

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

)

)

Federal-State Joint Board on

)

CC Docket No. 96-45

Universal Service

)

**NINTH REPORT & ORDER AND
EIGHTEENTH ORDER ON RECONSIDERATION**

Adopted: October 21, 1999 Released: November 2, 1999

By the Commission: Commissioners Ness and Tristani issuing separate statements; Commissioner Powell concurring in part and issuing a statement; Commissioner Furchtgott-Roth dissenting and issuing a statement.

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I. INTRODUCTION

1. In the Communications Act of 1934 (Act),⁽¹⁾ as amended by the Telecommunications Act of 1996 (1996 Act),⁽²⁾ Congress codified the Commission's historical policy of promoting universal service to ensure that consumers in all regions of the nation have access to telecommunications services.⁽³⁾ Specifically, in section 254 of the Act, Congress instructed the Commission, after consultation with the Federal-State Joint Board on Universal Service (Joint Board), to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service.⁽⁴⁾

2. Based on recommendations from the Joint Board in the *Second Recommended Decision*,⁽⁵⁾ and building on the framework the Commission set forth in the *First Report and Order*⁽⁶⁾ and the *Seventh Report and Order*,⁽⁷⁾ we establish in this Order a new federal high-cost support mechanism that will be sufficient to enable non-rural carriers⁽⁸⁾ rates for services supported by universal service to remain affordable and

reasonably comparable in all regions of the nation. The support determined by the mechanism described in this Order will replace the support that non-rural carriers currently receive from the existing high-cost fund, which provides support for intrastate rates and services.⁽⁹⁾ The new high-cost support mechanism described in this Order provides support based on the estimated forward-looking costs of providing supported services. The forward-looking costs and the cost model that we will use to estimate them are discussed at length in the companion *Inputs Order* adopted today.⁽¹⁰⁾ With the adoption of this Order and the *Inputs Order*, the Commission's new forward-looking high-cost support mechanism for non-rural carriers will be ready to begin providing support effective January 1, 2000.

3. Our methodology for determining non-rural carriers' high-cost universal service support conforms to the 1996 Act's goals and balances the competing interests involved in this proceeding. As the 1996 Act requires, the Commission has developed policies for reforming high-cost support in consultation with the Joint Board, and this Order reflects deference to states' interests and needs.⁽¹¹⁾ We also have attempted to balance the various and often countervailing concerns of many industry segments that have an interest in the outcome of this proceeding, including incumbent local exchange carriers (LECs), interexchange carriers (IXCs), competitive LECs, and wireless carriers.

4. Because of the disparate interests involved and the complexity of the issues, however, this has not been an easy process. For example, high-cost states, which are likely to be net recipients of high-cost support, have very different views on universal service than low-cost states, which are likely to be net payors of high-cost support. On the other hand, all states have expressed similar concerns about the Commission's jurisdiction. Similarly, incumbent LECs in high-cost states, which are likely to be major recipients of support, particularly in the near term, have very different views than other LECs, IXCs, and wireless carriers, which are major contributors to federal support mechanisms. In some cases, however, IXCs and wireless carriers are entering competitive local service markets, so that these carriers are both contributors and potential recipients.

5. The 1996 Act charged the Commission with resolving the difficult issues surrounding universal service, within prescribed guidelines, and so we must balance the competing interests of these divergent parties. In this proceeding, the Commission has done so in a way that is faithful to the statute's commitment to ensuring that support mechanisms serve "*consumers* in all regions in the nation," and that consumers in high-cost areas continue to have access to reasonably comparable services at reasonably comparable rates.⁽¹²⁾

II. EXECUTIVE SUMMARY

6. Consistent with the 1996 Act, and based on the recommendations of the Joint Board, we adopt in this Order a new federal forward-looking high-cost support mechanism to enable states to ensure the reasonable

comparability of non-rural carriers' intrastate rates.⁽¹³⁾ Specifically, we are adjusting and finalizing the framework of the new mechanism for non-rural carriers that we adopted on May 27, 1999, in the *Seventh Report and Order*. In the *Seventh Report and Order*, the Commission adopted a two-part methodology for calculating high-cost support for non-rural carriers that considers: (1) the relative costs of providing supported services in high-cost areas, and (2) the states' ability to support those costs using their own resources. In the first part of that methodology, the forward-looking costs of providing supported services, as calculated by a cost model, are compared to a national benchmark. In the second part of that methodology, a state's ability to support the costs that exceed the national benchmark is estimated by multiplying a fixed dollar amount by the number of lines served by non-rural carriers in the state. Federal support would then be provided for costs that exceed both the benchmark and the state's estimated ability to support those costs.

7. For the reasons discussed below, however, we are adjusting the framework of this methodology so that it will better reflect the historical and statutory roles of federal and state universal service support programs. As the Joint Board has suggested, we believe that the primary role of federal high-cost support is to enable reasonable comparability of rates *among* states, while the primary role of state high-cost support is to ensure reasonable comparability of rates *within* states.⁽¹⁴⁾ In *Texas Office of Public Utility Counsel v. FCC*, the United States Court of Appeals for the Fifth Circuit found that the principles set forth in section 254(b), which include the principle of reasonable comparability, are policy goals, not legal obligations.⁽¹⁵⁾ Thus, the Fifth Circuit held that the Commission did not have an unambiguous legal obligation to support intrastate services, and that the Act did not unequivocally establish that all federal universal service support should go to support rates for intrastate services.⁽¹⁶⁾ The Fifth Circuit nevertheless confirmed that federal universal service support may be used to support rates for intrastate services.⁽¹⁷⁾ The court also found that the Commission could set conditions that states must satisfy to be eligible to receive such federal universal service support.⁽¹⁸⁾ Regardless of the extent to which the Commission is legally obligated to support intrastate services, we find that, as a matter of policy, federal universal service high-cost support should be sufficient to enable reasonably comparable rates among states, while leaving states with sufficient resources to set rates for intrastate services that are reasonably comparable to rates charged for similar services within their borders. Because the Commission does not set rates for intrastate services, the decision we adopt today is intended to allow states to ensure that rates are reasonably comparable within their borders. We find that this is consistent with the goals that Congress established in section 254(b)(3).

8. In fulfilling the federal goal of enabling states to set rates that are reasonably comparable to rates in other states, we do not believe at this time that it is appropriate for the federal high-cost support mechanism for non-rural carriers to assume that state support mechanisms will supply a particular amount of support above the national benchmark to enable reasonable comparability of rates among states. Rather, states should be free to use the full extent of their own resources to fulfill their primary role in the federal-state high-cost support dichotomy, i.e., ensuring reasonable comparability of rates within states. We find that we can ensure that state resources are accounted for in determining federal support amounts by considering the average cost of providing the supported services in the entire area of the state served by non-rural carriers. We base this judgment on the facts before us and the characteristics of the overall mechanism that we are adopting herein. Therefore, we reconsider and eliminate the second part of the two-part methodology described in the *Seventh Report and Order*, and conclude that the goal of the federal high-cost mechanism should be to

provide support to non-rural carriers based solely on the extent to which the costs of providing supported services in high-cost areas exceed the national benchmark.⁽¹⁹⁾

9. In this Order, we also are filling in the framework of the revised methodology for non-rural carriers to address certain implementation issues on which we sought comment in the *Seventh Report and Order*. These issues include the area over which costs should be averaged; the level of the national benchmark; the amount of support to be provided for costs above the national benchmark; targeting support to high-cost areas; the hold-harmless and portability provisions; and the methods to ensure that non-rural carriers use support in compliance with the 1996 Act. In addition, consistent with our commitment to protect rural carriers' support levels during our reform of non-rural carriers' high-cost support, we are modifying our existing high-cost support mechanism to ensure that support for rural carriers is not substantially changed when non-rural carriers are removed from that mechanism and begin receiving support from the new forward-looking support mechanism.

10. The following is a summary of the salient points of the high-cost support mechanism for non-rural carriers that we adopt today. Each of these points is discussed in greater detail in the sections below.

The forward-looking costs estimated by the cost model are averaged at the statewide level.

The national benchmark is set at 135 percent of the national average forward-looking cost per line of providing supported services.

The forward-looking high-cost support mechanism provides support for all intrastate forward-looking costs per line that exceed the national benchmark.

The amount of support indicated by the forward-looking high-cost support mechanism on a statewide basis is targeted so that the amount of support available to a competitor depends on the wire center cost of the line that the competitor serves.

Pursuant to the interim hold-harmless provision, a carrier will receive the greater of the amount of support provided to that carrier under the current mechanism or the amount of support provided by the forward-looking mechanism. Hold-harmless support is determined on a per-line basis; if a carrier loses a line, it loses the support for that line. Hold-harmless support is targeted, based on wire center costs, to the highest-cost

wire centers.

Pursuant to the portability provision, when a competitor acquires a customer from an incumbent receiving support, the competitor will receive the incumbent's support.

States must certify that non-rural carriers receiving federal high-cost support will use that support in compliance with section 254(e) of the Act. To the extent that forward-looking support calculations exceed support levels based on the current mechanism, no non-rural carrier in a particular state will receive federal support based on forward-looking costs until that state files the required certification with the Commission. No non-rural carrier in a particular state will receive *any* federal support after January 1, 2001, if that particular state has not filed the required certification with the Commission.

11. The Commission will use this methodology to provide high-cost universal service support to non-rural carriers effective January 1, 2000. The support mechanism for rural carriers will remain unchanged at least until January 1, 2001, and reform will be undertaken only after the Commission, the Joint Board, and a Rural Task Force appointed by the Joint Board have selected an appropriate methodology for rural support.⁽²⁰⁾

III. BACKGROUND

A. Historical High-Cost Universal Service Support

12. The purpose of high-cost universal service support has always been to enable access to telecommunications service in areas where the cost of such service otherwise would be prohibitively high. Historically, this purpose has been achieved by providing high-cost support to incumbent LECs to enable them to serve high-cost customers at below-cost rates. This support has been both explicit and implicit.

1. Explicit Support

13. Several federal and state programs have provided explicit monetary payments to support the local loop and switching costs of incumbent LECs serving high-cost areas.⁽²¹⁾ The most significant program for non-rural carriers that we are addressing in this phase of our universal service proceeding is the current high-cost

loop support mechanism, which provides increasing amounts of explicit support based on the amount by which an incumbent LEC's loop costs, as reflected in its books, exceed the national average.⁽²²⁾ Beginning with loop costs between 115 percent and 160 percent of the national average, the current federal support mechanism for incumbent LECs with more than 200,000 lines provides support for 10 percent of the incumbent LEC's book loop costs (in addition to the 25-percent allocation of all loop costs to the interstate jurisdiction), and provides gradually more support as those costs exceed 160 percent of the national average.⁽²³⁾ The following chart summarizes the levels of support provided by the current high-cost support mechanism for large incumbent LECs:⁽²⁴⁾

Loop Cost as a % of the National Average	Amount of Intrastate Loop Cost Supported
greater than 115%, but not greater than 160%	10%
greater than 160%, but not greater than 200%	30%
greater than 200%, but not greater than 250%	60%
greater than 250%	75%

14. Historically, the dial equipment minutes (DEM) weighting program, now called the local switching support program,⁽²⁵⁾ has provided support for the switching costs of incumbent LECs with fewer than 50,000 lines. Because most of these companies meet the statutory definition of a rural telephone company,⁽²⁶⁾ support levels for these carriers will remain unchanged pending later proceedings.⁽²⁷⁾ Carriers that set their access charges through participation in the NECA common-line cost pool, including a few non-rural carriers, also may receive long-term support (LTS), which provides explicit support to reduce these carriers' loop-related access charges.⁽²⁸⁾

2. Implicit Support

15. In contrast to explicit support, some state rate designs and, to a lesser extent, the federal interstate access charge system, have provided implicit high-cost support flowing from (1) urban areas to rural areas; (2) business customers to residential customers; (3) vertical services to basic service; and/or (4) long distance service to local service. First, many states have adopted the practice of setting uniform local rates throughout the territory that a given company serves within the state, thereby enabling incumbent LECs to charge above-cost rates in urban (low-cost) areas to support the below-cost rates they charge in rural (high-cost) areas. Second, some state regulators have allowed incumbent LECs to charge business customers higher rates than residential customers even though the costs of serving business and residential customers in the same area are roughly the same, thereby creating a business-to-residential support flow. Third, through rate regulation in some states, incumbent LECs are able to charge above-cost rates for vertical services (e.g., touch tone, conference calling, speed dialing, call waiting, caller identification, etc.) in order to support the rates for basic local service. Fourth, incumbent LECs in some states have been able to charge relatively high intrastate access charges to interexchange carriers to cover costs not recovered through local rates. The IXC's pass these access charges on to their long distance customers in the form of higher usage charges for intrastate long distance service, thus creating implicit support from long distance service to local service. Further, the federal interstate access charge system has capped flat end-user rates and recovered certain loop costs through per-minute charges to IXCs, which are being phased out through our access charge

reform proceeding.

16. Although implicit universal service support was sustainable in a monopoly environment, it will become more difficult to sustain as competition increases. In a competitive market, a carrier that charges rates significantly above its costs to a class of customers may lose those customers to a competitor charging cost-based rates. As carriers lower their rates closer to their costs in urban areas, or lose low-cost customers to new entrants charging cost-based rates, the implicit support for below-cost rates in high-cost areas may erode. Moreover, efforts to sustain implicit universal service support in a competitive environment could encourage business decisions contrary to the purpose of high-cost support - to enable access to telecommunications service in areas where the cost of such service otherwise would be prohibitively high. For example, competitors may be likely to target high-revenue business customers in low-cost urban areas where incumbent LECs are charging rates significantly above costs, while foregoing opportunities to serve lower-revenue residential customers in high-cost rural areas where incumbent LECs are charging artificially low rates because of implicit support flows.

B. Universal Service Principles Stemming From the 1996 Act

17. In the 1996 Act, Congress, recognizing that existing universal service support mechanisms were designed for a monopoly environment, directed the Commission to establish support mechanisms for the preservation and advancement of universal service in the competitive telecommunications environment that Congress envisioned.⁽²⁹⁾ To assist the Commission in preserving and advancing universal service, Congress instructed the Commission to convene a Joint Board for the purpose of making recommendations to the Commission regarding universal service reform.⁽³⁰⁾

18. Congress also provided several principles to guide the Commission and the Joint Board in their reform efforts. Specifically, Congress declared that consumers in all regions of the nation, including consumers in rural, insular, and high-cost areas, should have access to telecommunications services at rates that are affordable and reasonably comparable.⁽³¹⁾ Congress also stated that federal universal service support mechanisms should, as far as possible, be explicit,⁽³²⁾ as well as specific, predictable, and sufficient to preserve and advance universal service.⁽³³⁾ The support mechanisms also should require all providers of telecommunications services to make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.⁽³⁴⁾ The support mechanisms should be competitively neutral, i.e., they should neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.⁽³⁵⁾ Additionally, the support mechanisms should allow any telecommunications carrier, using any technology, including wireless technology, to receive universal service support if it meets the criteria for eligible telecommunications carrier status under the 1996 Act.⁽³⁶⁾

C. Actions by the Commission and the Joint Board to Reform High-Cost Universal Service Support Pursuant to the 1996 Act

19. As required by the 1996 Act, the Commission convened the Joint Board,⁽³⁷⁾ which produced its first set of recommendations to the Commission in November 1996.⁽³⁸⁾ Based on those recommendations, the Commission adopted the universal service *First Report and Order* in May 1997. Among other things, the Commission identified the services included within the definition of universal service and established a specific timetable for implementation of revised universal service support mechanisms.⁽³⁹⁾ Consistent with the Joint Board's recommendations, the Commission further concluded that carriers should receive support for serving rural, insular, and high-cost areas based on a methodology using the forward-looking costs of providing supported services. The Commission explained that using forward-looking costs will provide sufficient support without giving carriers an incentive to inflate their costs or to refrain from efficient cost-cutting.⁽⁴⁰⁾

20. To determine the forward-looking costs of providing supported services, the Commission considered various cost models.⁽⁴¹⁾ A cost model consists of: (1) a model platform, which contains a series of fixed assumptions about network design and engineering; and (2) input values for the model platform, such as the cost of network components, e.g., cables and switches, as well as various capital cost parameters.⁽⁴²⁾ Under the methodology described in the *First Report and Order*, the cost model ultimately selected by the Commission would be used to estimate the forward-looking costs of providing the supported services, but would not, by itself, determine the amount of federal support. Instead, federal support would be based on a methodology comparing the relative differences between the forward-looking costs of providing supported services in a particular area and a national benchmark.

21. In the *First Report and Order*, the Commission, following the Joint Board's recommendation, concluded that its high-cost methodology should compare the forward-looking costs of providing supported services to a national revenue benchmark.⁽⁴³⁾ The Commission decided that the share of support provided by the federal mechanism initially should be set at 25 percent of the difference between the forward-looking cost of providing supported services and an appropriate revenue benchmark to be determined later.⁽⁴⁴⁾ The Commission stated, however, that the federal share of support would be subject to review in light of state proceedings, the development of competition, and other relevant factors.⁽⁴⁵⁾ The Commission also determined in the *First Report and Order* that non-rural carriers would begin to receive high-cost support based on forward-looking costs on January 1, 1999.⁽⁴⁶⁾ This date subsequently was extended to January 1, 2000.⁽⁴⁷⁾ Implementation of support based on forward-looking costs for *rural* carriers, however, would not occur at least until January 1, 2001, and only after the Commission selects an appropriate forward-looking mechanism based on recommendations from the Joint Board and a Rural Task Force appointed by the Joint Board.⁽⁴⁸⁾

22. The Commission's decisions in the *First Report and Order* regarding the high-cost support methodology generated significant comment and numerous petitions for reconsideration.⁽⁴⁹⁾ In addition, several parties filed petitions for review of the *First Report and Order*, which were consolidated before the United States Court of Appeals for the Fifth Circuit.⁽⁵⁰⁾ In the spring of 1998, the state members of the Joint Board requested that certain issues related to the determination of high-cost support be referred back to the Joint Board.⁽⁵¹⁾ In April 1998, the Commission committed itself to completing a proceeding reconsidering the federal share of support before revised support mechanisms are implemented for non-rural carriers,⁽⁵²⁾ and sought proposals and comments on how to reform high-cost support for non-rural carriers.⁽⁵³⁾ In response, parties submitted a variety of proposals and comments, and provided input in a series of *en banc* hearings.⁽⁵⁴⁾

23. In July 1998, the Commission referred several issues to the Joint Board for its recommendations.⁽⁵⁵⁾ Specifically, the Commission sought recommendations on the following issues: an appropriate methodology for determining support amounts; the extent to which federal universal service support should be applied to the intrastate jurisdiction; whether interstate access charges should be reduced concomitantly to reflect a transition from implicit to explicit support; how to avoid "windfalls" to carriers if federal funds are applied to the intrastate jurisdiction before states reform intrastate rate structures and support mechanisms; whether and to what extent federal universal service policy should support state efforts to make intrastate support mechanisms explicit; the relationship between the jurisdiction to which funds are applied and the appropriate revenue base upon which the Commission should assess and recover providers' universal service contributions; and to what extent, and in what manner, it is reasonable for providers to recover universal service contributions through rates, surcharges, or other means.⁽⁵⁶⁾

24. In November 1998, the Joint Board released its recommendations on these issues.⁽⁵⁷⁾ The *Second Recommended Decision* called for a renewed focus on the statutory principles that sufficient support should be available to ensure that rates are affordable and reasonably comparable.⁽⁵⁸⁾ The Joint Board had previously found that rates were generally affordable,⁽⁵⁹⁾ and in the *Second Recommended Decision* focused on laying the groundwork for a mechanism to enable reasonably comparable rates.⁽⁶⁰⁾ Based on the *Second Recommended Decision*, the Commission released the *Seventh Report and Order* in May 1999.⁽⁶¹⁾ In the *Seventh Report and Order*, the Commission recognized that the 1996 Act requires that rates should be "just, reasonable, and affordable," and that rates in rural, insular, and high-cost areas should be "reasonably comparable" to rates charged for similar services in urban areas.⁽⁶²⁾ Because the Joint Board had previously determined that rates are generally affordable, the Commission chose to focus more closely on the issue of reasonable comparability of rates in the *Seventh Report and Order*.⁽⁶³⁾ The Commission adopted the Joint Board's proposal that "reasonably comparable" rates should refer to a "fair range" of rates, requiring support levels sufficient "to prevent pressure from high costs and the development of competition from causing unreasonable increases in rates above current, affordable levels."⁽⁶⁴⁾

25. In the *Seventh Report and Order*, the Commission reconsidered and repudiated the decision in the *First Report and Order* that federal support should be limited to 25 percent of the difference between the forward-looking cost of providing supported services and a national revenue benchmark.⁽⁶⁵⁾ Based on the recommendations of the Joint Board, the Commission concluded that federal support should not be limited to 25 percent because such a limit failed to consider the states' ability to support the costs of providing supported services.⁽⁶⁶⁾ The Commission adopted the Joint Board's recommendation to use costs as a proxy for rates in assessing its responsibilities to enable the reasonable comparability of rates. Thus, if federal support is available to cover costs that substantially exceed the national average, no state should face rates that are significantly higher than those elsewhere. The Commission also decided, based on the Joint Board's recommendation, that a cost benchmark would be more appropriate than a revenue benchmark because revenues may not accurately reflect the need for support due to varying rate-setting methods and goals among different states, and because of the administrative difficulties of a revenue approach in light of carriers' decisions to bundle supported services with unsupported services, such as long distance services, wireless services, and Internet access services.⁽⁶⁷⁾ Therefore, the Commission adjusted the initial support framework outlined in the *First Report and Order* and established a two-part methodology for non-rural carriers that considers both the relative costs of providing supported services and the states' ability to support those costs using their own resources.⁽⁶⁸⁾

26. In the first step of the methodology described in the *Seventh Report and Order*, the costs incurred by a non-rural carrier to provide supported services are estimated using a model based on forward-looking costs.⁽⁶⁹⁾ Those costs are then compared to a national cost benchmark to determine the areas that have costs exceeding the benchmark and are therefore in need of support.⁽⁷⁰⁾ In the second step of the methodology,⁽⁷¹⁾ the state's ability to achieve reasonably comparable rates using its own resources would be estimated by multiplying a fixed dollar amount by the number of lines served by non-rural carriers in the state.⁽⁷²⁾ The federal support mechanism would then provide support for costs that exceed both the national benchmark and the individual state's resources to support those costs.⁽⁷³⁾ Under this methodology, states would not be required to impose a per-line charge to collect intrastate universal service support, and carriers would not necessarily be entitled to recover a per-line amount from state mechanisms.⁽⁷⁴⁾ Instead, the per-line amount would be an estimate of a state's ability to achieve reasonable comparability, and would establish a level above which federal support would be provided.⁽⁷⁵⁾

27. In accordance with the Joint Board's recommendations, the Commission also decided to adopt a hold-harmless provision as part of its new high-cost methodology, i.e., the amount of support provided under the new support mechanism will be no less than the amount provided under the current support mechanism.⁽⁷⁶⁾ The hold-harmless provision is intended to prevent potential rate shocks and disruptions in state rate designs when the forward-looking mechanism takes effect.⁽⁷⁷⁾ To ensure that support is distributed in a competitively neutral manner, the Commission adopted the Joint Board's recommendation that a portability provision be included in the new high-cost methodology.⁽⁷⁸⁾ Under this provision, high-cost support will be made available to all carriers eligible for support,⁽⁷⁹⁾ whether they are incumbent LECs, competitive LECs, or wireless carriers.⁽⁸⁰⁾ In addition, pending a decision from the Fifth Circuit concerning the Commission's authority to assess carriers' intrastate revenues, the Commission decided that contributions to the high-cost

support mechanism should continue to be based on interstate and international revenues.⁽⁸¹⁾ The Commission committed itself to reviewing the operation of the new forward-looking high-cost support mechanism on or before January 1, 2003.⁽⁸²⁾

28. Although the Commission adopted a revised framework for the new high-cost support mechanism in the *Seventh Report and Order*, it allowed parties an opportunity for further comment on certain implementation issues in order to create a sufficient record regarding those issues.⁽⁸³⁾ Specifically, in the further notice section of the *Seventh Report and Order*, the Commission sought comment on the level of the national benchmark; the size of the area over which costs should be averaged; the estimate of a state's ability to support high-cost areas; methods for ensuring that support is distributed and applied consistent with the 1996 Act; and the implementation of the hold-harmless and portability provisions.⁽⁸⁴⁾ At the same time the Commission released the *Seventh Report and Order*, the Commission also released the *Inputs Further Notice* seeking comment on proposed input values for the cost model.⁽⁸⁵⁾

D. Opinion of the Fifth Circuit Court of Appeals

29. On July 30, 1999, a three-judge panel of the Fifth Circuit issued its opinion in *Texas Office of Public Utility Counsel v. FCC*, affirming in part, reversing in part, and remanding in part the *First Report and Order*.⁽⁸⁶⁾ Among other things, the court rejected challenges by several incumbent LECs to the use of a forward-looking cost model for determining high-cost support for non-rural carriers. The court concluded that the Commission could reasonably interpret section 254 of the 1996 Act to authorize a cost model methodology.⁽⁸⁷⁾ Specifically, the court held:⁽⁸⁸⁾

[T]he FCC's reason for adopting this methodology is not just to preserve universal service. Rather it is also trying to encourage local competition by setting the cost models at the "most efficient" level so that carriers will have the incentive to improve operations. As long as it can reasonably argue that the methodology will provide sufficient support for universal service, however, it is free, under the deference we afford it under *Chevron [USA, Inc. v. National Resources Defense Council, Inc., 467 U.S. 837 (1984)]* step-two, to adopt a methodology that serves its other goal of encouraging local competition.

The court also accepted the Commission's argument that "sufficient" support does not mean that the amount of support provided must equal the costs reflected in carriers' books.⁽⁸⁹⁾

30. Concerning the assessment base for contributions to the universal service support mechanisms, the court

found that the Commission lacked jurisdiction to assess the intrastate revenues of universal service contributors.⁽⁹⁰⁾ The court also reversed and remanded for further consideration the Commission's decision to assess contributions based on the international revenues of contributors having interstate revenues.⁽⁹¹⁾ In addition, the court reversed the Commission's "decision to require ILECs to recover universal service contributions from their interstate access charges."⁽⁹²⁾ The court held that this requirement maintained an implicit subsidy in violation of section 254(e) of the Act.⁽⁹³⁾

E. Response to the Fifth Circuit's Opinion

31. On September 9, 1999, the Commission filed a motion for stay of the Fifth Circuit's mandate in *Texas Office of Public Utility Counsel v. FCC*, which was to become effective on September 20, 1999.⁽⁹⁴⁾ On September 13, 1999, the Commission, GTE, and AT&T each filed petitions for rehearing with the Fifth Circuit.⁽⁹⁵⁾ On September 28, 1999, the Fifth Circuit denied all of the petitions for rehearing, and granted the Commission's motion for stay in part.⁽⁹⁶⁾ The Fifth Circuit stayed its mandate until November 1, 1999.⁽⁹⁷⁾

32. In response to the court's rulings, the Commission adopted an Order on October 8, 1999, that amends its contribution and recovery rules, effective November 1, 1999.⁽⁹⁸⁾ Specifically, the Commission removed intrastate revenues from the contribution base, so that universal service contributions are now calculated using a single contribution factor based on interstate and international end-user telecommunications revenues.⁽⁹⁹⁾ The Commission also exempted from the contribution base the international revenues of interstate carriers whose interstate revenues account for less than 8 percent of their combined interstate and international revenues.⁽¹⁰⁰⁾ Further, the Commission revised its rules to comply with the court's directive that our rules not require implicit support flows. The new rules allow incumbent LECs to recover their contributions through access charges or through end-user charges.⁽¹⁰¹⁾ To the extent they choose to implement an interstate end-user charge, incumbent LECs that are currently recovering their universal service contributions in interstate access charges must make corresponding reductions in their interstate access charges to avoid any double recovery.⁽¹⁰²⁾

33. In light of the Fifth's Circuit's decision and the Commission's response to it, the present Order adjusts the methodology described in the *Seventh Report and Order*, resolves the remaining implementation issues, and adopts a final forward-looking high-cost support methodology. In the companion *Inputs Order* adopted today, the Commission resolves the issues raised in the *Inputs Further Notice* and adopts final input values for the cost model.⁽¹⁰³⁾ With the adoption of these two Orders, the Commission's new forward-looking high-cost support mechanism is now ready to begin providing support to non-rural carriers effective January 1, 2000.

IV. ORDER

A. Introduction

34. In this Order, we adopt a new specific and predictable forward-looking mechanism that will provide sufficient support to enable affordable, reasonably comparable intrastate rates for customers served by non-rural carriers.⁽¹⁰⁴⁾ The methodology for this mechanism is based on the framework outlined in the *Seventh Report and Order*, with certain modifications discussed below. Specifically, the forward-looking mechanism compares the costs of providing supported services in a particular state, as determined by the cost model, to a national benchmark, and provides support for costs that exceed that benchmark. In constructing this mechanism, we begin by examining the appropriate federal and state roles in providing universal service support for intrastate rates. Next, we address specific methodological issues relating to the calculation of forward-looking support, including the area over which costs should be averaged; the level of the national benchmark; the amount of support to be provided for costs above the national benchmark; the elimination of the state share requirement; and the targeting of the statewide support amount. We then address the hold-harmless and portability provisions, and the methods to ensure that non-rural carriers use support in compliance with the 1996 Act. We next address the assessment and recovery bases for contributions to the high-cost support mechanism. We also describe our plan to address implicit support in access charges as part of our separate *Access Charge Reform* proceeding. In addition, we modify the rules governing our existing support mechanism to ensure that support for rural carriers is not substantially changed when non-rural carriers are removed from that mechanism and transitioned to the new forward-looking support mechanism. Finally, we lift the stay on our section 251 pricing rules, effective May 1, 2000. We emphasize that there may be several ways in which we could design the various components of the federal support mechanism consistent with section 254, but we believe, in light of the facts before us and in consultation with the Joint Board, that the method we adopt here appropriately balances the varied and competing goals of section 254.

35. The new forward-looking support mechanism that we adopt today will provide forward-looking support effective January 1, 2000. As discussed below in section IV.F., however, the actual disbursement of forward-looking support (retroactive to January 1, 2000) will not occur until the second quarter of 2000. Moreover, no commenter has claimed that implementation of the new forward-looking mechanism presents any "Y2K" problems. Thus, we do not foresee any "Y2K" issues associated with the transition to the new forward-looking mechanism because there will be no actual change in support levels on or around January 1, 2000.⁽¹⁰⁵⁾

B. Federal and State Roles in Providing Universal Service Support for Intrastate Rates

36. To construct an appropriate methodology for providing federal high-cost support, we must first examine the respective roles of federal and state regulators in providing such support. Historically, federal programs have provided explicit intrastate high-cost support for local loop and switching costs that significantly

exceeded the national average.⁽¹⁰⁶⁾ Many state programs, on the other hand, have largely achieved the goals of intrastate universal service implicitly through rate structures and, to a lesser extent, through explicit state high-cost support mechanisms. As discussed above, many state rate structures have included significant implicit support for universal service.⁽¹⁰⁷⁾ The states' historical authority over intrastate ratemaking, and thus their primary responsibility for intrastate universal service, has been recognized by the Commission.⁽¹⁰⁸⁾ The Commission, however, has had a longstanding goal of promoting universal service nationwide, and thus has provided support for intrastate-allocated costs that significantly exceed the national average.

37. In *Texas Office of Public Utility Counsel v. FCC*, the Fifth Circuit held that section 254 of the Act did not affect the proscription, set forth in section 2(b), against Commission regulation of intrastate rates.⁽¹⁰⁹⁾ Thus, states alone have jurisdiction for setting rates for intrastate services. Consequently, states alone have the authority to set rates for intrastate services that are just, reasonable, affordable, and reasonably comparable. We conclude that Congress would not have imposed on the Commission obligations regarding intrastate rates that the Commission does not have the legal authority to effectuate. Indeed, the Fifth Circuit found that the Commission was permitted (but not required) to provide federal universal service support for intrastate services.⁽¹¹⁰⁾ The Fifth Circuit also found that the Commission may condition such support on assurances by states that such federal support will be used for its intended purposes.⁽¹¹¹⁾

38. In the *Second Recommended Decision*, the Joint Board recognized that section 254 does not alter the states' historical responsibility for intrastate universal service.⁽¹¹²⁾ The Joint Board interpreted section 254(b) (3)'s principle that rates be "reasonably comparable" to refer to "a fair range of urban/rural rates both within a state's borders, and among states nationwide."⁽¹¹³⁾ The Joint Board found that the federal role in achieving reasonably comparable rates should be to provide "those amounts necessary to establish a standard of reasonable comparability of rates across states."⁽¹¹⁴⁾ According to the Joint Board, the state role is to "supplement, as desired, any amount of federal funds it may receive," and to "address issues regarding implicit intrastate support in a manner that is appropriate to local conditions."⁽¹¹⁵⁾ Stated another way, the primary federal role is to enable reasonable comparability among states (i.e., to provide states with sufficient support so that states can make local rates reasonably comparable among states), and the primary role of each state is to ensure reasonable comparability within its borders (i.e., to apply state and federal support to make local rates reasonably comparable within the state). This Order adopts that approach as a policy goal. In addition, the approach is consistent with the Fifth Circuit's decision regarding the Commission's responsibility for supporting intrastate services. It also is consistent with Congress's goal of making universal service support explicit.

C. New Forward-Looking High-Cost Support Methodology

39. This Order sets out a methodology - in essence, a set of formulas - that will be used to determine non-rural carriers' support amounts for serving rural and high-cost areas. The methodology computes a specific

support amount, and can be replicated by carriers or other members of the public. The methodology will change over time only in the ways we specifically describe herein or pursuant to modifications that we make in the future pursuant to public notice and comment in this proceeding. Thus, the methodology is specific and predictable.⁽¹¹⁶⁾ Moreover, for the reasons discussed below, we find that this mechanism will result in sufficient support to enable affordable and reasonably comparable rates for customers in areas served by non-rural carriers.⁽¹¹⁷⁾

40. In the *First Report and Order*, the Commission concluded that high-cost support should be based on forward-looking costs.⁽¹¹⁸⁾ Since that time, the Commission has continued to work to adopt a cost model that is reasonably accurate and verifiable.⁽¹¹⁹⁾ As an initial matter, we note that in the *Inputs Order* we have affirmed the Commission's decision to base support calculations on forward-looking costs.⁽¹²⁰⁾ Moreover, the Commission and its staff have undertaken a thorough review of the model and its input values over the past six months. In so doing, the staff has coordinated extensively with, and received substantial input from, the Joint Board staff and interested outside parties. As a result of this examination of the model, we have concluded in the *Inputs Order* that the model generates reasonably accurate estimates of forward-looking costs and that the model is the best basis for determining non-rural carriers' high-cost support in a competitive environment.⁽¹²¹⁾ We have found that none of the criticisms of the model undermine our decision to use it for calculating non-rural carriers' high-cost support.⁽¹²²⁾ As discussed in the *Inputs Order*, we believe that using the model is the best way to determine non-rural carriers' support amounts for the funding year beginning January 1, 2000.⁽¹²³⁾ We also recognize, however, that the model must evolve as technology and other conditions change. We therefore have committed in the *Inputs Order* to initiating a proceeding to study how the model should be used in the future and how the model itself should change to reflect changing circumstances.⁽¹²⁴⁾

41. Finally, as discussed further in the *Inputs Order*, we reiterate that the federal cost model was developed for the purpose of determining federal universal service support, and that it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements.⁽¹²⁵⁾ The Commission has not considered the appropriateness of this model for any other purposes, and we have cautioned parties from making any claims in other proceedings based upon the input values adopted in the *Inputs Order*.⁽¹²⁶⁾

42. Consistent with the goals of federal universal service support discussed above, the new forward-looking support mechanism will compare the average costs of providing supported services in a given area to the national benchmark, provide support for costs exceeding the national benchmark, and then target that support based on wire-center costs, so that the amount of support available to a competitor depends on the cost level of the wire center. In this section, we examine the area over which costs should be averaged; the level of the national benchmark; the amount of support to be provided for costs above the national benchmark; the elimination of the state share requirement; and the method for targeting statewide support amounts.

1. Area Over Which Costs Should Be Averaged

a. Background

43. In the *Second Recommended Decision*, the Joint Board weighed several options for the area over which costs should be averaged.⁽¹²⁷⁾ Recognizing that states have a substantial role in preserving universal service and "can be expected to participate as full partners" with the Commission, the Joint Board considered the use of statewide average costs to determine the need for universal service support.⁽¹²⁸⁾ The Joint Board observed that statewide averaging could require some states to create mechanisms to transfer support among non-rural carriers in different study areas.⁽¹²⁹⁾ Because the Joint Board believed that the short lead time before implementation of the new forward-looking mechanism would not be sufficient for some states to create such mechanisms, it declined to recommend a statewide approach.⁽¹³⁰⁾ Instead, the Joint Board recommended that costs be averaged at the study area level.⁽¹³¹⁾ Although the Joint Board recognized that determining costs at the wire center level allows for a more granular measure of support, it concluded that, as between the study area and wire center approaches, the study area approach would "properly measure the support responsibility that ought to be borne by the federal mechanism given the current extent of local competition."⁽¹³²⁾

44. Instead of adopting a particular approach in the *Seventh Report and Order*, the Commission sought comment on the appropriate area over which costs should be averaged.⁽¹³³⁾ Specifically, the Commission asked commenters to consider the wire center level, the unbundled network element (UNE) cost zone level, and the study area level.⁽¹³⁴⁾ The Commission also described the perceived benefits and drawbacks of each of those approaches.⁽¹³⁵⁾

b. Discussion

45. *Federal and State Roles.* After further consultation with the Joint Board, we believe that the federal mechanism should calculate support levels for non-rural carriers by comparing the forward-looking costs of providing supported services, averaged at the statewide level, to the national benchmark.⁽¹³⁶⁾ Of all the potential approaches suggested,⁽¹³⁷⁾ we believe that statewide averaging is the approach most consistent with the federal role of providing support for intrastate universal service to enable reasonable comparability of rates among states. Federal high-cost support is generated through contributions by all interstate telecommunications carriers for purposes of providing support to high-cost states. This has the effect of shifting money from relatively low-cost states to relatively high-cost states. By averaging costs at the statewide level, the federal mechanism compares the relative costs of providing supported services in different states. The federal mechanism will then provide support to carriers in those states with costs that exceed the national average by a certain amount, i.e., the national benchmark (135 percent of the national

average).⁽¹³⁸⁾ This approach ensures that no state with costs greater than the national benchmark will be forced to keep rates reasonably comparable without the benefit of federal support. By averaging costs at the statewide level, the federal mechanism is designed to achieve reasonable comparability of intrastate rates among states based solely on the interstate transfer of funds.

46. The states, in contrast, have the primary responsibility for ensuring reasonable comparability of rates within their borders. The federal mechanism leaves this state role intact, but provides support to carriers in states with average costs substantially in excess of the national average. With the elimination of the state share requirement,⁽¹³⁹⁾ no state resources are relied upon by the federal mechanism in providing support for costs above the benchmark. This permits the states to use their substantial resources to achieve the goal of reasonably comparable rates within states. In many cases, states have brought their resources to bear through rate averaging and other forms of implicit support. Recently, some states have created explicit support mechanisms.⁽¹⁴⁰⁾ We recognized the states' jurisdiction over intrastate support in the *Seventh Report & Order*, when we observed that "the erosion of intrastate implicit support does not mean that federal support must be provided to replace [it]. Indeed, it would be unfair to expect the federal support mechanism, which by its very nature operates by transferring funds among jurisdictions, to bear the support burden that has historically been borne within a state by intrastate, implicit support mechanisms."⁽¹⁴¹⁾ Thus, we believe that statewide averaging, together with the rest of the methodology we adopt today, is consistent with the division of federal and state responsibility for achieving reasonable comparability for non-rural carriers.

47. *Joint Board.* We also find that averaging costs at the statewide level is consistent with the Joint Board's vision for the scope and purpose of the federal high-cost support mechanism. The Joint Board noted that this Commission alone has the ability to implement a support mechanism that transfers support from one state to another,⁽¹⁴²⁾ and stated that federal support should be provided to achieve reasonably comparable rates across states.⁽¹⁴³⁾ The Joint Board envisioned that the states should have the primary responsibility for ensuring reasonable comparability within states.⁽¹⁴⁴⁾ Although the Joint Board recommended averaging costs at the study area level instead of the statewide level, it did so based on its concern that there would be insufficient time before implementation of the new federal mechanism for some states to adopt the necessary mechanisms to transfer support among non-rural carriers in different study areas within a particular state.⁽¹⁴⁵⁾ The carrier-by-carrier interim hold-harmless approach that we adopt today, however, alleviates the Joint Board's concern.⁽¹⁴⁶⁾ Under that approach, each non-rural carrier within a state will receive no less support under the new mechanism than it receives under the current mechanism. Because the carrier-by-carrier interim hold-harmless approach will be in effect for up to three years from implementation of the new forward-looking mechanism, states have no immediate need to transfer support among study areas within their borders.⁽¹⁴⁷⁾ In addition, states should have ample time to implement whatever state mechanisms are necessary to achieve such transfers before the Commission reviews the need for a hold-harmless provision. Therefore, the only impediment to statewide averaging identified by the Joint Board - lack of sufficient time for state action - has been removed by the carrier-by-carrier interim hold-harmless provision.

48. *Alternative Approaches*. We have carefully reviewed the alternatives to statewide averaging, and in the context of non-rural carriers, in light of the overall methodology we adopt here and the specific circumstances before us, we conclude that statewide averaging is the best approach to further the goals of section 254, while respecting the historical federal and state roles for universal service. There are several benefits to statewide averaging. Statewide averaging considers costs averaged with regard to state boundaries, thereby taking into consideration each state's authority and ability to achieve reasonable comparability of rates within its borders. We recognize that averaging at the study area, UNE cost zone, or wire center levels would have the advantage of providing a more granular measure of support, and that granularity of support is a desirable goal in a competitive marketplace.⁽¹⁴⁸⁾ Given the specific circumstances and purposes we address here, however, we believe that statewide averaging, coupled with our decision to target the distribution of support to wire centers with the highest costs in a state, better balances the goal of targeting support to high-cost areas against the recognition that states can and should satisfy their own rate comparability needs to the extent possible before drawing support from other states.

49. For example, assume that the Commission chose to average costs at the wire center level.⁽¹⁴⁹⁾ Under this approach, the costs of providing supported services in individual wire centers would be averaged together to arrive at a national average cost per wire center. Wire centers with costs that exceed the national benchmark would receive support. Because the costs in high-cost wire centers in a given state would not be averaged first with lower-cost wire centers in the same state, wire center averaging would ignore the state's authority and ability to ensure reasonable comparability of rates within its borders. Stated another way, the federal mechanism would shift funds from low-cost wire centers (and customers) in other states to fund high-cost wire centers in the state at issue, and would do so without giving the state the opportunity to support its high-cost wire centers with funds from its low-cost wire centers.

50. The same issue arises if costs are averaged at the UNE cost zone level.⁽¹⁵⁰⁾ Pursuant to our UNE cost zone rules, state commissions must set different rates for elements in at least three defined geographical areas within the state to reflect geographic cost differences, and may employ existing density-related zone pricing plans or other cost-related zone plans established pursuant to state law.⁽¹⁵¹⁾ Under a UNE cost zone approach to averaging forward-looking costs, costs in individual UNE cost zones would be averaged together to arrive at a national average cost per UNE cost zone. UNE cost zones with costs greater than the benchmark would receive support. As in the wire center approach, the federal mechanism would provide support to high-cost UNE cost zones in a state, without regard to the state's authority or ability to ensure reasonable comparability of rates within its borders. In providing such support, the federal mechanism would shift funds from low-cost UNE zones in other states to high-cost UNE zones in the subject state, thus saddling ratepayers in other states with burdens more appropriately placed on ratepayers in the subject state. Additionally, although we expressed concern in the *Seventh Report and Order* that averaging costs over an area larger than the UNE cost zone could result in opportunities for arbitrage or other uneconomic activities, our concern was based on the assumption that all lines within that larger geographic area would be eligible for the same amount of support, even though UNE prices would differ among UNE zones.⁽¹⁵²⁾ Because the new federal mechanism calculates the amount of support at the statewide level, but targets that support to high-cost wire centers within the state,⁽¹⁵³⁾ all lines within a state are not eligible for the same amount of support. Thus, the potential for arbitrage or other uneconomic activity is reduced.⁽¹⁵⁴⁾

51. Study area cost averaging suffers from the same infirmities as wire center or UNE cost zone averaging.⁽¹⁵⁵⁾ In many states, only one non-rural carrier provides service. In such states, the state boundary and the study area boundary are the same. Some states, however, possess more than one non-rural carrier, and thus more than one study area.⁽¹⁵⁶⁾ Thus, under a study area averaging approach, costs in individual study areas would be averaged together to arrive at a national average cost per study area. Study areas with costs greater than the benchmark would receive support. The federal mechanism, therefore, would shift funds from low-cost study areas in one state to high-cost study areas in another state without regard to the recipient state's authority or ability to provide support for costs within its borders. In addition, such a federal mechanism could provide greater support to a state with more than one study area than it would to a state with a single study area, even though both states have the same average forward-looking costs on a statewide level, thus discriminating against a state that has only one non-rural study area. For example, assume that a state with a single study area has average costs below the benchmark and therefore does not receive forward-looking support. Assume that another state has the same average statewide costs below the benchmark, but has two study areas, one with costs above the benchmark and one with costs below the benchmark. Under a study area averaging approach, the federal mechanism would provide support for the high-cost study area even though the statewide average cost is below the benchmark. This result would burden the federal support mechanism (and thus all ratepayers) with providing support for a state that, through happenstance, has more than one non-rural carrier, and therefore more than one study area. Such support should instead be provided by the state in its role as the primary ratemaking authority and provider of support within its borders.

52. Several commenters have suggested nonetheless that a decision by the Commission to average costs over a large geographic area is merely an arbitrary way to restrain the size of the fund created by the new forward-looking support mechanism.⁽¹⁵⁷⁾ We reject this assertion. Congress stated that the Commission shall establish specific, predictable, and *sufficient* mechanisms to preserve and advance universal service.⁽¹⁵⁸⁾ Moreover, the Fifth Circuit approved the Commission's use of a methodology based on forward-looking cost models for this task "[a]s long as [the Commission] can reasonably argue that the methodology will provide sufficient support for universal service"⁽¹⁵⁹⁾ Thus, despite our general agreement with the Joint Board's conclusion that the federal fund should not increase substantially at this time,⁽¹⁶⁰⁾ our primary goal in this proceeding must be to provide sufficient universal service support to enable reasonable comparability of rates among states.⁽¹⁶¹⁾ We meet this policy goal, however, in a manner consistent with the federal role for providing universal service support, which, as discussed above, we find to be transferring funds among states.⁽¹⁶²⁾ Accordingly, we conclude that statewide averaging of forward-looking costs is the appropriate means for achieving the federal mechanism's primary goal of enabling reasonable comparability of rates among states.

2. National Benchmark

a. Background

53. In the *Second Recommended Decision*, the Joint Board recommended that the Commission consider a national benchmark in the range between 115 and 150 percent of the national average cost per line.⁽¹⁶³⁾ While most commenters supported the use of a national benchmark, many were reluctant to comment on the Joint Board's recommendation in the absence of a more finalized cost model. Therefore, we sought further comment in the *Seventh Report and Order* on the Joint Board's recommended range and urged commenters to formulate their comments using the updated cost model outputs available as a result of the *Inputs Further Notice*.⁽¹⁶⁴⁾ We received numerous comments in response to this request.⁽¹⁶⁵⁾ Commenters proposed benchmarks ranging from 80 percent to 200 percent of the national average forward-looking cost per line.⁽¹⁶⁶⁾ For the reasons discussed below, we select 135 percent as the appropriate national cost benchmark.

b. Discussion

54. In establishing a national cost benchmark to enable reasonably comparable rates among states, we observe that the 1996 Act does not define the term "reasonably comparable." We find that Congress's use of the term "reasonably" indicates its recognition that the task of setting federal support amounts is not an exact science. Accordingly, consistent with our interpretations of "reasonableness" provisions elsewhere in the statute, we conclude that the term "reasonably comparable" leaves us substantial discretion to determine what is reasonable, including the manner in which we make that determination. The Joint Board interpreted the reasonable comparability standard to refer to a "fair range" of urban and rural rates both within a state's borders, and among states nationwide.⁽¹⁶⁷⁾ In the *Seventh Report and Order*, the Commission adopted the Joint Board's interpretation.⁽¹⁶⁸⁾ The Commission recognized, however, that reasonably comparable does not mean that rate levels in all states, or in every area of every state, must be the same.⁽¹⁶⁹⁾ Therefore, we believe that reasonably comparable must mean some reasonable level above the national average forward-looking cost per line, i.e., greater than 100 percent of the national average. In interpreting "reasonably comparable," we must consider the burden placed on below-benchmark states (and ratepayers) whose contributions fund the federal support mechanism. We also must ensure that the benchmark we select, when taken together with other aspects of the overall funding mechanism, allows for universal service support that is specific and predictable.

55. We conclude that the level of the national benchmark should be set at 135 percent of the national average forward-looking cost per line for non-rural carriers. The federal mechanism will provide support for costs that exceed this national benchmark. A national benchmark of 135 percent falls within the range recommended by the Joint Board, and ensures that no state will face costs greater than 35 percent above the national average cost per line. Moreover, setting the benchmark at 135 percent of the national average forward-looking cost is consistent with the precedent of the existing support mechanism and the comments we have received. The current mechanism begins providing support for costs between 115 and 160 percent of the national average cost per line, based on carriers' books, and the vast majority of non-rural carriers

receive all their current support for costs in this range.⁽¹⁷⁰⁾ The new national benchmark of 135 percent is near the midpoint of this range. Commenters generally proposed benchmark levels between 80 and 200 percent of the nationwide average.⁽¹⁷¹⁾ Vermont and US West, for example, advocated benchmarks of 80 percent and 115 percent, respectively.⁽¹⁷²⁾ California stated that it uses an affordability benchmark of 150 percent.⁽¹⁷³⁾ CBT, Sprint, and Western Wireless also advocate a 150 percent benchmark, and AT&T urges us to use a 200 percent benchmark.⁽¹⁷⁴⁾ Thus, the 135 percent benchmark is a reasonable compromise of commenters' proposals. By adopting this benchmark, we do not mean to suggest that we could not, in consultation with the Joint Board, determine that a different level of benchmark is appropriate in future proceedings. In the context of non-rural carriers, and in light of the overall methodology we adopt here and the specific circumstances before us, however, we believe that the benchmark we adopt appropriately balances various goals under the statute. These goals include, among others, sufficiency, specificity, and predictability, as well as the need to achieve rate comparability. In addition, we have also attempted to ensure that the fund is no larger than necessary, and to minimize burdens on carriers and consumers that contribute to universal service mechanisms.

56. We believe that this level of support will provide states with the ability to provide for a "fair range" of urban and rural rates within their borders,⁽¹⁷⁵⁾ and will be sufficient to "prevent pressure from high costs and the development of competition from causing unreasonable increases in rates above current, affordable levels."⁽¹⁷⁶⁾ Because no state will face costs, net of federal support, that exceed 135 percent of the national average, the federal mechanism will prevent excessive upward pressure on rates caused by high costs. This will remain true even as competition develops and pushes prices toward economic cost. We therefore find that using a benchmark set at 135 percent of the national average forward-looking cost per line will, at this time, in light of the facts before us, provide sufficient support to enable reasonably comparable rates.

57. We recognize that, irrespective of our policies, the development of competition may place pressure on implicit support mechanisms at the state level. For example, states that use above-cost pricing in urban areas to subsidize below-cost service in rural areas may face pressure to deaverage rates as competitors begin to offer cost-based rates to urban customers. Although this development may compromise states' ability to facilitate universal service using implicit support, it should not compromise states' ability to facilitate universal service through explicit support mechanisms. In addition, we do not believe it would be equitable to expect the federal mechanism - and thus ratepayers nationwide - to provide support to replace implicit state support that has been eroded by competition if the state possesses the resources to replace that support through other means at the state level. This approach is consistent with our discussion, above, of the appropriate, respective roles of the state and federal jurisdictions in providing universal service support.

58. We also believe that a national benchmark of 135 percent strikes a fair balance between the federal mechanism's responsibility to enable reasonable comparability of rates among states and the burden placed on below-benchmark states (and ratepayers) whose contributions fund the federal support mechanism. We recognize that selecting the national benchmark is not an exact science. We conclude, however, that a national benchmark of 135 percent of the national average cost per line will allow the federal mechanism to

provide sufficient support pursuant to the Act,⁽¹⁷⁷⁾ while at the same time minimizing the burden on those who fund the federal support mechanism. Moreover, we believe that, given the specific circumstances here, the mechanism we adopt today is consistent with the Joint Board's conclusion that the federal high-cost support fund should be only as large as necessary, consistent with other requirements of the law.

59. Some commenters have suggested that our choice of a benchmark will necessarily be arbitrary,⁽¹⁷⁸⁾ and some have suggested that we will intentionally set the benchmark with an eye to minimizing the size of the federal support mechanism.⁽¹⁷⁹⁾ We reject these claims. We remain committed to the objective that the fund not be any larger than is necessary to achieve the various goals of section 254. As noted above, we have attempted to set a benchmark level that provides sufficient support to enable reasonably comparable rates, as the statute requires. To do so, we have relied on the Joint Board's recommendations, the existing mechanism, and commenters' proposals to arrive at a benchmark level that reasonably balances the roles of the states and the federal mechanism to meet the statutory goals.

3. Support for Costs Above the National Benchmark

a. Background

60. In the *Seventh Report and Order*, the Commission recognized that there is a tension between the goal of preventing the fund from growing substantially and the goal of ensuring that support is targeted directly to the high-cost areas that need it most.⁽¹⁸⁰⁾ In light of the Joint Board's recommendations and commenters' suggestions, the Commission proposed five methods for resolving this tension.⁽¹⁸¹⁾ Four of those proposals sought to average costs over a relatively small area (the wire center or UNE cost zone level), while limiting the size of the fund by providing less than 100 percent of the support for costs above the national benchmark. The remaining proposal sought to average costs over a larger area (the study area level), while targeting the resulting support amount to the highest cost areas within that large area.⁽¹⁸²⁾ In this section, we address the four proposals to limit the size of the fund by: (1) providing only a uniform percentage of the support otherwise indicated by costs exceeding the benchmark level; (2) capping the amount of support available to any particular state at a fixed percentage of the overall fund; (3) raising the benchmark; or (4) employing incremental funding levels for costs above the selected benchmark similar to the existing high-cost loop support mechanism (i.e., a step function benchmark).⁽¹⁸³⁾ Commenters offered varying degrees of support for each of these methods.⁽¹⁸⁴⁾

b. Discussion

61. All of the proposals to limit the size of the high-cost support mechanism assume that costs will be averaged at the wire center or UNE cost zone level. As discussed above in section IV.C.1., however, we have concluded that averaging costs below the statewide level is not the most appropriate means for the federal support mechanism to achieve the goals of the Act. We recognize that our primary mission in this proceeding is to construct a federal mechanism that provides sufficient support,⁽¹⁸⁵⁾ and we conclude that using one of the proposals described above to limit the amount of support available to states from the federal mechanism would not provide sufficient support and would be contrary to Congress's goals and the Fifth Circuit's decision. Therefore, we reject all four of these proposals.

62. We observe, however, that providing support for all loop costs that exceed the federal benchmark would not properly take account of our separations rules.⁽¹⁸⁶⁾ Pursuant to the separations process, incumbent carriers currently recover, through interstate access rates, a portion of their book costs for all components necessary to provide supported services, e.g., loop costs, switching costs, etc. Our separations rules specify the percentage of costs that will be recovered through interstate rates.⁽¹⁸⁷⁾ In producing cost estimates, the cost model estimates only the forward-looking *intrastate* (i.e., separated) costs for all of the components necessary to provide supported services, with three important exceptions: loop costs, port costs, and local number portability (LNP) costs. The model's estimates for loop and port costs consist of both the *intrastate and interstate* (i.e., unseparated) costs of the loop and port. The model's estimates of LNP costs consist solely of interstate costs. In this Order, we are addressing support to enable the reasonable comparability of *intrastate* rates. It would therefore be inappropriate for us to address costs in this Order that are recovered through interstate rates, as these costs, or their recovery, will not directly affect intrastate rates. Our methodology must therefore account for the percentage of costs that are recovered in the interstate jurisdiction in determining how much support should be provided to enable the reasonable comparability of intrastate rates.

63. Our current separations rules allow carriers to recover 25 percent of their book loop costs through interstate rates. Carriers also recover 15 percent of their book port costs, on average, through interstate rates, and 100 percent of their LNP costs through the federal LNP cost recovery mechanism.⁽¹⁸⁸⁾ We therefore conclude that the forward-looking mechanism will calculate support based on 75 percent of forward-looking loop costs, 85 percent of forward-looking port costs, and 0 percent of forward-looking LNP costs, as well as 100 percent of all other forward-looking costs determined by the cost model. Based on the percentage of forward-looking costs that the intrastate portion of each of these items represents, we have determined that together they represent 76 percent of total forward-looking costs.⁽¹⁸⁹⁾ Therefore, we conclude that the federal mechanism should provide 76 percent of the portion of the forward-looking cost of providing the supported services that exceeds the national benchmark.⁽¹⁹⁰⁾ We emphasize that this will not undermine the federal mechanism's ability to provide sufficient support.⁽¹⁹¹⁾ Rather, it is merely a safeguard to ensure that our mechanism adequately takes account of our separations rules and the division of cost recovery responsibility set forth in those rules. If necessary, we will adjust this support amount in light of further developments in our ongoing separations and access charge reform proceedings.

4. Elimination of the State Share Requirement from the Forward-Looking Support Methodology

a. Background

64. In the *Second Recommended Decision*, the Joint Board recommended that the methodology for determining federal high-cost support amounts should take into account the states' ability to support their own universal service needs internally through their own resources.⁽¹⁹²⁾ The Joint Board recommended that federal support be provided only for costs that exceed both the national benchmark and the states' ability to support their own universal service needs.⁽¹⁹³⁾ Several members of the Joint Board, however, believed that the federal support methodology should not account for the states' ability to support their own universal service needs because doing so would be inconsistent with the rest of the methodology proposed by the Joint Board.⁽¹⁹⁴⁾

65. In the *Seventh Report and Order*, the Commission adopted the Joint Board's recommendation that the federal support mechanism take into account the states' ability to support universal service internally, i.e., the state share requirement.⁽¹⁹⁵⁾ Specifically, the Commission concluded that a set dollar amount per line would be an appropriate method by which to ascertain a state's internal ability to achieve reasonable comparability of rates.⁽¹⁹⁶⁾ The Commission then sought comment on the level of that set dollar amount per line.⁽¹⁹⁷⁾

b. Discussion

66. After further consultation with the Joint Board, we conclude that determining support amounts for non-rural carriers in each state based on statewide averaged costs will, under these specific circumstances, more accurately reflect each state's ability to support universal service with its own resources than would imputing a per-line amount to each state to support universal service internally. Therefore, we reconsider and eliminate the state share requirement from the methodology adopted in the *Seventh Report and Order*.⁽¹⁹⁸⁾

67. We find that this result is consistent with both section 254 and the Joint Board's overarching recommendation that federal support not be dependent on any particular state action and that "no state can or should be required by the Commission to establish an intrastate universal service fund."⁽¹⁹⁹⁾ We conclude that the Joint Board's general recommendation, namely that the Commission abstain from requiring any state action as a condition for receiving federal high-cost universal service support (other than state certifications),⁽²⁰⁰⁾ represents the best policy choice at this time.⁽²⁰¹⁾ Furthermore, we conclude that, together with the statewide averaging approach discussed above in section IV.C.1., the elimination of the state share requirement better fosters the Joint Board's goal of ensuring that the states' ability to provide for universal

service needs within their borders is reflected in the federal mechanism. Thus, we reconsider and eliminate the state share requirement from the methodology for the forward-looking high-cost support mechanism for non-rural carriers.

5. Targeting Statewide Support Amounts

a. Background

68. Under the methodology that we have adopted above, the forward-looking federal mechanism determines the amount of support to be provided to each state by comparing the average statewide cost per line for non-rural carriers to the national benchmark of 135 percent of the national average cost per line for non-rural carriers. The mechanism then provides support for 76 percent of the costs per line that exceed the benchmark. The statewide average amount of support per line indicated for a particular state, multiplied by the number of lines in that state within non-rural carriers' study areas, equals the total amount of support provided to non-rural carriers in the state.⁽²⁰²⁾

69. In the *Seventh Report and Order*, the Commission proposed that, instead of taking the total amount of support provided and making it available to all carriers in a uniform amount per line, the total amount of support should be targeted so that more support is available in high-cost wire centers.⁽²⁰³⁾ The Commission observed that this approach would ensure that support reaches the areas that need it the most, and "would not significantly increase the size of the fund."⁽²⁰⁴⁾ The Commission also tentatively concluded that, if the federal support amount based on forward-looking costs provides only a portion of the support for a carrier's wire centers, then support should be allocated among all lines in those high-cost wire centers in a *pro rata* manner.⁽²⁰⁵⁾

b. Discussion

70. We conclude that, after the total amount of forward-looking support provided to carriers in a particular state has been determined in accordance with the methodology set forth above, which is based on statewide average costs, the total support amount will then be targeted so that support is only available to carriers serving those wire centers with forward-looking costs in excess of the benchmark, and so that the amount available per line in a particular wire center depends on the relative cost of providing service in that wire center.⁽²⁰⁶⁾ This targeting approach has two main effects. First, once the forward-looking mechanism calculates the total amount of support available within a state, the targeting approach determines which carriers receive support, and how much support is provided to each carrier. Second, the targeting approach

determines the amount of support that is available to a competitive carrier that captures lines from an incumbent carrier.⁽²⁰⁷⁾

71. As discussed above in section IV.B., the primary role of the federal mechanism is to transfer funds among states, while states are primarily responsible for transferring funds within their borders. Our targeting approach is consistent with this determination. The total amount of support available within the state is based, as discussed above, on statewide costs - not wire center costs - relative to the federal benchmark. If we did not target support, then the same amount of federal support would be available for any line served by a competitor within the state. Thus, support would be available, for example, to competitors that serve only low-cost, urban lines, regardless of whether the cost of any of the lines served exceeds the benchmark. This result would create uneconomic incentives for competitive entry,⁽²⁰⁸⁾ and could result in support not being used for the purposes for which it was intended, in contravention of section 254(e).⁽²⁰⁹⁾

72. In the *Seventh Report and Order*, the Commission described this targeting process as follows: "if we were to determine total support amounts in each study area by running the model to estimate costs at the study area level, [we propose] to distribute support by running the model again at the wire center level in order to target support to high-cost wire centers within the study area."⁽²¹⁰⁾ We clarify that this process does *not* involve running the model more than once. The cost model, by design, calculates costs at the wire center level. The wire center costs generated by the model can then be averaged together, as desired, at higher levels of aggregation, such as the UNE cost zone level (assuming UNE cost zones are composed of wire centers), the study area level, or the statewide level. Thus, the model only needs to be run once to determine forward-looking costs for whatever methodology is selected.

73. Under the methodology we adopt today, the model's wire center costs are averaged at the statewide level and a total statewide support amount is determined. That total statewide support amount is then targeted, based on the individual high-cost wire center costs in the state, as previously determined by the cost model, that are above the benchmark. For example, assume that a state has three wire centers with ten lines in each wire center. Assume that the average forward-looking cost per line in each wire center is as follows: Wire Center 1 - \$20, Wire Center 2 - \$30, Wire Center 3 - \$40. Thus, the statewide average cost per line is \$30 $((\$20 \times 10) + (\$30 \times 10) + (\$40 \times 10)) / 30$ lines). Assume further that the national benchmark equates to \$25 per line. Using the statewide methodology adopted above, the total amount of support provided to the carriers in the state would be \$114.00 $((\$30 - \$25) \times 30 \text{ lines} \times 76\%)$, or \$3.80 per line per month of untargeted support. Under the targeting approach, however, this support is distributed to carriers serving lines in the highest-cost wire centers, based on the difference between costs in that wire center and the benchmark, the number of lines served, and a pro rata factor. Any carrier serving customers in the low-cost wire center receives no support. Targeting support to high-cost wire centers requires three calculations. First, support is calculated separately for each wire center (wc-scale support). Wire Center 1 is not entitled to any support because its cost is below the benchmark. Wire Center 2's wc-scale support would be \$38.00 $((\$30 - \$25) \times 10 \text{ lines} \times 76\%)$. Wire Center 3's wc-scale support would be \$114.00 $((\$40 - \$25) \times 10 \text{ lines} \times 76\%)$. Second, a pro-rating factor is calculated for the state. Total wc-scale support for both wire centers is \$152 $(\$38.00 + \$114.00)$. Because only \$114.00 of support is available in

the state, each wire center will receive 75 percent ($\$114 / \152) of its wc-scale support. Third, the pro-rating factor is applied to each wire center eligible for support. In Wire Center 2, support will be \$2.85 per line ($\$38.00 \times 75\% / 10$). In Wire Center 3, support will be \$8.55 per line ($\$114.00 \times 75\% / 10$). Total support in the state, distributed in this way, is \$114.00 ($(\$2.85 \times 10) + (\$8.55 \times 10)$). The targeting mechanism, therefore, provides support to carriers serving the highest cost customers, but within the overall limit on the state's support amount from the federal mechanism.

74. By comparison, a uniform distribution in the hypothetical state described above would result in all lines in the state receiving \$3.80. Thus, even though a carrier serving lines in Wire Center 1 has costs (\$20) below the benchmark (\$25), it would receive a substantial amount of support (\$3.80) for those lines, resulting in a windfall for the carrier and an artificial incentive for other carriers to compete in that wire center. At the same time, although the carrier serving lines in Wire Center 3 has costs (\$40) above the benchmark (\$25), it would receive a support amount (\$3.80) substantially below its costs, thereby discouraging competitive entry in that wire center and placing increased pressure on the state to provide additional support.

75. By targeting the total amount of support to high-cost wire centers, the federal mechanism avoids the inefficiencies and potential market distortions that could be caused by distributing federal support on a uniform statewide basis. We believe that this distribution methodology ensures that federal high-cost support provided by state-to-state transfers will flow to carriers serving the high-cost areas within each state.

76. After further consultation with the Joint Board, we recognize that some states may wish to have federal support targeted to an area different than the wire center, e.g., the UNE cost zone, in order to achieve the individual state ratemaking goals unique to a particular state.⁽²¹¹⁾ We believe that such an approach is consistent with the states' primary role in ensuring reasonable comparability within their borders and would give the states a degree of flexibility in reaching that goal. Therefore, we conclude that a state may file a petition for waiver of our targeting rules, asking the Commission to target federal support to an area different than the wire center. Such a petition should include a description of the particular geographic level to which the state wishes federal support to be targeted, and an explanation of how that approach furthers the preservation and advancement of universal service within the state.⁽²¹²⁾

D. Interim Hold-Harmless Provision

1. Background

77. In the *Seventh Report and Order*, the Commission concluded that, consistent with the Joint Board's

recommendations, a hold-harmless provision should be included with the new federal high-cost support mechanism for non-rural carriers to ensure that the amount of support provided under the new mechanism is no less than the amount provided under the existing mechanism.⁽²¹³⁾ The Commission found that this hold-harmless provision was necessary to prevent substantial reductions of federal support and any rate shock that may occur when the new federal mechanism goes into effect.⁽²¹⁴⁾ While the Commission agreed in principle that a hold-harmless provision should be adopted, it sought further comment in the *Seventh Report and Order* on the exact operation of the hold-harmless provision.⁽²¹⁵⁾ Specifically, the Commission sought comment on whether the hold-harmless provision should be implemented on a state-by-state basis or on a carrier-by-carrier basis (i.e., on whether the hold-harmless provision should ensure that no *state* receives less support than it receives under the current mechanism, or that no *carrier* should receive less than it receives under the current mechanism).⁽²¹⁶⁾ If a state-by-state hold-harmless approach were adopted, the Commission sought comment on how such a provision would allocate support among non-rural carriers in a state if the state hold-harmless amount was not sufficient to fully hold each carrier harmless.⁽²¹⁷⁾ Assuming a state-by-state approach, the Commission also asked whether federal support should be distributed directly to state commissions.⁽²¹⁸⁾

2. Discussion

78. We conclude that the new federal high-cost support mechanism will contain an interim hold-harmless provision that provides hold-harmless support on a carrier-by-carrier basis. That is, no carrier will receive less support, on a per-line basis,⁽²¹⁹⁾ than it would have received if we had continued to provide support under the existing high-cost support mechanism. To accomplish this result, we shall calculate interim hold-harmless support pursuant to the existing high-cost support mechanism for non-rural carriers in Part 36 of our rules for the duration of the interim hold-harmless provision.⁽²²⁰⁾ Interim hold-harmless support also shall include LTS under section 54.303 of our rules for those non-rural carriers that would otherwise be eligible for LTS if we had continued to provide support under our existing high-cost support mechanism.⁽²²¹⁾ To the extent that a carrier qualifies for forward-looking support, in an amount greater than it would receive pursuant to the existing mechanism, the carrier shall receive support based solely on the forward-looking methodology. To the extent that a carrier does not qualify for forward-looking support, or qualifies for forward-looking support in an amount less than it would receive pursuant to the existing mechanism, the carrier shall receive interim hold-harmless support based solely on the existing support mechanism in Part 36 of our rules, and, if applicable, LTS under section 54.303 of our rules. Thus, we will ensure that no non-rural carrier will receive less support on a per line basis than it receives under the current mechanism.

79. Existing federal high-cost support under Part 36 and section 54.303 is calculated on a carrier-by-carrier basis and is reflected in the recipient carrier's rates. Our continuation of the high-cost support mechanism under Part 36 and section 54.303, as an interim hold-harmless provision, therefore, effectively adopts a carrier-by-carrier hold-harmless approach. The majority of commenters supporting a hold-harmless provision are in favor of a carrier-by-carrier approach.⁽²²²⁾ We believe that a carrier-by-carrier hold-harmless provision is necessary to ensure that no sudden or undue disruption in consumer rates occurs during

the transition to the new federal high-cost support mechanism based on forward-looking economic costs. Moreover, as discussed above in section IV.C.1., an interim carrier-by-carrier hold-harmless provision ensures that states will not have to take immediate action to transfer funds among carriers within their borders as a result of our decision to average costs at the statewide level.

80. We emphasize, however, that we do not intend for the continuation of high-cost support under Part 36 and section 54.303 as an interim hold-harmless provision, to insulate carriers from changes in their support amounts due to changed circumstances unrelated to the rules adopted in this Order. If a carrier becomes ineligible for high-cost universal service support after January 1, 2000, then the carrier shall not continue to receive hold-harmless support under Part 36 or section 54.303 of our rules. In addition, our continuation of support under Part 36 and section 54.303 as an interim hold-harmless provision ensures that, if the carrier's high-cost universal service support would have changed under the existing mechanism after December 31, 1999, then the carrier's hold-harmless support will be adjusted to reflect that change. We believe that computing hold-harmless support under Part 36 and section 54.303 of our rules on an ongoing basis is a better policy choice than simply "freezing" support levels as of a certain date.⁽²²³⁾ Freezing hold-harmless support could provide windfalls, or create hardships, for carriers that should have experienced changes in their support amounts through the normal operation of Part 36 and section 54.303. Therefore, we reject the frozen hold-harmless approach.

81. We recognize that an interim carrier-by-carrier hold-harmless provision may increase the size of the federal high-cost fund slightly when compared to a state-by-state hold-harmless provision.⁽²²⁴⁾ Nonetheless, we agree with commenters that this concern is outweighed by the potential for rate shock in high-cost areas during the transition to a forward-looking mechanism if carriers are not fully held harmless.⁽²²⁵⁾ Under the interim carrier-by-carrier hold-harmless provision that we adopt today, the amount of federal high-cost support provided to each non-rural carrier will be the greater of the amount indicated by the new forward-looking support mechanism, or the explicit amount of federal high-cost support that the carrier would receive, on a per-line basis, under the operation of the existing high-cost support mechanism at Part 36 and section 54.303 of the Commission's rules.⁽²²⁶⁾ Specifically, all carriers will continue to report cost and loop count data pursuant to Part 36.⁽²²⁷⁾ In the event that carriers in a particular state do not qualify for forward-looking support pursuant to Part 54⁽²²⁸⁾ of our rules because the statewide average forward-looking cost per line is below the national cost benchmark, or the amount determined pursuant to section 54.309 of our rules is less than the amount that would be determined under Part 36 and section 54.303, then those carriers shall receive interim hold-harmless support pursuant to Part 36 and, if applicable, section 54.303.⁽²²⁹⁾ This provision will ensure that no non-rural carrier receives less federal high-cost universal service support per line under the new mechanism than it receives under the current mechanism.

82. Rather than simply making available a uniform hold-harmless amount to each non-rural carrier, however, we conclude that hold-harmless support must be targeted for competitive purposes to the high-cost wire centers served by a non-rural carrier. We believe that targeting hold-harmless support to individual wire centers is necessary for many of the same reasons that we chose to target forward-looking support to

individual wire centers. By targeting hold-harmless support to individual wire centers, we can encourage competitive entry in high-cost wire centers. Targeting also avoids the economic inefficiencies that could be caused by making hold-harmless support available to competitors on a uniform basis among all of the wire centers served by a carrier, such as arbitrage between deaveraged UNE rates and averaged support in low-cost wire centers.

83. Because the interim hold-harmless support provided pursuant to Part 36 and section 54.303 of our rules, unlike forward-looking support, will be based on carriers' book costs rather than the forward-looking methodology, the amount of hold-harmless support provided is not related to the level of the national benchmark. Thus, during the limited period for which hold-harmless support is available, certain carriers may receive support for costs that are below the national benchmark for forward-looking support. To ensure that hold-harmless support is available in the highest cost wire centers, we adopt a method for targeting hold-harmless support that is slightly different than the method we adopted for targeting forward-looking support. ⁽²³⁰⁾ Specifically, as discussed in the following paragraph, we adopt a cascading approach to target hold-harmless support, so that a carrier's highest-cost wire centers receive support before its lower-cost wire centers receive support. Thus, while the total amount of interim hold-harmless support available to a carrier is determined pursuant to Part 36 and section 54.303, that amount is targeted to the carrier's individual wire centers based on the forward-looking costs of providing supported services in those wire centers as determined pursuant to section 54.309 of our rules. As we explained above in section IV.C.5., carriers will receive lump sum support payments, and the states can direct carriers to spend the federal support in a manner consistent with section 254(e), though not necessarily in the wire center to which the support was targeted. By targeting hold-harmless support, however, the federal mechanism ensures that, in a wire center where the incumbent is receiving hold-harmless support, a competitor will receive an amount of support that is related to the costs in that wire center. ⁽²³¹⁾

84. For example, assume a state has a single carrier with three wire centers in the state and ten lines in each wire center. Assume that the average forward-looking cost per line in each wire center is as follows: Wire Center 1 - \$15, Wire Center 2 - \$20, Wire Center 3 - \$25. Thus, the statewide average cost per line is \$20 ($(\$150 + \$200 + \$250) / 30 \text{ lines} = \$20 / \text{line}$). Assume further that the national benchmark equates to \$22 per line, and therefore the carrier receives no forward-looking support under the forward-looking methodology in Part 54 of our rules, which averages costs at the statewide level. Also assume that the carrier receives a total of \$90 of interim hold-harmless support as determined pursuant to Part 36 of our rules. Under our targeting approach, the hold-harmless support is distributed first to the wire center with the highest costs until that wire center's costs, net of support, equal the costs in the next most expensive wire center. This process continues in a cascading fashion until all support has been distributed. In this example, the first \$50 of hold-harmless support (\$5 per line) would be distributed to Wire Center 3, so that the average forward-looking cost in Wire Center 3, net of hold-harmless support, is reduced to \$20 per line. This places Wire Center 3 on equal footing with Wire Center 2, which also has average costs of \$20 per line. The remaining \$40 of hold-harmless support would be divided equally on a per-line basis between Wire Center 2 and Wire Center 3. Thus, both wire centers would receive an additional \$2 per line ($\$40 / 20 \text{ lines}$), so that the average forward-looking costs, net of hold-harmless support, in Wire Center 2 and Wire Center 3 would be \$18 per line.

85. Moreover, because we have decided that a competitor that captures a customer from an incumbent is entitled to any per line hold-harmless support that the incumbent is receiving,⁽²³²⁾ the distribution described above is necessary to prevent uneconomic incentives for competitive entry, potential for arbitrage with UNE rates, and to ensure that support reaches the areas where it is needed most. If hold-harmless support were not targeted to high-cost wire centers, then a uniform hold-harmless amount would be available for a competitor serving any line in the state, including low-cost lines. For example, in the hypothetical situation described above, a uniform distribution would result in all lines being eligible for \$3 (\$90 / 30 lines) of hold-harmless support. Thus, even though the cost of providing service is relatively low in Wire Center 1 (\$15), competitors serving lines in that wire center would receive a significant amount of support for those lines, creating an artificial incentive for other carriers to compete in that wire center. At the same time, the cost of providing service is relatively high in Wire Center 3 (\$25), but this would not be reflected in the amount of support available to competitors, thereby discouraging competitive entry in that wire center. Accordingly, we conclude that targeting forward-looking support to high-cost wire centers is an appropriate means for achieving Congress's goal of promoting competition in the marketplace.

86. In section IV.C.5., above, we decided to allow individual states to petition the Commission to have federal forward-looking support targeted for competitive purposes to an area different from the wire center. We concluded that such an approach is consistent with the states' primary role in achieving the goal of reasonable comparability within their borders and would allow states greater flexibility to reach that goal. We conclude that the same rationale applies with equal force in the context of targeting interim hold-harmless support. Accordingly, we conclude that a state may file a petition for waiver of our targeting rules, asking the Commission to target interim hold-harmless support to an area different than the wire center. Such a petition should include a description of the particular geographic level to which the state wishes interim hold-harmless support to be targeted, and an explanation of how that approach furthers the preservation and advancement of universal service within the state.⁽²³³⁾

87. As discussed below in section IV.E., we are adopting several amendments to the current data reporting requirements to ensure that cost and loop count data submitted by non-rural carriers under Part 36 will conform with loop count data submitted under our Part 54 rules for forward-looking support. All carriers serving customers in areas served by non-rural incumbent LECs will be required to file data on a quarterly schedule, instead of the present annual schedule with voluntary quarterly updates. The filing of quarterly data for rural carriers, however, shall remain voluntary. By synchronizing the reporting requirements for non-rural high-cost support, we can ensure that all non-rural carriers receive support based on data from the same time periods. We conclude that this synchronization will result in a high-cost support mechanism that is easier to administer and is more equitable, non-discriminatory, and competitively neutral.

88. We stress that the interim carrier-by-carrier hold-harmless provision that we adopt today is a *transitional* provision intended to protect consumers in high-cost areas during the shift to the new federal

support mechanism that will provide support based on statewide-averaged forward-looking costs of providing the supported services.⁽²³⁴⁾ We agree with commenters that the hold-harmless provision should not be a perpetual entitlement, and should be phased out as carriers and states adapt to the new forward-looking mechanism.⁽²³⁵⁾ Accordingly, we request that, on or before July 1, 2000, the Joint Board provide the Commission with a recommendation on how the interim hold-harmless provision can be phased out or eliminated without causing undue disruption to consumer rates in high-cost areas. In addition, we reaffirm our original conclusion in the *Seventh Report and Order* that the Commission and the Joint Board shall, no later than January 1, 2003, comprehensively examine the operation of the revised high-cost universal service support mechanism.⁽²³⁶⁾

E. Portability of Support

1. Background

89. In the *Seventh Report and Order*, the Commission reaffirmed its commitment to the policy established in the *First Report and Order* that federal universal service high-cost support should be made available to all eligible telecommunications carriers that provide the supported services, including wireless carriers, regardless of the technology used.⁽²³⁷⁾ The Commission also reiterated its belief that competitive neutrality is a fundamental principle of universal service reform, and that portability is necessary to ensure that universal service funds are distributed in a competitively neutral manner.⁽²³⁸⁾ The Commission sought comment on the amount of support to be ported in the event a competitor wins a customer from an incumbent receiving hold-harmless support.⁽²³⁹⁾ Specifically, the Commission asked whether the competitor should receive the forward-looking amount or the incumbent's hold-harmless amount.⁽²⁴⁰⁾

2. Discussion

90. We reiterate that federal universal service high-cost support should be available and portable to all eligible telecommunications carriers, and conclude that the same amount of support (i.e., either the forward-looking high-cost support amount or any interim hold-harmless amount) received by an incumbent LEC should be fully portable to competitive providers.⁽²⁴¹⁾ A competitive eligible telecommunications carrier, when support is available, shall receive per-line high-cost support for lines that it captures from an incumbent LEC, as well as for any "new" lines that the competitive eligible telecommunications carrier serves in high-cost areas. To ensure competitive neutrality, we believe that a competitor that wins a high-cost customer from an incumbent LEC should be entitled to the same amount of support that the incumbent would have received for the line, including any interim hold-harmless amount. While hold-harmless amounts do not necessarily reflect the forward-looking cost of serving customers in a particular area, we believe this concern

is outweighed by the competitive harm that could be caused by providing unequal support amounts to incumbents and competitors.⁽²⁴²⁾ Unequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent.

91. We reiterate our finding in the *First Report and Order* that, where a competitive eligible telecommunications carrier is providing service to a high-cost line exclusively through unbundled network elements (UNEs), that carrier will receive the universal service support for that high-cost line, not to exceed the cost of the unbundled network elements used to provide the supported services.⁽²⁴³⁾ The remainder of the support associated with that element, if any, will go to the incumbent LEC.⁽²⁴⁴⁾

92. As discussed above in section IV.D., we are modifying our reporting requirements to synchronize non-rural carrier submissions under Part 36 and Part 54 of our rules.⁽²⁴⁵⁾ Under our current Part 36 rules, incumbent LECs are required to report cost and loop-count data on July 31st of each year.⁽²⁴⁶⁾ If they so choose, incumbent LECs may update the July 31st data on a quarterly basis.⁽²⁴⁷⁾ Part 54 of the Commission's rules, on the other hand, requires competitive eligible telecommunications carriers to report loop-count data on July 31st of each year.⁽²⁴⁸⁾ Unlike the rules applicable to incumbent LECs, however, Part 54 of the Commission's rules does not currently allow competitive eligible telecommunications carriers to update their loop-count data on a quarterly basis. To ensure that forward-looking support provided under Part 54 and interim hold-harmless support provided under Part 36 and section 54.303 are based on data from the same reporting periods, and to ensure equitable, non-discriminatory, and competitively neutral treatment of incumbent LECs and competitive eligible telecommunications carriers, we shall require mandatory quarterly reporting for non-rural carriers under both Part 54 and Part 36 of our rules.⁽²⁴⁹⁾ By allowing incumbent LECs and competitive eligible telecommunications carriers to obtain support for high-cost lines on a regular quarterly basis, our rules will facilitate portability of support among carriers. In addition, the quarterly filing requirement is consistent with the Universal Service Administrative Company's (USAC) quarterly submission of program demand projections,⁽²⁵⁰⁾ and should allow more accurate projections based on regular quarterly loop counts.

F. Use of Federal High-Cost Support by Carriers

1. Background

93. Section 254(e) of the Act states that carriers must use universal service support "only for the provision, maintenance and upgrading of facilities and services for which the support is intended."⁽²⁵¹⁾ In the *Seventh Report and Order*, the Commission concluded that carriers receiving federal universal service high-cost support must apply that support in a manner consistent with section 254(e).⁽²⁵²⁾ The Commission also

concluded that, if it finds that a carrier has not applied its high-cost support in a manner consistent with section 254, the Commission has the authority to take appropriate enforcement action.⁽²⁵³⁾

94. The Commission sought further comment in the *Seventh Report and Order* on ways in which it could ensure that carriers use federal high-cost support for its intended purpose.⁽²⁵⁴⁾ Specifically, the Commission sought comment on whether making high-cost support available as carrier revenue, to be accounted for in the state rate-setting process, will sufficiently fulfill the requirements of section 254(e) of the Act, and whether state commissions have the jurisdiction and resources to take the actions this approach would require.⁽²⁵⁵⁾ The Commission asked whether carriers should be required to notify high-cost customers that their lines have been identified as "high-cost" and that federal high-cost support is being provided to their carrier.⁽²⁵⁶⁾ The Commission also sought comment on what further restrictions, if any, could be imposed to ensure that carriers use federal high-cost support in a manner consistent with section 254. Specifically, the Commission tentatively concluded that state oversight may not in every case ensure that the goals of section 254(e) are met, and asked whether the receipt of federal support should be conditioned on any state action, including adjustments to local rate schedules.⁽²⁵⁷⁾ The Commission tentatively concluded that even states that lack the direct regulatory authority to ensure that federal funds are used appropriately would be able to certify to the Commission that a carrier within the state had accounted for its receipt of federal support in its rates or otherwise used the support in a manner consistent with section 254(e).⁽²⁵⁸⁾ Finally, the Commission sought comment on the carrier or state commission actions, if any, that may be necessary to prevent double-recovery of universal service support at both the federal and state levels.⁽²⁵⁹⁾

2. Discussion

95. We conclude that providing federal universal service high-cost support in the form of carrier revenue, to be accounted for by states in their ratemaking process, is an appropriate mechanism by which to ensure that non-rural carriers use high-cost support only for the "provision, maintenance and upgrading of facilities and services for which the support is intended," in accordance with section 254(e) of the Act.⁽²⁶⁰⁾ We note, however, that we are not attempting to direct the manner in which states incorporate federal high-cost support into their ratemaking processes, nor are we setting forth elaborate rules for compliance with section 254(e).⁽²⁶¹⁾ Rather, we anticipate that states will take the appropriate steps to account for the receipt of federal high-cost support and ensure that the federal support is being applied in a manner consistent with section 254, and then certify to the Commission that federal high-cost support received by non-rural carriers in their states is being used appropriately. Because the support that will be provided by the methodology described in this Order is intended to enable the reasonable comparability of *intrastate* rates, and states have primary jurisdiction over intrastate rates, we find that it is most appropriate for states to determine how the support is used to advance the goals set out in section 254(e).

96. For example, a state could adjust intrastate rates, or otherwise direct carriers to use the federal support to replace implicit intrastate universal service support to high-cost rural areas, which was formerly generated by above-cost rates in low-cost urban areas, that has been eroded through competition. A state could also

require carriers to use the federal support to upgrade facilities in rural areas to ensure that services provided in those areas are reasonably comparable to services provided in urban areas of the state. These examples are intended to be illustrative, not exhaustive. As long as the uses prescribed by the state are consistent with section 254(e), we believe that the states should have the flexibility to decide how carriers use support provided by the federal mechanism.

97. As a regulatory safeguard, however, we adopt rules in this Order requiring states that wish to receive federal universal service high-cost support for non-rural carriers within their territory to file a certification with the Commission stating that all federal high-cost funds flowing to non-rural carriers in that state will be used in a manner consistent with section 254(e). This certification requirement is applicable to non-rural incumbent LECs, and competitive eligible telecommunications carriers seeking high-cost support in the service area of a non-rural LEC. The certification shall be filed annually and shall be applicable to all non-rural carriers that the state certifies as eligible to receive federal universal service high-cost support during that annual period.⁽²⁶²⁾ A state may file a supplemental certification for carriers not subject to the state's annual certification. A certification may be filed in the form of a letter from the appropriate state regulatory authority, and shall be filed with (1) the Commission and (2) USAC. Each certification shall become part of the public record maintained by the Commission. We note that some state commissions, including Wisconsin, may lack direct regulatory oversight to ensure that federal support is reflected in intrastate rates.⁽²⁶³⁾ We believe, nonetheless, that states that lack direct authority over rates in their jurisdictions would still be able to certify to the Commission that a non-rural carrier in the state had accounted to the state commission for its receipt of federal support, and that such support had been used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.⁽²⁶⁴⁾ Indeed, in states with limited jurisdiction over carriers, the state need not initiate the certification process itself. Instead, in such states, non-rural LECs, and competitive eligible telecommunications carriers serving lines in the service area of a non-rural LEC, may formulate plans to ensure compliance with section 254(e), and present those plans to the state, so that the state may make the appropriate certification to the Commission. Under our rules, a state shall also have the authority to revoke a certification in the event that it determines that a carrier has not complied with section 254(e). Because states are responsible for making section 254(e) certifications to the Commission, challenges to the propriety of the certifications, or revocation of the certifications, should be brought at the state level.

98. To ensure that non-rural carriers comply with section 254(e), we do not believe that a non-rural carrier in a particular state should receive federal forward-looking support until the Commission receives an appropriate certification from the state. Absent such a certification, the Commission has no reliable way of knowing whether the forward-looking support is being used properly, because of the Commission's limited authority over carriers' intrastate activities. Therefore, we conclude that, during the first year of operation of the new federal forward-looking support mechanism (January 1, 2000 - December 31, 2000), a non-rural carrier in a particular state will not receive forward-looking support until the state files an appropriate certification with the Commission. The carrier will, however, receive interim hold-harmless support during the first year in the event that the state does not make the required certification. Given the short time before implementation of the new mechanism, we believe that providing interim hold-harmless support in the absence of a state certification is necessary to prevent possible rate shocks that might occur absent such support.

99. After further consultation with the Joint Board, we conclude that all federal high-cost support flowing to non-rural carriers in the second year of operation and thereafter, including both forward-looking support and interim hold-harmless support (to the extent that this measure is still in place), should be contingent upon the state's filing the section 254(e) certification described above. Although we recognize that some states will need more time than others to produce a certification, we must have a reliable way of knowing that federal support is being used in a manner consistent with section 254(e). We believe that the certification requirement is not an overly burdensome means of effectuating Congress's goals, and we conclude that a year is a sufficient period of time for states to file the required certification with the Commission.

100. Under our existing rules, USAC submits estimated universal service support requirements, including high-cost support, to the Commission two months before the beginning of each quarter.⁽²⁶⁵⁾ Thus, for the first quarter of 2000, USAC will submit estimated universal service support requirements on or before November 1, 1999. The Commission uses those support requirements to establish a contribution factor for the upcoming quarter.⁽²⁶⁶⁾ USAC then uses the contribution factor to bill carriers and collect the appropriate amount of support to fund the universal service programs.⁽²⁶⁷⁾ In order for USAC to submit an accurate estimate of high-cost demand, it will need to know which carriers have been certified by states pursuant to the section 254(e) certification process before it files its estimate. To allow USAC sufficient time to process section 254(e) certifications and estimate demand, we conclude that states should file such certifications one month before USAC's filing is due. For a given program year of the new forward-looking high-cost support mechanism, this would mean that section 254(e) certifications would be due on October 1.

101. We recognize that the timing of the adoption of this Order will not give states sufficient time to file section 254(e) certifications for the first program year 2000 under this approach. Therefore, for the first and second quarters of 2000 only, non-rural carriers in a state shall be entitled to retroactive forward-looking high-cost support for those quarters. Specifically, if the state files its certification on or before January 1, 2000, then carriers subject to that certification shall receive forward-looking support for the first quarter of 2000 in the second quarter of 2000,⁽²⁶⁸⁾ and forward-looking support for the second quarter of 2000 in that quarter. If the state files its certification on or before April 1, 2000, and certifies carriers for the first and second quarters of 2000, then carriers subject to that certification shall receive forward-looking support for the first quarter of 2000 in the third quarter of 2000, together with forward-looking support for the third quarter of 2000.⁽²⁶⁹⁾ Such carriers shall receive forward-looking support for the second quarter of 2000 in the fourth quarter of 2000, together with forward-looking support for the fourth quarter of 2000.⁽²⁷⁰⁾

102. Under this approach, some carriers may receive two quarters worth of support in a single quarter. To prevent fluctuations in the contribution factor and ensure a uniform collection of contributions, we direct USAC to collect contributions in the first quarter of 2000 as if all carriers potentially eligible for forward-looking support were certified to receive such support beginning in the first quarter of 2000, and as if

support were actually provided beginning in the first quarter of 2000.⁽²⁷¹⁾ In the event that not all potentially eligible carriers are certified to receive support for the first and second quarters of 2000, USAC shall apply any surplus contributions to reduce future collection requirements.

103. In order for non-rural carriers in a state to receive any high-cost support, either forward-looking or hold-harmless support, for the second program year beginning on January 1, 2001, the state must file its section 254(e) certification no later than one month before USAC's filing is due (i.e., October 1, 2000). In order for non-rural carriers in a state to receive any high-cost support, either forward-looking or hold-harmless support, for subsequent program years beginning on January 1, of each year, the state must file its section 254(e) certification no later than one month before USAC's filing is due (i.e., October 1 of the preceding year).

104. In the event that a state files an untimely certification, the carriers subject to that certification will not be eligible for support until the quarter for which USAC's subsequent filing is due. For example, if a state files a section 254(e) certification for the first program year, after April 1, 2000, but on or before July 1, 2000, then carriers subject to that certification will not receive forward-looking support until the fourth quarter of 2000. If a state files a section 254(e) certification for the first program year after July 1, 2000, then carriers subject to that certification will not receive forward-looking support in the first program year. If a state files a section 254(e) certification for the second program year, after October 1, 2000, but on or before January 1, 2001, then carriers subject to that certification will not receive any support, either forward-looking or hold-harmless support, until the second quarter of 2001.⁽²⁷²⁾

105. Because support from the federal methodology described in this Order will be used to maintain reasonably comparable *intrastate* rates, we must decide how to apply the federal support in the intrastate jurisdiction. The current federal support mechanism operates through the jurisdictional separations rules, shifting additional carrier book costs into the interstate jurisdiction so that they can be recovered through the federal mechanism.

106. We conclude that support amounts provided to incumbent non-rural carriers as a result of the hold-harmless provision should continue to operate through the jurisdictional separations process to reduce book costs to be recovered in the intrastate jurisdiction. The hold-harmless amounts are based on the existing system, which is based on carriers' book costs. Moreover, these amounts have generally been accounted for in intrastate ratemaking, so treating them differently could result in a need for states to take further action to ensure the proper application of the support.

107. As noted above, forward-looking support will be provided to non-rural carriers once states have certified that such support will be used in the intrastate jurisdiction in a manner consistent with section 254

(e). In light of this provision, we conclude that we do not need to take further action to specify how such support will be applied in the intrastate jurisdiction. Before forward-looking support begins flowing to non-rural carriers, the state commission will have specified or reached agreement with that carrier on how the support will be used in the intrastate jurisdiction, in a manner consistent with section 254(e). Thus, there is no reason for further federal requirements for the application of the support.

108. We are not adopting any rules in this Order that, as a means to ensure compliance with section 254(e), would require that non-rural carriers receiving federal high-cost support offer an affordable basic local service package to their customers.⁽²⁷³⁾ GTE, for example, argues that each state should be required to determine the rate it considers "affordable" and then certify to the federal fund administrator that each carrier seeking high-cost funding for areas within that state provide at least one service package that meets the Commission's definition of the supported services, and is offered at a rate no greater than the state-determined affordable rate.⁽²⁷⁴⁾ We decline to condition support on such extensive state actions. We believe that the less onerous certification requirements described above allow states an appropriate amount of flexibility to determine how to ensure that carriers comply with section 254(e). Furthermore, as we found in the *First Report and Order*, even assuming that section 214(e) allowed the Commission to impose such a "basic service package" requirement, it is not necessary to adopt such a requirement because, in areas where there is no competition, states are charged with setting rates for local services, and where competing carriers offer the supported services, consumers will be able to choose the carrier that offers the service package best suited to the consumer's needs.⁽²⁷⁵⁾

109. We also decline to adopt rules in this Order that would require incumbent non-rural carriers to notify their customers that the incumbent has received federal support for their lines and that such support is portable to the carrier of the customer's choice.⁽²⁷⁶⁾ We agree with commenters that the issue of whether or not to require non-rural incumbent LECs to provide notification or display high-cost support credits on customer bills or inserts is best left to the individual state jurisdictions to decide.⁽²⁷⁷⁾

110. Finally, we re-emphasize our conclusion in the *Seventh Report and Order* that, if we find that a carrier has not applied its universal service high-cost support in a manner consistent with section 254(e), we have the authority to take appropriate enforcement actions against that carrier.⁽²⁷⁸⁾ We remind parties that they may petition the Commission, under section 208 of the Act, if they believe a carrier has misapplied its high-cost support, and may also fully avail themselves of the Commission's formal complaint procedures to bring any alleged misapplication of federal high-cost support before the Commission.⁽²⁷⁹⁾ Moreover, although we have given states the flexibility to determine how carriers may use federal support in a manner consistent with section 254(e), we may revisit this issue if we find that a more prescriptive approach is necessary to ensure compliance with section 254(e).

G. Assessment and Recovery Bases for Contributions to the High-Cost Support Mechanism

111. Pursuant to the *First Report and Order*, the Commission currently assesses contributions to the high-cost universal service support mechanism on the basis of carriers' interstate and international end-user telecommunications revenues, and carriers recover their contributions through their rates for interstate services.⁽²⁸⁰⁾ In the *Second Recommended Decision*, the Joint Board stated that the Commission may wish to consider adding intrastate revenues to the assessment and recovery bases for the high-cost support mechanism.⁽²⁸¹⁾ In the *Seventh Report and Order*, the Commission took the Joint Board's recommendation under advisement, pending resolution of challenges to the Commission's assessment and recovery rules in the Fifth Circuit.⁽²⁸²⁾

112. As discussed above in section III.D., a three judge panel of the Fifth Circuit ruled that the Commission could not assess carriers' intrastate revenues to fund its universal service support mechanisms.⁽²⁸³⁾ The court also reversed and remanded for further consideration the Commission's decision to assess the international revenues of carriers with interstate revenues.⁽²⁸⁴⁾ In addition, the court reversed the Commission's "decision to require ILECs to recover universal service contributions from their interstate access charges."⁽²⁸⁵⁾ In response to the court's decision, the Commission removed intrastate revenues from the contribution base; ⁽²⁸⁶⁾ exempted from the contribution base the international revenues of interstate carriers whose interstate revenues account for less than 8 percent of their combined interstate and international revenues;⁽²⁸⁷⁾ and revised its rules to allow incumbent LECs to recover their contributions through access charges or through end-user charges.⁽²⁸⁸⁾ In light of the court's decision, and the Commission's response to it, the assessment base for contributions to the high-cost support mechanism shall remain interstate and international end-user telecommunications revenues, and the recovery base shall remain rates for interstate services.

H. Adjusting Interstate Access Charges to Account for Explicit Support

113. In the *Seventh Report and Order*, the Commission agreed with the Joint Board that the Commission has the jurisdiction and responsibility to identify any universal service support that is implicit in interstate access charges.⁽²⁸⁹⁾ If such implicit support does exist, the Commission concluded that, to the extent possible, it should make that support explicit.⁽²⁹⁰⁾ Thus, in order to supplement the record in the ongoing companion access charge reform proceeding, the Commission sought comment in the *Seventh Report and Order* on how interstate access charges should be adjusted to account for implicit high-cost universal service support that may, in the future, be identified in access rates.⁽²⁹¹⁾ Specifically, the Commission sought further comment on a number of proposals and tentative conclusions regarding the adjustment of interstate access charges to account for explicit support, including: (1) whether price cap LECs should reduce their interstate access rates to reflect any increase in explicit federal high-cost support they receive; (2) whether the Commission should require price cap LECs to make a downward exogenous adjustment to their common line basket price cap indexes (PCIs); (3) whether price cap carriers should reduce their base factor portion (BFP); (4) whether the Commission should reduce the subscriber line charge (SLC) on primary residential or single-line business lines; and (5) whether non-rural rate-of-return LECs should apply additional interstate

explicit high-cost support revenues to the CCL element.⁽²⁹²⁾ The Commission received numerous comments addressing these issues. As we stated in the *Seventh Report and Order*, we intend to move ahead with access reform in tandem with the implementation of the revised federal high-cost support methodology.⁽²⁹³⁾ Accordingly, we anticipate that the Commission's final determinations regarding adjustments to interstate access charges to account for explicit universal service support will be issued in the separate *Access Charge Reform* proceeding. We re-emphasize that the support provided through the methodology described in this Order will be used to enable the reasonable comparability of *intrastate* rates, and thus will not be used to replace implicit support in interstate access rates.

I. High-Cost Loop Support For Rural Carriers

1. Background

114. Under current Commission rules, high-cost loop support for all carriers is restricted by an "interim cap" that limits the growth of the current fund each year to the annual growth in nationwide loops.⁽²⁹⁴⁾ The cap on total funds available for high-cost loop support is determined by applying the total growth rate in industry working loops to the prior year funding level.⁽²⁹⁵⁾ The loop costs of all incumbent LECs, both rural and non-rural, are used to calculate the national average cost per loop.⁽²⁹⁶⁾ The growth rate in working loops for non-rural carriers historically has been faster than the growth rate in working loops for rural carriers. Under our current rules, non-rural carriers are scheduled to be removed from the existing rules, and thus from the interim cap, on January 1, 2000.⁽²⁹⁷⁾ Thus, because the growth rate in rural working loops is slower than the growth rate in non-rural working loops, support for rural carriers will increase at a slower rate if non-rural carriers are removed from the existing system.

115. The Rural Telephone Coalition (RTC) and Western Alliance argue that rural carriers may be harmed when non-rural carriers move to the new forward-looking high-cost support methodology due to the operation of the interim cap, which will remain applicable to rural carriers.⁽²⁹⁸⁾ NECA asserts that removing non-rural carrier loop growth data from the interim cap calculations will slow the total growth rate in industry loops, so that the growth in support levels for rural carriers will slow when the interim cap is applied solely to the smaller universe of rural carriers with lower growth levels.⁽²⁹⁹⁾ NECA asserts that, under the current mechanism, the "cap reduction" amount (i.e., the amount by which universal service support is reduced to avoid exceeding the cap) actually increases when non-rural carriers are removed from the current funding mechanism, and, as this larger reduction is applied solely to non-rural carriers, the overall result is a significant reduction in the annual growth rate in support for rural carriers.⁽³⁰⁰⁾

2. Discussion

116. Initially, we emphasize that, under our current rules, removing the non-rural carriers from the existing system does *not* result in a decrease in support for rural carriers. Rather, rural carriers would receive a smaller annual increase in support when non-rural carriers are removed from the interim cap.

117. There are three general options available to address this issue. First, we could take no action and, pursuant to our existing rules, calculate rural support under the interim cap using only the total growth in rural carrier loops. Second, as proposed by Western Alliance, we could remove the interim cap in its entirety. Finally, as proposed by NECA, we could calculate support for rural carriers as if all carriers, rural and non-rural, continued to participate in the existing fund.⁽³⁰¹⁾

118. Consistent with our commitment not to consider significant changes in rural carriers' support until after the Rural Task Force and the Joint Board have made their recommendations, we conclude that we should amend our Part 36 rules to calculate universal service funding for rural carriers as if all carriers continued to participate in the fund. This approach will avoid significant and immediate changes in support for rural carriers, and is similar to the interim hold-harmless provision that we adopted for non-rural carriers. We also believe that it would be inconsistent with the intent of section 254 if we allowed the growth rate of high-cost universal service support for rural carriers to be significantly and unintentionally reduced because of the overall slowdown in loop growth caused by the removal of non-rural carriers. Contrary to the suggestions of Western Alliance, however, we do not believe that removing the cap from the calculation is an appropriate remedy for this situation. The cap is designed to prevent excessive growth in the existing high-cost fund, and we believe it should remain in place pending any restructuring of the high-cost support mechanism for rural carriers. In addition, because we are requiring non-rural carriers to continue reporting cost and loop-count data under Part 36 pursuant to the interim hold-harmless provision, continuing to calculate the expense adjustment for rural carriers using data from all carriers will be administratively easy to implement. We also wish to stress that, although we are modifying our rules to calculate the rural loop expense adjustment based on loop data for both rural and non-rural carriers, this remedy is an *interim* solution until we consider appropriate reforms for the rural high-cost support mechanism.

J. Lifting the Stay of the Commission's Section 251 Pricing Rules

119. In August 1996, the Commission promulgated certain rules in the *Local Competition Order* to implement section 251 of the Communications Act of 1934, as amended.⁽³⁰²⁾ One such rule, section 51.507 (f), requires each state commission to "establish different rates for [interconnection and unbundled network elements (UNEs)] in at least three defined geographic areas within the state to reflect geographic cost differences."⁽³⁰³⁾ Numerous parties, including incumbent LECs and state commissions, appealed the *Local Competition Order*, and the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's section 251 pricing rules in September 1996 pending its consideration of the appeal.⁽³⁰⁴⁾ In July 1997, the Eighth Circuit vacated the deaveraging rule, among others, on the grounds that the Commission lacked jurisdiction.

(305) On January 25, 1999, however, the U.S. Supreme Court reversed the Eighth Circuit's decision with regard to the Commission's section 251 pricing authority, and remanded the case to the Eighth Circuit for proceedings consistent with the Supreme Court's opinion. (306)

120. Because the section 251 pricing rules had not been in force for more than two years, and not all states established at least three deaveraged rate zones, the Commission stayed the effectiveness of section 51.507 (f) on May 7, 1999, to allow the states to bring their rules into compliance. (307) The Commission stated that the stay would remain in effect until six months after the Commission released its order in CC Docket No. 96-45 finalizing and ordering implementation of high-cost universal service support for non-rural LECs. (308) The Commission did so to allow the states to coordinate their consideration of deaveraged rate zones with issues raised in that proceeding. (309) Now that we have adopted an order in CC Docket No. 96-45 finalizing and ordering implementation of intrastate high-cost universal service support for non-rural LECs, state commissions can consider deaveraging in concert with the federal high-cost support that will be available in the intrastate jurisdiction. Consequently, the stay that has been in effect since May 7, 1999, shall be lifted on May 1, 2000. By that date, states are required to establish different rates for interconnection and UNEs in at least three geographic areas pursuant to section 51.507(f) of the Commission's rules.

V. PROCEDURAL MATTERS

A. Regulatory Flexibility Act Certification

121. The Regulatory Flexibility Act (RFA) (310) requires an Initial Regulatory Flexibility Analysis (IRFA) (311) whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA) (312) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification. (313) The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." (314) In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. (315) A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). (316) The SBA defines a small telecommunications entity in SIC code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees. (317)

122. We conclude that a FRFA is not required here because the foregoing *Report and Order* adopts a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally

do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. In a companion *Further Notice of Proposed Rulemaking* in this docket, the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) seeking comment on the economic impacts on small entities.⁽³¹⁸⁾ No comments were received in response to that IRFA. Furthermore, we are taking action in this *Report and Order* that will have a beneficial impact on smaller rural carriers. Specifically, we are amending our Part 36 rules to calculate universal service funding for rural carriers as if all carriers, both rural and non-rural, continued to participate in the fund, pending the selection of an appropriate forward-looking high-cost support mechanism for rural carriers.⁽³¹⁹⁾ This action will avoid significant changes in support for rural carriers, and prevent the growth rate of high-cost universal service support for rural carriers from being significantly reduced because of a slowdown in loop growth rates that would be caused by the removal of non-rural carriers from the fund calculations. Therefore, we certify, pursuant to section 605(b) of the RFA, that the final rule adopted in the *Report and Order* will not have a significant economic impact on a substantial number of small entities.⁽³²⁰⁾ The Office of Public Affairs, Reference Operation Division, will send a copy of this certification, along with this *Report and Order*, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA.⁽³²¹⁾ In addition, this certification, and *Report and Order* (or summaries thereof) will be published in the Federal Register. The Commission will send a copy of this *Report and Order* including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.⁽³²²⁾

B. Effective Date of Final Rules

123. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the Federal Register, and the information collections adopted herein shall be effective upon approval from the Office of Management and Budget (OMB). In this Order we conclude that the new forward-looking high-cost support mechanism should be implemented on January 1, 2000, and that states and territories that desire non-rural carriers within their jurisdiction to receive forward-looking high-cost support for calendar year 2000 must certify to the Commission and the Administrator that non-rural carriers receiving support within their jurisdiction will only use the support for the provision, maintenance and upgrading of the supported services. The first filing deadline for this certification will be January 1, 2000. Thus, the amendments must become effective before January 1, 2000. Making the amendments effective 30 days after publication in the Federal Register would jeopardize the required January 1, 2000 implementation and filing date. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the Federal Register.⁽³²³⁾

C. Paperwork Reduction Act

124. This *Report and Order* contains either proposed or modified information collections. The Commission has requested Office of Management and Budget ("OMB") approval, under the emergency processing

provisions of the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, of the information collections contained in this rulemaking.⁽³²⁴⁾

VI. ORDERING CLAUSES

125. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 214, 218-220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 218-220, 254, 303(r), 403, and 410, the NINTH REPORT AND ORDER AND EIGHTEENTH ORDER ON RECONSIDERATION IS ADOPTED. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

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

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

128. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of the Report and Order, including the Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Secretary

APPENDIX A - PARTIES FILING COMMENTS

Committer Abbreviation

AT&T Corp. AT&T

Ameritech Ameritech

Bell Atlantic Bell Atlantic

BellSouth Corporation BellSouth

People of the State of CALIFORNIA and California

the California PUC

CenturyTel, Inc. CenturyTel

Cincinnati Bell Telephone Company CBT

Competitive Telecommunications Association CompTel

General Services Administration GSA

GTE Service Corporation GTE

GVNW Consulting, Inc. GVNW

Iowa Utilities Board Iowa

ITCs, Inc. ITCs

MCI Worldcom, Inc. MCIW

New York State Dept. of Public Service New York

Omnipoint Communications, Inc. Omnipoint

Personal Communications Industry Association PCIA

Puerto Rico Telephone Company PRTC

Rural Telephone Coalition RTC

SBC Communications Inc. SBC

Sprint Corporation Sprint

State Members of the Joint Board State Members

TDS Telecommunications Corporation TDS

Texas Office of Public Utility Counsel, Texas

Consumer Federation of
America, National Association of
State Utility Consumer Advocates,
and the Consumer Union

United States Cellular Corporation USCC

United States Telephone Association USTA

US West, Inc. US West

Vermont Public Service Board Vermont

Arkansas Public Service Commission

Maine Public utilities Commission

Montana Public Service Commission

New Hampshire Public Utilities Commission

North Dakota Public Service Commission

West Virginia Public Service Commission

Wyoming Public Service Commission

Virgin Islands Telephone Corporation Vitelco

West Virginia Public Service Commission West Virginia

Consumer Advocate Division

Western Alliance Western Alliance

Western Wireless Corporation Western Wireless

Wisconsin PSC Wisconsin

APPENDIX B - PARTIES FILING REPLY COMMENTS

Committer Abbreviation

Ameritech Ameritech

AT&T AT&T

Bell Atlantic Telephone Companies Bell Atlantic

BellSouth Corporation BellSouth

People of the State of CALIFORNIA and California

the California PUC

CenturyTel, Inc. CenturyTel

Florida Public Service Commission Florida

General Services Administration GSA

GTE Service Corporation GTE

MCI WorldCom, Inc. MCIW

National Exchange Carrier Association, Inc. NECA

Puerto Rico Telephone Company PRTC

Roseville Telephone Company Roseville

Sprint Corporation Sprint

United States Cellular Corporation USCC

US West, Inc. US West

Virgin Islands Telephone Corporation Vitelco

West Virginia Consumer Advocate West Virginia

APPENDIX C - FINAL RULES

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

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

Subpart F - Universal Service Fund

1. Section 36.601 is amended to read as follows:

§ 36.601 General.

(a) . . .

(b) . . .

(c) The annual amount of the total nationwide expense adjustment shall consist of the amounts calculated pursuant to section 54.309 of this Chapter and the amounts calculated pursuant to this subpart F. The annual amount of the total nationwide loop cost expense adjustment calculated pursuant to this Subpart F shall not exceed the amount of the total loop cost expense adjustment for the immediately preceding calendar year, increased by a rate equal to the rate of increase in the total number of working loops during the calendar

year preceding the July 31st filing. The total loop cost expense adjustment shall consist of the loop cost expense adjustments, including amounts calculated pursuant to sections 36.612(a) and 36.631 of this Subpart. The rate of increase in total working loops shall be based upon the difference between the number of total working loops on December 31 of the calendar year preceding the July 31st filing and the number of total working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submissions pursuant to section 36.611 of this Subpart. Beginning January 1, 2000, non-rural incumbent local exchange carriers and, eligible telecommunications carriers serving lines in the service area of non-rural incumbent local exchange carriers, shall only receive support pursuant to this Subpart F to the extent that they qualify pursuant to section 54.311 of this Chapter for interim hold-harmless support.

2. Section 36.611 is amended to read as follows:

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

In order to allow determination of the study areas and wire centers that are entitled to an expense adjustment, each incumbent local exchange carrier (LEC) must provide the National Exchange Carrier Association (NECA) (established pursuant to Part 69 of this Chapter) with the information listed below for each of its study areas, with the exception of the information listed in subsection (h), which must be provided for each study area and, if applicable, for each wire center, as that term is defined in Part 54 of this Chapter. This information is to be filed with NECA by July 31st of each year, and must be updated pursuant to section 36.612 of this Subpart. The information filed on July 31st of each year will be used in the jurisdictional allocations underlying the cost support data for the access charge tariffs to be filed the following October. An incumbent LEC is defined as a carrier that meets the definition of an "incumbent local exchange carrier" in section 51.5 of this Chapter.

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) . . .

(f) . . .

(g) . . .

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

3. Section 36.612 is amended to read as follows:

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

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

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

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

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

4. Section 36.622 is amended to read as follows:

§ 36.622 National and study area average unseparated loop costs.

(a) . . .

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

(2) . . .

(3) . . .

(b) . . .

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

(2) . . .

(c) . . .

(d) [deleted].

5. Section 36.631 is amended to read as follows:

§ 36.631 Expense adjustment.

(a) . . .

(b) . . .

(c) . . .

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

(1) . . .

(2) . . .

(3) . . .

(4) . . .

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

PART 54 - UNIVERSAL SERVICE

Subpart D - Universal Service Support for High Cost Areas

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

§ 54.5 Terms and definitions.

...

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

7. Section 54.307 is amended to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

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

(1) A competitive eligible telecommunications carrier shall receive support for each line it serves in a particular wire center based on the support the incumbent LEC would receive for each such line.

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

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

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

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

serving loops in the service area of a non-rural telephone company, the carrier must update the information submitted to the Administrator on July 31st pursuant to subsection (b) according to the schedule below.

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

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

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

8. A new section 54.309 is added as follows:

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

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

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

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

in all States.

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

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

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

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

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

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

(3) The total amount of forward-looking support available in the State calculated pursuant to subsection (a)

(4) shall be divided by the sum of the total wire center scale support amounts calculated for each wire center

pursuant to subsection (b)(2);

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

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

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

(c) *Petition for Waiver.* Pursuant to section 1.3 of this Chapter, any State may file a petition for waiver of subsection (b), asking the Commission to distribute support calculated pursuant to subsection (a) to a geographic area different than the wire center. Such petition must contain a description of the particular geographic level to which the State desires support to be distributed, and an explanation of how waiver of subsection (b) will further the preservation and advancement of universal service within the State.

9. A new section 54.311 is added as follows:

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

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

amount of support that would be provided to a non-rural incumbent local exchange carrier in such State pursuant to section 54.309(b) of this Subpart is less than the amount that would be provided pursuant to Part 36 and, if applicable, section 54.303 of this Subpart, the carrier shall be eligible for support pursuant to Part 36 and, if applicable, section 54.303 of this Subpart. To the extent that an eligible telecommunications carrier serves lines in the service area of a non-rural incumbent local exchange carrier receiving interim hold-harmless support, the eligible telecommunications carrier shall also be entitled to interim hold-harmless support in an amount per line equal to the amount per line provided to the non-rural incumbent local exchange carrier pursuant to subsection (b).

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

(c) *Petition for Waiver.* Pursuant to section 1.3 of this Chapter, a State may file a petition for waiver of subsection (b), asking the Commission to distribute interim hold-harmless support to a geographic area different than the wire center. Such petition must contain a description of the particular geographic level to which the State desires interim hold-harmless support to be distributed, and an explanation of how waiver of subsection (b) will further the preservation and advancement of universal service within the State.

10. A new Section 54.313 is added as follows:

§ 54.313 State certification.

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

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

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

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

(i) *Certifications filed on or before January 1, 2000.* Carriers subject to certifications filed on or before January 1, 2000 shall receive support pursuant to section 54.309 of this Subpart for the first and second quarters of 2000 in the second quarter of 2000, and on a quarterly basis thereafter. Support provided in the second quarter of 2000 shall be net of any support provided pursuant to section 54.311 of this Subpart for the first quarter of 2000.

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

(iii) *Certifications filed on or before July 1, 2000.* Carriers subject to certifications filed on or before July

1, 2000, shall receive support pursuant to section 54.309 of this Subpart for the fourth quarter of 2000 in the fourth quarter of 2000.

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

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

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

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

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

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

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

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

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

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

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

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

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

Separate Statement

of

Commissioner Susan Ness

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

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

Under section 254 of the Act, the federal government and the states together share responsibility for ensuring that specific, predictable and sufficient mechanisms are in place to preserve and advance universal service.

⁽³²⁵⁾ A key component of universal service is the requirement that quality services be available at just, reasonable, and affordable rates.⁽³²⁶⁾ Working in close consultation with our colleagues on state public utility commissions, we today adopt an order that further clarifies these principles. We identify the federal role as enabling reasonable comparability among states; the state role is to ensure reasonable comparability within its borders. We emphasize that states can and should satisfy their own rate comparability needs to the extent possible before drawing support from other states through the federal mechanism.

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

I want to underscore what I have said previously - we have made no determination as to the appropriateness of applying this model, or any model, to determine comparative funding levels for rural carriers. The Joint Board has asked the Rural Task Force to examine the unique cost structures and competitive circumstances of rural carriers. I await its recommendations next spring and Joint Board action before making any significant changes to the universal service mechanisms for rural carriers. But I urge us to move expeditiously once the Task Force has issued its report to finalize any modifications in rural carrier support.

I am also increasingly concerned about the aggregate impact of our universal service reforms on consumers, particularly those who make very few long distance telephone calls. These subscribers have not derived the benefits of the very substantial rate reductions in long distance service. This past July, we issued a Notice of Inquiry seeking comment on the aggregate impact of marketplace changes on low-volume users. We need to move swiftly to review these comments and determine what, if anything, should be done to reduce any disproportionate burden on this group.

Finally, I would have preferred to proceed concurrently with reform of high cost support and access charges. The two go hand in glove. Unfortunately, while progress has been made in access charge reform, the proposals on the table do not adequately take into account the needs of consumers. We will continue to work on access charge reform to finalize changes expeditiously, but cannot justify further delay in implementing our revisions to high cost support.

DISSENTING STATEMENT OF COMMISSION FURCHTGOTT-ROTH

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

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

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

I believe that this proceeding illustrates, yet again, that this Commission has its universal service priorities entirely backward. Section 254 of the Telecommunications Act of 1996 was drafted with rural carriers in mind. The primary objective of that provision was to ensure that rural carriers continued to receive sufficient funding to enable them to provide local service at rates comparable to those in urban areas. In light of this objective, the Commission should have turned first to the matter of preserving rural universal service.

Instead, the Commission has squandered a tremendous amount of its employees' time and taxpayers' money coming up with an entirely new approach to universal service. And the matter of universal service support for rural carriers has been this Commission's very last priority.

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

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

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

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

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

The result of this so-called "hold harmless" requirement is that all carriers will receive as much or more

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

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

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

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

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

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

I agree that there is merit in giving carriers that will not receive as much federal support under the new mechanism some period to adjust to that change. I believe it is essential, however, that we keep that period as brief as reasonably possible because we will be collecting and distributing funds for two support mechanisms as long as the hold harmless stays in place. This approach, I concede, holds *carriers receiving federal support* harmless. But clearly, *other carriers and consumers* will not be held harmless. Rather, to support the old and new mechanisms simultaneously, carriers will have to make temporarily inflated contributions, which they will pass on to their customers in the form of higher rates or unnecessarily high line items. Thus, at the very least, I would have preferred to specify in this *Order* a date certain (*i.e.*, a sunset date) by which the hold harmless would end, absent further action by the Commission in consultation with the Joint Board. This approach would have given the Joint Board ample opportunity to weigh in to recommend that we accelerate and, if absolutely necessary, extend the sunset date. Certainly, I applaud the extent to which the item describes the hold harmless as "transitional." Without a sunset date as a baseline, however, I fear we have left the Commission, as well as the carriers and consumers who will have to pay for the two funds, unnecessarily vulnerable to enormous pressures by those states and carriers that will receive less federal support under the new mechanism. I should add that, by leaving ambiguous precisely when we will end the hold harmless, we have left ourselves vulnerable to accusations, in the courts and perhaps elsewhere, that the hold harmless is not really transitional at all.

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

Based on our action today, I am hopeful that the Commission can exercise similar courage as we work hard to put together the other pieces of the subsidy puzzle, including access reform and rural high cost support. We must not quaver in our resolve to make that which is implicit explicit, nor should we be naïve enough to think we can reform implicit subsidies without any effect on consumers. Certainly, we should try to minimize these effects to the extent doing so does not undermine the reform itself. But the Commission has repeatedly tried - and, to my mind, consistently failed - to shield consumers from such impacts. And I see on the horizon no truly viable method, whether directly or through less formal means, for shielding consumers in a significant

way from these impacts, save doing what seems almost unthinkable: imposing new price regulations on the competitive long distance market, just as we watch long distance rates plummet toward commodity levels. In my view, our time would be better spent completing the exercise of subsidy reform, rather than engaging in exercises in futility.

Separate Statement of Commissioner Gloria Tristani

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

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

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

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

1. 47 U.S.C. § 151, *et seq.*
2. *See* Pub. L. No. 104-104, 110 Stat. 56 (1996).
3. According to the Joint Explanatory Statement, the purpose of the 1996 Act is "to provide for a pro-

competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition" Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (Joint Explanatory Statement).

4. 47 U.S.C. § 254(a), (d). *See also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, 11 FCC Rcd 18092 (1996) (*Universal Service NPRM*).

5. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Second Recommended Decision, 13 FCC Rcd 24744 (Jt. Bd. 1998) (*Second Recommended Decision*).

6. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Erratum, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *petition for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (*First Report and Order*).

7. *Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8077 (1999), *petition for review filed sub nom. Vermont Department of Public Service v. FCC*, No. 99-60530 (5th Cir., filed June 23, 1999) (*Seventh Report and Order*).

8. Non-rural carriers are those that do not meet the following statutory definition of a rural telephone company:

The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity-

(A) provides common carrier service to any local exchange carrier study area that does not include either-

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

47 U.S.C. § 153(37).

9. We intend to address the support that may be implicit in interstate access charges in a future order, jointly captioned in this proceeding and our access charge reform proceeding. *See, e.g., Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition of US West Communications, Inc. for Forbearance from Regulations as Dominant Carrier in the Phoenix, Arizona MSA*, CC Docket Nos. 96-262, 94-1, 98-157, CCB/CPD File No. 98-63, Fifth Report and Order and Further Notice of Proposed Rulemaking, FCC 99-206 (rel. Aug. 27, 1999); *Sunshine Restrictions Applicable to Access Charge Reform (CC Docket No. 96-262), Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94-1), and Federal-State Joint Board on Universal Service (CC Docket No. 96-45) Lifted with Regard to Issues Raised in the July 29, 1999, Ex Parte Submission of the Coalition for Affordable Local and Long Distance Services in CC Docket Nos. 96-45, 96-262, 94-1, and 99-249*, Public Notice, FCC 99-214 (rel. Aug. 11, 1999).

10. *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, Report and Order, FCC 99-304 (rel. Nov. 2, 1999) (*Inputs Order*).

11. We have carefully considered states' concerns as they have been expressed to us in the Joint Board's recommendations and our ongoing consultations with the state members and staff, as well as in comments filed in this proceeding by states not directly represented on the Joint Board.

12. 47 U.S.C. § 254(b)(3) (emphasis added).

13. Carriers also recover a portion of their costs through interstate rates. We will address reform of universal service support in interstate rates in our ongoing access charge reform proceeding. *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing and End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, 12 FCC Rcd 15982 (1997) (*Access Charge Reform Order*).

14. *See Second Recommended Decision*, 13 FCC Rcd at 24760, paras. 37-39; *Seventh Report and Order*, 14 FCC Rcd at 8094, para. 35, 8101, para. 46, 8102, para. 48, 8128, para. 105.

15. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 411-12, 425.

16. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 425-26.

17. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 444.

18. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 444.

19. As discussed in the *Seventh Report and Order*, the Commission adopted the Joint Board's recommendation to use costs as a proxy for rates. *Seventh Report and Order*, 14 FCC Rcd at 8092-93, paras. 32-33. The Commission concluded that comparing costs in different states, rather than rates, allows

the federal mechanism to provide sufficient support to enable reasonably comparable rates without having to evaluate the myriad state policy choices that affect those rates. *Seventh Report and Order*, 14 FCC Rcd at 8092-93, paras. 32-33.

20. *First Report and Order*, 12 FCC Rcd at 8889, para. 204, 8917-18, paras. 252-56. *See also Federal-State Joint Board on Universal Service Announces the Creation of a Rural Task Force; Solicits Nominations for Membership on Rural Task Force*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 15752 (1997) (*Rural Task Force Public Notice*).

21. A local loop is the connection between the telephone company's central office building and the customer's premises. A switch is a mechanical or electrical device that selects, opens, and closes circuits or paths.

22. Pursuant to section 36.631 of the Commission's rules, the current high-cost mechanism provides greater levels of support for study areas reporting 200,000 or fewer working loops than for study areas reporting more than 200,000 working loops. *See* 47 C.F.R. § 36.631(c), (d).

23. 47 C.F.R. § 36.631(d). The existing high-cost loop support mechanism provides gradually more support for costs that exceed certain thresholds, or steps, above the national benchmark. Thus, the support mechanism is often referred to as a "step function benchmark."

24. 47 C.F.R. § 36.631(d). The amounts shown in the chart are exclusive of the base 25 percent of loop costs that are recovered in the interstate jurisdiction through access charges.

25. *See* 47 C.F.R. § 54.301.

26. 47 U.S.C. § 153(37).

27. *See supra* para. 11.

28. *See* 47 U.S.C. § 54.303.

29. 47 U.S.C. § 254(b), (d). *See also* Joint Explanatory Statement at 113.

30. 47 U.S.C. § 254(a)(1).

31. 47 U.S.C. § 254(b)(1), (3).

32. 47 U.S.C. § 254(e). *See also* Joint Explanatory Statement at 131 ("To the extent possible, the conferees intend that any support mechanisms continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today.").

33. 47 U.S.C. § 254(b)(5).

34. 47 U.S.C. § 254(b)(4).

35. Besides the universal service principles specified in the 1996 Act, Congress directed that the Joint Board and the Commission be guided by such other principles they determine to be consistent with the Act, and

necessary and appropriate for the protection of the public interest, convenience, and necessity. 47 U.S.C. § 254(b)(7). At the recommendation of the Joint Board, the Commission adopted competitive neutrality as an additional principle for universal service. *First Report and Order*, 12 FCC Rcd at 8801-03, paras. 46-51.

36. See 47 U.S.C. § 214(e)(1); *First Report and Order*, 12 FCC Rcd at 8858-59, para. 145.

37. *Universal Service NPRM*, 11 FCC Rcd 18092.

38. *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 (Jt. Bd. 1996) (*First Recommended Decision*).

39. See *First Report and Order*, 12 FCC Rcd 8776. The Commission designated the following as services eligible for universal service support: (1) single-party service; (2) voice-grade access to the public switched network; (3) Dual Tone Multifrequency signaling or its functional equivalent; (4) access to emergency services including, in some circumstances, access to 911 and Enhanced 911; (5) access to operator services; (6) access to interexchange service; (7) access to directory assistance; and (8) toll limitation services for qualifying low income consumers. *First Report and Order*, 12 FCC Rcd at 8807, para. 56.

40. *First Report and Order*, 12 FCC Rcd at 8899-8900, paras. 224-26. See also *First Recommended Decision*, 12 FCC Rcd at 232, para. 276.

41. *First Report and Order*, 12 FCC Rcd at 8903-8917, paras. 232-51. See also *First Recommended Decision*, 12 FCC Rcd at 212-34, para. 237-82.

42. Because of various deficiencies in the cost models initially presented to the Commission, it did not adopt a specific model platform or set of input values in the *First Report and Order*. *First Report and Order*, 12 FCC Rcd at 8909-10, para. 245. After further consideration of revised cost models, the Commission adopted a model platform in the *Platform Order* released in October 1998. *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, Fifth Report and Order, 13 FCC Rcd 21323 (1998) (*Platform Order*). As discussed *infra*, the Commission proposed input values in a FNPRM released on May 28, 1999, and adopted final input values in a companion Order today. *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, Further Notice of Proposed Rulemaking, FCC 99-120 (rel. May 28, 1999) (*Inputs Further Notice*); *Inputs Order*, FCC 99-304.

43. *First Report and Order*, 12 FCC Rcd at 8888, para. 200. See also *First Recommended Decision*, 12 FCC Rcd at 184-85, paras. 184-85.

44. *First Report and Order*, 12 FCC Rcd at 8888, para. 201. The Commission chose this level of support because 25 percent approximates the cost of providing the supported network facilities that historically have been assigned to the interstate jurisdiction, and 25 percent is the current interstate allocation factor applied to loop costs in the separations process. *First Report and Order*, 12 FCC Rcd at 8888, para. 201, 8925, para. 269.

45. See *First Report and Order*, 12 FCC Rcd at 8926, paras. 271-72. See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd at 11602-09, paras. 219-234 (1998) (*April 1998 Report to Congress*).

46. *First Report and Order*, 12 FCC Rcd at 8929-30, para. 281.
47. As discussed *infra*, the implementation date for non-rural carriers initially was extended to July 1, 1999, in conjunction with the referral of issues back to the Joint Board. *See Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order and Order on Reconsideration, 13 FCC Rcd 13749, 13751, para. 4 (1998) (*Referral Order*). The implementation date was later extended to January 1, 2000, in order to allow interested parties to provide further information and verification on certain implementation issues and model input values. *Seventh Report & Order*, 14 FCC Rcd at 8086, para. 19; *Inputs Further Notice*, FCC 99-120 at para. 2.
48. *First Report and Order*, 12 FCC Rcd at 8889, para. 204, 8917-18, paras. 252-56. *See also Rural Task Force Public Notice*, 12 FCC Rcd 15752.
49. *See April 1998 Report to Congress*, 13 FCC Rcd at 11603-04, paras. 222-23.
50. *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999). The court's decision is discussed *infra* in section III.D.
51. *Formal Request for Referral of Designated Items by the State Members of the § 254 Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed March 11, 1998); Letter from the State Members of the Joint Board to William Kennard, Chairman, FCC, CC Docket No. 96-45 (filed June 18, 1998).
52. *April 1998 Report to Congress*, 13 FCC Rcd at 11605, para. 224.
53. *Common Carrier Bureau Seeks Comment on Proposals to Revise the Methodology for Determining Universal Service Support*, Public Notice, 13 FCC Rcd 7341 (Com. Car. Bur. 1998).
54. In connection with the preparation of the *April 1998 Report to Congress*, the Commission held an *en banc* hearing on March 6, 1998, covering, among other things, revisions to the support methodology for non-rural carriers. On June 8, 1998, the Commission convened an *en banc* hearing, which included the state Joint Board commissioners, to address options for revising the support mechanisms for non-rural carriers. On October 29, 1998, the Commission held an *en banc* hearing, which included the state Joint Board commissioners, to address the consumer billing and information issues that had been referred to the Joint Board.
55. *Referral Order*, 13 FCC Rcd at 13751-52, para. 6.
56. *Referral Order*, 13 FCC Rcd at 13751-52, para. 6.
57. *Second Recommended Decision*, 13 FCC Rcd 24744.
58. *Second Recommended Decision*, 13 FCC Rcd at 24746, para. 3.
59. *First Recommended Decision*, 12 FCC Rcd at 154, para. 133.
60. *Second Recommended Decision*, 13 FCC Rcd at 24746, para. 3.

61. *Seventh Report and Order*, 14 FCC Rcd 8078.
62. *Seventh Report and Order*, 14 FCC Rcd at 8091-92, para. 29, 8095 para. 36; 47 U.S.C. § 254(b)(1), (3).
63. *Seventh Report and Order*, 14 FCC Rcd at 8092, para. 30.
64. *Seventh Report and Order*, 14 FCC Rcd at 8092, para. 30.
65. *Seventh Report and Order*, 14 FCC Rcd at 8080, para. 3.
66. *Seventh Report and Order*, 14 FCC Rcd at 8093-94, para. 34, 8105-06, para. 57.
67. *Seventh Report and Order*, 14 FCC Rcd at 8107-08, paras. 61-62.
68. *Seventh Report and Order*, 14 FCC Rcd at 8106-10, paras. 58-66.
69. *Seventh Report and Order*, 14 FCC Rcd at 8106-10, paras. 58-66.
70. *Seventh Report and Order*, 14 FCC Rcd at 8106-10, paras. 58-66.
71. As discussed below in section IV.C.4., we have reconsidered and eliminated the second step of the methodology.
72. *Seventh Report and Order*, 14 FCC Rcd at 8106-10, paras. 58-66.
73. *Seventh Report and Order*, 14 FCC Rcd at 8106-10, paras. 58-66.
74. *Seventh Report and Order*, 14 FCC Rcd at 8110, para. 65.
75. *Seventh Report and Order*, 14 FCC Rcd at 8110, para. 65.
76. *Seventh Report and Order*, 14 FCC Rcd at 8111, para. 68.
77. *Seventh Report and Order*, 14 FCC Rcd at 8111, para. 68.
78. *Seventh Report and Order*, 14 FCC Rcd at 8112-13, paras. 71-72.
79. *See* 47 U.S.C. § 214(e).
80. *Seventh Report and Order*, 14 FCC Rcd at 8113, para. 72.
81. *Seventh Report and Order*, 14 FCC Rcd at 8122, para. 90.
82. *Seventh Report and Order*, 14 FCC Rcd at 8123-24, paras. 93-94.
83. *Seventh Report and Order*, 14 FCC Rcd at 8124, para. 95.

84. *Seventh Report and Order*, 14 FCC Rcd at 8124-36, paras. 96-122. To supplement the record in the ongoing companion access charge reform proceeding, the Commission also sought comment in the *Seventh Report and Order* on how interstate access charges should be adjusted to account for implicit high-cost universal service support that may, in the future, be identified in access rates. *Seventh Report and Order*, 14 FCC Rcd at 8136-41, paras. 123-35. As discussed in section IV.H., *infra*, comments in response to the questions raised about interstate access charges will be addressed in the ongoing access charge reform proceeding rather than the instant universal service proceeding. *See Access Charge Reform Order*, 12 FCC Rcd 15982.
85. *Inputs Further Notice*, FCC 99-120.
86. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 449.
87. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 411.
88. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 412.
89. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 412.
90. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 446-48.
91. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 433-35.
92. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 425.
93. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 425.
94. Commission's Motion for a Stay of the Mandate (filed Sept. 9, 1999).
95. FCC Petition for Panel Rehearing (filed Sept. 13, 1999); FCC Petition for Rehearing *En Banc* (filed Sept. 13, 1999); Petition for Rehearing of the GTE Entities (filed Sept. 13, 1999); Petition for Rehearing *En Banc* of the GTE Entities (filed Sept. 13, 1999); Petition of Intervenor AT&T Corp. for Rehearing *En Banc* (filed Sept. 13, 1999).
96. *Texas Office of Public Utility Counsel v. FCC*, No. 97-60421, (Sept. 28, 1999) (Order denying petitions for rehearing); *Texas Office of Public Utility Counsel v. FCC*, No. 97-60421, (Sept. 28, 1999) (Order granting motion for stay in part).
97. *Texas Office of Public Utility Counsel v. FCC*, No. 97-60421, (Sept. 28, 1999) (Order granting motion for stay in part).
98. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform*, CC Docket No. 96-262, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 96-45, Sixth Report and Order in CC Docket No. 96-262, FCC 99-290 (rel. Oct. 8, 1999) (*Universal Service Remand Order*).
99. *Universal Service Remand Order*, FCC 99-290 at paras. 15, 17.

100. *Universal Service Remand Order*, FCC 99-290 at paras. 15, 19-29.
101. *Universal Service Remand Order*, FCC 99-290 at paras. 30-33.
102. *Universal Service Remand Order*, FCC 99-290 at para 33.
103. *Inputs Order*, FCC 99-304.
104. *See* 47 U.S.C. § 254(b)(3), (5). We intend to address reform of universal service support in interstate access rates in our ongoing access charge reform proceeding. *See Access Charge Reform Order*, 12 FCC Rcd 15982. In section IV.C.3., *infra*, we specifically account for carriers' bifurcated recovery of costs in the two jurisdictions to ensure that our actions here do not disrupt our jurisdictional separations rules. *See* 47 C.F.R. Part 31.
105. In the event that a carrier presents a serious and unanticipated Y2K-related implementation problem to the Commission before January 1, 2000, we will consider the issue expeditiously. *See Minimizing Regulatory and Information Technology Requirements that Could Adversely Affect Progress Fixing the Year 2000 Date Conversion Problem*, Year 2000 Network Stabilization Policy Statement, FCC 99-272 (rel. Oct. 4, 1999). We discourage parties dissatisfied with the policies adopted in this Order from using Y2K as an excuse to delay implementation of the new forward-looking support mechanism.
106. Under the Commission's rules, only certain small carriers are eligible to receive support for switching costs. *See* 47 C.F.R. §§ 54.201, 54.301.
107. *See supra* section III.A.2.
108. *See, e.g., First Report and Order*, 12 FCC Rcd at 8926, para. 271 ("The Commission does not have any authority over the local rate setting process or the implicit intrastate universal service support reflected in intrastate rates.").
109. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 421, 424, 446-48. Although the Commission disagrees with the court's jurisdictional analysis, this Order is consistent with the court's decision.
110. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 444.
111. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 444.
112. *Second Recommended Decision*, 13 FCC Rcd at 24747, para. 6, 24755-56, paras. 24-26.
113. *Second Recommended Decision*, 13 FCC Rcd at 24754, para. 18.
114. *Second Recommended Decision*, 13 FCC Rcd at 24760, para. 37.
115. *Second Recommended Decision*, 13 FCC Rcd at 24760, paras. 37, 39.
116. *See* 47 U.S.C. § 254(b)(5), (d).

117. See 47 U.S.C. § 254(b)(3), (d).
118. *First Report and Order*, 12 FCC Rcd at 8899-8900, paras. 224-226.
119. See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, *Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, 97-160, Further Notice of Proposed Rulemaking, 12 FCC Rcd 18514 (1997) (*1997 Further Notice*); *Common Carrier Bureau Requests Further Comment on Selected Issues Regarding the Forward-Looking Economic Cost Mechanism for Universal Service*, CC Docket Nos. 96-45, 97-160, Public Notice, DA 98-848 (rel. May 4, 1998) (*Inputs Public Notice*); *Common Carrier Bureau to Hold Three Workshops on Input Values to be Used to Estimate Forward-Looking Economic Costs for Purposes of Universal Service Support*, CC Docket Nos. 96-45, 97-160, Public Notice, DA 98-2406 (rel. Nov. 25, 1998) (*Workshop Public Notice*); *Inputs Further Notice*, FCC 99-120.
120. *Inputs Order*, FCC 99-304 at para. 22.
121. *Inputs Order*, FCC 99-304 at para. 23.
122. *Inputs Order*, FCC 99-304 at para. 24.
123. *Inputs Order*, FCC 99-304 at para. 28.
124. *Inputs Order*, FCC 99-304 at para. 28.
125. *Inputs Order*, FCC 99-304 at para. 32. State commissions, for example, may find that it is not appropriate to use nationwide values in determining state universal service support or prices for unbundled network elements and may choose instead to use statewide or company-specific values.
126. *Inputs Order*, FCC 99-304 at para. 32.
127. *Second Recommended Decision*, 13 FCC Rcd at 24758-59, paras. 32-35.
128. *Second Recommended Decision*, 13 FCC Rcd at 24759, para. 35.
129. *Second Recommended Decision*, 13 FCC Rcd at 24759, para. 35.
130. *Second Recommended Decision*, 13 FCC Rcd at 24759, para. 35.
131. *Second Recommended Decision*, 13 FCC Rcd at 24759, paras. 33, 35.
132. *Second Recommended Decision*, 13 FCC Rcd at 24759, para. 33. As discussed *infra*, the Commission believes that the appropriate federal role in providing support for intrastate rates, rather than the current level of competition, should be the driving factor in the selection of the appropriate area over which costs should be averaged.
133. *Seventh Report and Order*, 14 FCC Rcd at 8126-30, paras. 101-109.

134. *Seventh Report and Order*, 14 FCC Rcd at 8126-27, para. 102.

135. *Seventh Report and Order*, 14 FCC Rcd at 8127-30, paras. 103-109.

136. Because we are, in this phase of this proceeding, considering universal service reform only for non-rural carriers, when we speak of "statewide" averaged costs, we are referring only to the entire area within a state that is served by non-rural carriers. Moreover, our decision to adopt a statewide averaging approach for non-rural carriers does not necessarily mean that we will adopt a similar approach for rural carriers in the future.

137. We recognize that the Commission did not specifically ask for comment on the statewide averaging approach in the *Seventh Report and Order*. Considering that the Joint Board addressed the statewide approach in its *Second Recommended Decision*, and that the Commission was seeking comment on the appropriate area over which costs should be averaged, we believe that the decision to adopt a statewide approach is a logical outgrowth of the proposal to average costs over a given area. *See Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506 (D.C. Cir. 1983).

138. The national benchmark is discussed *infra* in section IV.C.2.

139. *See infra* section IV.C.4.

140. While the 1996 Act does not require states to establish explicit intrastate universal service support mechanisms, the Joint Board has acknowledged that the competitive forces that prompted Congress to favor explicit federal support mechanisms may also lead states to establish explicit state support mechanisms. *Second Recommended Decision*, 13 FCC Rcd at 24756, para. 26.

141. *Seventh Report & Order*, 14 FCC Rcd at 8101, para. 46. *See* AT&T reply comments at 6 (the federal mechanism should focus on support flows among states, rather than within states).

142. *Second Recommended Decision*, 13 FCC Rcd at 24752-53, para. 14.

143. *Second Recommended Decision*, 13 FCC Rcd at 24760, para. 37.

144. *Second Recommended Decision*, 13 FCC Rcd at 24760, paras. 38-39.

145. *Second Recommended Decision*, 13 FCC Rcd at 24759, para. 35.

146. The carrier-by-carrier hold-harmless approach is discussed in section IV.D., *infra*.

147. In the *Seventh Report and Order*, the Commission stated that it would review the operation of the new federal mechanism, including the hold-harmless provision, on or before January 1, 2003. *Seventh Report and Order*, 14 FCC Rcd at 8123-24, para. 94. In this Order, we have asked the Joint Board to provide us with its recommendations, on or before July 1, 2000, regarding how the interim hold-harmless provision may be phased out without causing undue disruption to consumer rates in high-cost areas. *See infra* section IV.D.

148. The results from these sub-statewide approaches can be tabulated into state categories to determine

the amount of support provided to a particular state, but the averaging occurs independent of state boundaries.

149. Several commenters support averaging costs at the wire center level. *See* PCIA comments at 3; PRTC comments at 5; SBC comments at 3; Western Wireless comments at 3; USCC reply comments at 7.

150. Some commenters support averaging costs at the UNE cost zone level. *See* BellSouth comments at 6; GTE comments at 23; USTA comments at 6.

151. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996), *aff'd in part and vacated in part sub nom. Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and rev'd in part sub nom. AT&T Corp. v. Iowa Utilities Bd.*, 119 S.Ct. 721 (1999) (*Local Competition Order*). *See infra* section IV.J., regarding the reinstatement of our UNE deaveraging rules following the Supreme Court's decision in that matter.

152. *Seventh Report and Order*, 14 FCC Rcd at 8128-29, para. 106.

153. *See infra* section IV.C.5.

154. *See* West Virginia comments at 8.

155. The majority of commenters support study area averaging. *See* AT&T comments at 12-13; Bell Atlantic comments at 5-6; California comments at 9-12; CBT comments at 4; CompTel comments at 3; Vermont comments at 15; West Virginia comments at 4.

156. The following states have more than one non-rural study area: Alabama (3); California (4); Florida (3); Illinois (3); Indiana (3); Kentucky (3); Michigan (2); Minnesota (2); Missouri (3); North Carolina (6); Nebraska (2); Nevada (2); New York (2); Ohio (4); Oklahoma (2); Oregon (2); Pennsylvania (2); South Carolina (2); Tennessee (2); Texas (4); Virginia (4); Washington (2); and Wisconsin (2).

157. *See, e.g.*, BellSouth comments at 7-8; GSA reply comments at 4; US West reply comments at 1-2.

158. 47 U.S.C. § 254(d).

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

160. *Seventh Report and Order*, 14 FCC Rcd at 8129-30, para. 109. *See infra* section IV.C.3.

161. *See* Iowa comments at 3; US West comments at 22; GTE reply comments at 8. We recognize that section 254 also states that federal support should be specific and predictable. 47 U.S.C. § 254 (b)(5), (d). We believe, however, that the forward-looking mechanism that we adopt today achieves these goals. Because the forward-looking mechanism provides a definitive amount of support on a per line basis, we conclude that it meets section 254's specificity goal. In addition, because the cost model and support methodology are available to the public and will change only through Commission action after notice and comment, carriers can predict the amount of support provided for a given period. Thus, we conclude that the forward-looking mechanism meets section 254's predictability goal. Moreover, commenters generally have not suggested that the new forward-looking mechanism fails to satisfy the specificity and predictability goals.

Therefore, we believe that our primary focus at this stage of this proceeding should be on section 254's sufficiency goal.

162. *See supra* section IV.B. *See also* New York comments at 7.

163. *Second Recommended Decision*, 13 FCC Rcd at 24761-62, para. 43.

164. *Seventh Report and Order*, 14 FCC Rcd at 8124, para. 97.

165. *See, e.g.*, Ameritech comments at 9; AT&T comments at 7-8; BellSouth comments at 5-6; CBT comments at 3-4; California comments at 8-9; ITCs comments at 4; New York comments at 4; PRTC comments at 3-4; Sprint comments at 15-16; US West comments at 18; Vermont comments at 8-9; West Virginia comments at 9.

166. *See, e.g.*, AT&T comments at 7-8 (200% benchmark); ITCs comments at 3-4 (115% benchmark); Sprint comments at 15 (150% benchmark); US West comments at 18 (115% benchmark); Vermont comments at 14 (80% benchmark); West Virginia comments at 9 (135% benchmark); Western Wireless comments at 8 (150% benchmark at a minimum).

167. *Second Recommended Decision*, 13 FCC Rcd. at 24753, para. 15. This definition of reasonable comparability contradicts, for example, ITCs' assumption that the goal of reasonable comparability should refer to *equality* of rates. ITCs comments at 3-4.

168. *Seventh Report and Order*, 14 FCC Rcd at 8092, para. 30.

169. *Seventh Report and Order*, 14 FCC Rcd at 8092, para. 30.

170. That is, very few non-rural carriers have book costs that exceed 160 percent of the nationwide average. For a more detailed description of the current support mechanism, *see supra* section III.A.1.

171. *See, e.g.*, Vermont comments at 14 (80% benchmark); AT&T comments at 7-8 (200% benchmark); ITCs comments at 3-4 (115% benchmark); Sprint comments at 15 (150% benchmark); US West comments at 18 (115% benchmark); West Virginia comments at 9 (135% benchmark); Western Wireless comments at 8 (150% benchmark at a minimum).

172. Vermont comments at 14 (80% benchmark); US West comments at 18 (115% benchmark).

173. California reply comments at 4.

174. Sprint comments at 15 (150% benchmark); Western Wireless comments at 8 (150% benchmark at a minimum); AT&T comments at 7-8 (200% benchmark).

175. *Second Recommended Decision*, 13 FCC Rcd at 24753, para. 15. *See also Seventh Report and Order*, 14 FCC Rcd at 8091, para. 29.

176. *Seventh Report and Order*, 14 FCC Rcd at 8092, para. 30.

177. 47 U.S.C. § 254(b)(5), (d).

178. *See, e.g.*, Ameritech comments at 9.

179. *See, e.g.*, BellSouth comments at 7-8.

180. *Seventh Report and Order*, 14 FCC Rcd at 8129, para. 107.

181. *Seventh Report and Order*, 14 FCC Rcd at 8129-30, paras. 108-09. Although the Commission described these methods as "four proposals," the fourth proposal consisted of two separate proposals.

182. That proposal is addressed *infra* at section IV.C.5.

183. *Seventh Report and Order*, 14 FCC Rcd at 8129-30, paras. 108-09.

184. California comments at 13-14; CBT comments at 3-4; GTE comments at 28-30; SBC comments at 5-6; US West comments at 22-24; West Virginia comments at 8-9; Western Alliance comments at 16; Western Wireless comments at 9; Florida reply comments 10-11; USCC reply comments at 7.

185. *See supra* section IV.C.1.

186. *See* Sprint comments at 16; Vermont comments at 10 (arguing that providing 100 percent of the difference between cost and the benchmark would lead to double-recovery because a portion of cost is recovered in the interstate jurisdiction pursuant to the separations process).

187. The separations rules have historically operated on carriers' book costs. *See* 47 C.F.R. Part 36. In addition, most carriers' actual access charge recovery is determined by our price cap rules. *See* 47 C.F.R. Part 69, Subpart C.

188. *See* 47 C.F.R. Part 52, Subpart C.

189. To arrive at 76 percent, we begin with the national average cost per line generated by the model, which is \$23.836. This amount consists of \$20.813 in loop costs, \$0.861 in port costs, \$0.320 in LNP costs, and \$1.842 in all other costs. Under our separations rules, 75 percent of loop costs and, on average, 85 percent of port costs are allocated to the intrastate jurisdiction. Thus, \$15.610 ($\$20.813 \times 75\%$) of the total forward-looking loop cost, and \$0.732 ($\$0.861 \times 85\%$) of the total forward-looking port cost, represent the intrastate loop and port costs the forward-looking mechanism will support. Under our LNP rules, 100 percent of LNP costs are recovered through the federal LNP cost recovery mechanism. Thus, 0 percent of LNP costs will be supported by the forward-looking mechanism. Combining intrastate loop costs (\$15.610), intrastate port costs (\$0.732), intrastate LNP costs (\$0), and all other intrastate costs (\$1.842) equals \$18.184, which represents the total forward-looking *intrastate* costs produced by the cost model. We then divide the total forward-looking intrastate costs produced by the cost model (\$18.184) by the total forward-looking intrastate and interstate costs produced by the cost model (\$23.836), and arrive at 76 percent.

190. The remaining 24 percent of forward-looking costs estimated by the cost model are already recovered through the interstate jurisdiction.

191. We recognize that, although the national average forward-looking loop, port, and LNP costs are

\$20.813, \$0.861, and \$0.320 per month, respectively, the loop, port, and LNP costs in a particular wire center may be higher or lower than those amounts. Theoretically, it would be possible to calculate a different level of support for costs above the benchmark, i.e., other than 76 percent, in each wire center. We conclude, however, that the administrative burdens of such an approach would outweigh any of its benefits.

192. *Second Recommended Decision*, 13 FCC Rcd at 24761-62, paras. 42, 44-45.

193. *Second Recommended Decision*, 13 FCC Rcd at 24761-62, paras. 42, 44-45.

194. Dissenting Statement of Commissioner Harold Furchtgott-Roth, 13 FCC Rcd at 24791 ("[A] State contribution level seems to conflict with other recommendations in the report. . . . In any event, I do not support either an explicit or an implicit federal requirement that States establish intrastate universal service funds."); Separate Statement of Commissioner Laska Schoenfelder Dissenting, 13 FCC Rcd at 24801 ("This approach is inconsistent with language contained in the recommended decision that federal support may not be made contingent upon any actions taken, or not taken, by the states.").

195. *Seventh Report and Order*, 14 FCC Rcd at 8109, para. 63.

196. *Seventh Report and Order*, 14 FCC Rcd at 8109, para. 63.

197. *Seventh Report and Order*, 14 FCC Rcd at 8109, para. 63.

198. Several commenters are generally opposed to any state share requirement. *See, e.g.*, GTE comments at 30-33; PRTC comments at 6; SBC comments at 6; USTA comments at 6.

199. *Second Recommended Decision*, 13 FCC Rcd at 24760, para. 38.

200. *See infra*, section IV.F.

201. *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 444.

202. If, however, a non-rural carrier would receive less support under the forward-looking mechanism than it receives under the current mechanisms, then the carrier will receive interim hold-harmless support. *See infra*, section IV.D.

203. *Seventh Report and Order*, 14 FCC Rcd at 8129, para. 108.

204. *Seventh Report and Order*, 14 FCC Rcd at 8129, para. 108. In fact, targeting support has no effect on the overall size of the fund. Rather, as discussed above, the fund size is dependent on the area over which costs are averaged, the level of the national benchmark, and the amount of support provided for costs above the benchmark.

205. *Seventh Report and Order*, 14 FCC Rcd at 8133, para. 116.

206. *See, e.g.*, California comments at 12; SBC comments at 5; AT&T reply comments at 8. In section IV.D., *infra*, we adopt a slightly different approach for targeting the amount of hold-harmless support provided to a particular carrier.

207. The targeting approach does not affect a state's ability to direct or approve how carriers use their federal support, so long as the use is consistent with section 254(e). *See infra* section IV.F.

208. *See infra*, para. 74.

209. We also note that this targeting does not affect states' authority in connection with their certifications to the Commission that support is being used in a manner consistent with section 254(e). *See infra* section IV.F.

210. *Seventh Report and Order*, 14 FCC Rcd 8129, para. 108.

211. *See also* AT&T reply comments at 8 (support should be distributed to UNE cost zones).

212. As a prerequisite to filing a waiver petition of this nature, the state must first comply with the certification requirements regarding section 254(e) of the 1996 Act that are described in section IV.F., *infra*.

213. *Seventh Report and Order*, 14 FCC Rcd at 8111, para. 68. Rural carriers have been held harmless by the Commission's conclusion in the *First Report and Order* that the support mechanism for rural carriers should not change until the Rural Task Force and the Joint Board have made recommendations to the Commission, but in no event before January 1, 2001. *See First Report and Order*, 12 FCC Rcd at 8934-42, paras. 291-306.

214. *Seventh Report and Order*, 14 FCC Rcd at 8111, para. 68.

215. *Seventh Report and Order*, 14 FCC Rcd at 8111, para. 68, 8133-36, paras. 117-122.

216. *Seventh Report and Order*, 14 FCC Rcd at 8133-36, paras. 117-122.

217. *Seventh Report and Order*, 14 FCC Rcd at 8134-35, para. 120.

218. *Seventh Report and Order*, 14 FCC Rcd at 8135, para. 121.

219. Support under the existing mechanism is calculated on a per-line basis in each study area.

220. *See* 47 C.F.R. Part 36, Subpart F. As discussed, *infra*, the Commission will re-examine the need for the hold-harmless provision no later than January 1, 2003.

221. *See* 47 U.S.C. § 54.303.

222. BellSouth comments at 9-10; CenturyTel comments at 4-8; CBT comments at 2; GTE comments at 36; Sprint comments at 7; TDS comments at 10; USTA comments at 5; US West comments at 29; Western Alliance comments at 15. *But see* AT&T comments at 15; California comments at 5; PCIA comments at 7-8; Western Wireless comments at 10.

223. *See, e.g.* USTA comments at 5 (support should be frozen at the level received in the quarter prior to adoption of the new mechanism, and that frozen amount would be multiplied by 4 to determine the amount of

support the carrier would receive upon implementation of the new mechanism).

224. *See* CenturyTel comments at 7-8; Sprint reply comments at 5-6 (increases in the fund from a carrier-by-carrier hold-harmless approach, as opposed to a state-by-state approach, are likely to be small).

225. *See* BellSouth comments at 10; CenturyTel comments at 4-7; GTE comments at 36; Western Alliance comments at 15.

226. *See Seventh Report and Order*, 14 FCC Rcd at 8134, para. 119.

227. *See infra* para. 87.

228. *See* 47 C.F.R. Part 54, Subpart D.

229. The provision of federal support to non-rural carriers is contingent upon compliance with the state certification requirements discussed *infra* in section IV.F.

230. *See supra* section IV.C.5.

231. *See infra* section IV.E.

232. *See infra* section IV.E.

233. As a prerequisite to filing a waiver petition of this nature, the state must first comply with the certification requirements regarding section 254(e) of the 1996 Act that are described in section IV.F., *infra*.

234. The method for ensuring that carriers use hold-harmless support in accordance with the 1996 Act is discussed below in section IV.F.

235. *See, e.g.*, Bell Atlantic Comments at 6; BellSouth comments at 10; California comments at 5-6; CompTel comments at 7; NY DPS comments at 13; Western Wireless comments at 11.

236. *Seventh Report and Order*, 14 FCC Rcd at 8123-24, para. 94. Furthermore, since we are adopting a carrier-by-carrier hold-harmless mechanism and not a state-by-state mechanism, we do not address issues raised in the *Seventh Report and Order* that were specific to the use of a state-by-state hold-harmless mechanism, including how support should be allocated if the state-by-state amount were insufficient to hold each carrier in the state harmless, and whether universal service high-cost support should be distributed directly to state commissions. *See Seventh Report and Order*, 14 FCC Rcd at 8134-35, paras. 120-121. We further note that commenters addressing this issue are unanimously opposed to distributing federal high-cost support directly to state commissions. GTE comments at 36-37; Omnipoint comments at 3-4; RTC comments at 14-15; SBC comments at 10; Sprint comments at 8-10; USTA comments at 5; US West comments at 30; Western Wireless comments at 12-13; Roseville reply comments at 11.

237. *Seventh Report and Order*, 14 FCC Rcd at 8113-14, paras. 72-74. *See also First Report and Order*, 12 FCC Rcd at 8861-62, paras 151-152.

238. *Seventh Report and Order*, 14 FCC Rcd at 8113, para. 72.

239. *Seventh Report and Order*, 14 FCC Rcd at 8131-33, paras. 113-116, 8135-36, para. 122.

240. *Seventh Report and Order*, 14 FCC Rcd at 8135-36, para. 122.

241. *See* AT&T comments at 16; BellSouth comments at 10; California comments at 7; GTE comments at 38; Western Wireless comments at 12. Some commenters believe, however, that a competitor should receive only the forward-looking amount of support. *See* PRTC comments at 8; RTC comments at 15; US West comments at 30.

242. *See, e.g.*, California comments at 7.

243. *See First Report and Order*, 12 FCC Rcd. at 8932-33, para. 287. We also remind parties of our finding in the *First Report and Order* that carriers that provide service to lines solely through resale are not eligible for support for those lines, and the underlying carrier should receive the support. *First Report and Order*, 12 FCC Rcd. at 8933-34, para. 290.

244. *First Report and Order*, 12 FCC Rcd. at 8932-33, para. 287.

245. *See also* Western Wireless Corporation Petition for Clarification or Rulemaking, CC Docket No. 96-45 (filed Oct. 15, 1998).

246. 47 C.F.R. § 36.611.

247. 47 C.F.R. § 36.611.

248. 47 C.F.R. § 54.307(b). Because the forward-looking support mechanism provides support based on costs estimated by the Commission's cost model, non-rural carriers will be required to file loop-count data, but not cost data, in order to receive forward-looking support under Part 54. Because the interim hold-harmless provision provides support based on Part 36 and section 54.303 of the Commission's rules, which rely on book costs, non-rural incumbent LECs will be required to file cost data, in addition to loop-count data, in order to receive interim hold-harmless support. Interim hold-harmless support for non-rural competitive eligible telecommunications carriers in a particular wire center is based on the amount of interim hold-harmless support available to the incumbent LEC, and thus non-rural competitive eligible telecommunications carriers need only file loop-count data under Part 54 in order to receive interim hold-harmless support.

249. Quarterly filing shall remain voluntary for rural carriers.

250. *See* 47 C.F.R. § 54.709(a).

251. 47 U.S.C. § 254(e).

252. *Seventh Report and Order*, 14 FCC Rcd at 8115, para. 77.

253. *Seventh Report and Order*, 14 FCC Rcd at 8115-16, para. 78.

254. *Seventh Report and Order*, 14 FCC Rcd at 8131-33, paras. 113-116.

255. *Seventh Report and Order*, 14 FCC Rcd at 8131-32, para. 114.
256. *Seventh Report and Order*, 14 FCC Rcd at 8131-32, para. 114.
257. *Seventh Report and Order*, 14 FCC Rcd at 8132-33, para. 115.
258. *Seventh Report and Order*, 14 FCC Rcd at 8132-33, para. 115.
259. *Seventh Report and Order*, 14 FCC Rcd at 8132-33, para. 115.
260. 47 U.S.C. § 254(e).
261. *See* Bell Atlantic comments at 7-8; BellSouth comments at 8-9; RTC comments at 23.
262. The timing and effectiveness of these annual certifications are discussed *infra* in paragraphs 98-104.
263. *See, e.g.*, Wisconsin comments at 2-3 (Wisconsin PSC does not have authority to require rate actions by price cap regulated utilities in the state).
264. 47 U.S.C. § 254(e).
265. 47 C.F.R. § 54.709(a)(3).
266. *See* 47 C.F.R. § 54.709(a).
267. *See* 47 C.F.R. § 54.709(a).
268. Such forward-looking support shall be net of any hold-harmless support provided to the carrier in the first quarter of 2000.
269. Such forward-looking support shall be net of any hold-harmless support provided to the carrier in the first quarter of 2000.
270. Such forward-looking support shall be net of any hold-harmless support provided to the carrier in the second quarter of 2000.
271. To the extent that USAC is unable to provide an estimate of first quarter 2000 demand for high-cost support based on this directive before its November 1 filing is due, USAC may submit a supplemental filing in November containing this information.
272. *See* Appendix C for the relevant rules. The Commission does not intend to grant requests for retroactive application of state certifications, except for state certifications filed before April 1, 2000, as discussed above.
273. *See* GTE comments at 34; USTA comments at 7.
274. GTE comments at 35.

275. *First Report and Order*, 12 FCC Rcd at 8824, para. 86.
276. *See* AT&T comments at 14.
277. US West comments at 27; RTC comments at 23.
278. *Seventh Report and Order*, 14 FCC Rcd at 8115-16, para. 78.
279. 47 U.S.C. § 208. The Commission's procedures for complaints involving common carriers are codified at 47 C.F.R. § 1.720 *et seq.*
280. *See First Report and Order*, 12 FCC Rcd at 9200-01, paras. 825-36.
281. *Second Recommended Decision*, 13 FCC Rcd at 24767-68, para. 63. By "assessment base," we mean the basis on which carriers' contributions to the universal service mechanisms are assessed. By "recovery base," we mean the basis on which carriers recover their contributions.
282. *Seventh Report and Order*, 14 FCC Rcd at 8122, para. 90.
283. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 446-48.
284. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 433-35.
285. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 425.
286. *Universal Service Remand Order*, FCC 99-290 at paras. 15, 17.
287. *Universal Service Remand Order*, FCC 99-290 at paras. 15, 19-29.
288. *Universal Service Remand Order*, FCC 99-290 at paras. 30-33. To the extent they choose to implement an interstate end-user charge, incumbent LECs that are currently recovering their universal service contributions in interstate access charges must make corresponding reductions in their interstate access charges to avoid any double recovery. *Universal Service Remand Order*, FCC 99-290 at para 33.
289. *Seventh Report and Order*, 14 FCC Rcd at 8098-8100, paras. 41-43.
290. *Seventh Report and Order*, 14 FCC Rcd at 8098-8100, para. 43.
291. *See Seventh Report and Order*, 14 FCC Rcd at 8136-41, paras. 123-135.
292. *Seventh Report and Order*, 14 FCC Rcd at 8136-41, paras. 123-135.
293. *Seventh Report and Order*, 14 FCC Rcd at 8099-8100, para. 43.
294. *See* 47 C.F.R. § 36.601(c).
295. *See generally* 36 C.F.R. Part 36, Subpart F.

296. *See* 47 C.F.R. § 36.601(c).

297. *See* 47 C.F.R. § 36.601(c).

298. *See* RTC comments at 16-21; Western Alliance comments at 4-7.

299. NECA reply comments at 4.

300. NECA reply comments at 6.

301. NECA reply comments at 6.

302. ³⁰² *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 15499 (1996).

303. 47 C.F.R. § 51.507(f).

304. ³⁰⁴ *Iowa Utilities Board v. FCC*, 96 F.3d 1116 (8th Cir. 1996) (per curium) (temporarily staying the *Local Competition Order* until the filing of the court's order resolving the petitioners' motion for stay). *See also Iowa Utilities Board v. FCC*, 109 F.3d 418 (8th Cir.) (dissolving temporary stay and granting petitioners' motion for stay, pending a final decision on the merits of the appeal), *motion to vacate stay denied*, 117 S. Ct. 429 (1996).

305. *Iowa Utilities Board v. FCC*, 120 F.3d 753, 800 n.21, 819 n.39, 820 (8th Cir. 1997).

306. *AT&T v. Iowa Utilities Board.*, 119 S. Ct. 721, 733, 738 (1999).

307. *See Deaveraged Rate Zones for Unbundled Network Elements*, CC Docket No. 96-98, Stay Order, 14 FCC Rcd. 8300, 8300-01 (1999) (*Deaveraged Rate Zones for Unbundled Network Elements*).

308. *Deaveraged Rate Zones for Unbundled Network Elements*, 14 FCC Rcd at 8301.

309. *Deaveraged Rate Zones for Unbundled Network Elements*, 14 FCC Rcd at 8302.

310. *See* 5 U.S.C. § 601 *et seq.* The RFA was amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Title II of the Contract with America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 87 (1996).

311. 5 U.S.C. § 603.

312. 5 U.S.C. § 604.

313. 5 U.S.C. § 605(b).

314. ³¹⁴ 5 U.S.C. § 601(6).

315. ³¹⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632).

316. ³¹⁶ Small Business Act, 15 U.S.C. § 632.

317. 13 C.F.R. § 121.201.

318. *See Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 97-160, FCC 99-120 at paras. 257-271 (rel. May 28, 1999).

319. *See supra* section IV.I.

320. 5 U.S.C. § 605(b).

321. *See* 5 U.S.C. § 605(b).

322. *See* 5 U.S.C. § 801(a)(1)(A).

323. *See* 5 U.S.C. § 553(d)(3).

324. *See* 44 U.S.C. § 3507(j).

325. 47 U.S.C. § 254(b)(5).

326. 47 U.S.C. § 254(b)(1).