations. I know that we will benefit considerably from their expertise and judgment, and I look forward to the coming dialogue on these proposals with our state commission colleagues, consumers, providers, and the many others with a stake in the future of universal service.

STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*) (Approving).

As Federal Chair of the Federal-State Joint Board on Universal Service (Joint Board) I am particularly pleased that we are taking this significant step forward in the journey toward comprehensive reform of the high-cost universal service program. This is an important program at the heart of rural America. Its purpose, to connect all Americans to telecommunications at affordable rates, has over the years permitted people to be connected even in rural and remote parts of our nation. Going forward, the Universal Service Fund will continue to play a critical and increasing role in one of our top priorities at the Commission -- encouraging broadband deployment to all corners of America.

Specifically, we seek comment on the recommendation of the Joint Board regarding comprehensive reform of high-cost universal service support. It is also significant that we also incorporate by reference the *Identical Support NPRM* and *Reverse Auctions NPRM*, including the records to be developed in response to those NPRMs. I look forward to receiving public input and examining these issues.

I would like to thank my Co-Chair, Commissioner Ray Baum of the Oregon Public Utility Commission. I am especially pleased that all eight Joint Board members, large and small/rural and urban/donor and recipient, were able to come to this consensus and hope this will move us forward and provide the basic building blocks for fundamental reform to ensure Fund stability and viability in a fiscally responsible manner. All of the Joint Board members deserve praise for their commitment to the in-depth analysis of these complex issues, their desire to positively affect public policy and to make decisions in the public interest in a thoughtful and deliberative manner. They should all be commended for their commitment to serve on the Joint Board in addition to their full time positions as government officials.

STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*) (Approving).

I have consistently stated that, while the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life, this system is in dire need of comprehensive reform. I have maintained that we must follow five principles when considering reforms to the Universal Service Fund. We must: (1) slow the growth of the Fund; (2) permanently broaden the base of contributors; (3) reduce the contribution burden for all, if possible; (4) ensure competitive neutrality; and (5) eliminate waste, fraud and abuse. A number of proposals have been put forth, particularly the Joint Board's recommendations for comprehensive reform sent to the Commission on November 19, 2007.

By adopting these three notices of proposed rulemaking, we are moving forward to advance specific reforms to the way the Universal Service High Cost Fund is administered. I favor a comprehensive approach where we can consider all ideas and options for reform of this important program. This year the Commission has an historic opportunity to implement meaningful and lasting fiscal reform that balances stakeholders' concerns and promotes the interests of consumers. We should seize this opportunity and take a bold step forward.