

Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597-9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: July 18, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80-286; FCC 95-282]

Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission has adopted a notice of proposed rulemaking (Notice) inviting comment on proposals to revise the assistance mechanisms contained in the jurisdictional separations rules applicable to Dial Equipment Minutes ("DEM") weighting and the Universal Service Fund ("USF"). The Commission invited comment on whether DEM weighting should be phased out or, if it is retained, whether it should be merged with the USF or otherwise reformed. The Commission also proposed three basic approaches to revising the USF, by either reforming the current mechanism, which bases assistance on the carriers' reported costs, or introducing a system basing assistance on proxy factors, or allocating the fund among the States, which would design their own distribution programs, according to the Commission's guidelines. The Commission referred the proposals to the Federal-State Joint Board in this proceeding for a recommended decision. In addition, the Commission issued a Notice of Inquiry ("NOI") seeking comment regarding: the need for further rulemaking to develop a program

to reduce the USF in competitive markets through least-cost bidding, and the appropriate long-range treatment of universal service issues.

DATES: Comments are due October 10, 1995; Reply Comments are due November 9, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jon Reel, (202) 418-0834, or Deborah A. Dupont, (202) 418-0873, Common Carrier Bureau, Accounting and Audits Division.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communication Commission's Notice of Proposed Rulemaking in Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, FCC 95-282, CC Docket No. 80-286, adopted and released July 13, 1995. The Commission has made the full text of the Notice of Proposed Rulemaking available for inspection and copying during normal business hours in the Commission's Reference Center, Room 239, 1919 M Street NW., Washington, DC 205543, and will publish it in the FCC Record. The full text of the Notice of Proposed Rulemaking may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone number (202) 857-3800.

Synopsis of Notice of Proposed Rulemaking

In this Notice, the Commission seeks comment on proposed improvements to two subsidies intended to promote universal service at reasonable rates in high-cost, predominantly rural areas: dial equipment minute ("DEM") weighting,¹ and the Universal Service Fund.² Changes in technology, market structure, and regulatory policies prompted the Commission to reevaluate these programs, with particular concern that the programs not act as *de facto* barriers to entry in the emerging competitive local exchange market. Commenters are asked to evaluate the proposals in the light of four basic principles. First, assistance should be targeted to support only those providers or users who need it; second, the programs should promote efficient investment and operation; third, the programs should not impose excessive costs on interstate carriers and ratepayers; and fourth, the rules should not impede competitive entry or disrupt

normal market forces. The Commission refers the proposals to the Federal-State Joint Board in this proceeding for a recommended decision, as required by the Communications Act of 1934, as amended.³

Proposals for Revision of the DEM Weighting Rules

The Commission's rules for allocating equipment costs between the federal and state jurisdictions divide the cost of local switching equipment based on relative dial equipment minutes, or DEM, of use. LEC study areas with 50,000 or fewer access lines "weight" (i.e. multiply) the DEM for their interstate switching costs—thus allocating a higher percentage of their overall switching costs to the interstate jurisdiction—on the theory that smaller LECs, because they cannot take advantage of economies of scale, have higher switching costs. Technological developments, however, may have diminished the importance of switch size to the point where the subsidy should be gradually eliminated, and the Notice requests comment on this option.

If DEM weighting is not eliminated, the Notice requests comment on two possible approaches for its reform. First, the switching costs used for DEM weighting could be combined with the loop costs that determine USF assistance, thereby creating a single, need-based subsidy. Second, if DEM weighting is kept separate from the USF, it could be modified in one or more of the following ways: (1) establish a high-cost test for LECs to qualify for DEM weighting, (2) determine DEM weighting factors on the basis of average local switch size, or (3) keep the existing program, but determine the level of assistance through use of a sliding scale. The Notice requests comment on all these measures, with particular emphasis on whether small LECs actually have higher switching costs per unit of traffic than large LECs.

Proposals for Revision of the Universal Service Fund

The Universal Service Fund was adopted in 1984 to support exchange carriers ("LECs") in study areas with above-average loop costs.⁴ The Notice seeks comment on several approaches for reforming the USF, any of which would be compatible with the use of a high-cost credit system. Distributing USF assistance through high-cost credits—money credited on a

³ 47 U.S.C. 410(c).

⁴ Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 96 F.C.C. 2d 781 (1984).

¹ See 47 CFR 36.125 (1994).

² See 47 CFR subpart F (1994).

subscriber's telephone bill that the subscriber could then assign either to the incumbent LEC or to a competing local carrier—is intended to make the program competitively neutral. The Notice requests comment on (1) whether the existence of local service competition should be prerequisite for distributing assistance through a high-cost credit system, (2) whether eligibility for high-cost assistance should depend upon a carrier's assuming minimum service requirements, (3) how best to distribute assistance to carriers that have not been subject to the Commission's separations rules, and (4) the significance of subscriber need in determining high-cost credits.

Besides requesting comment on a high-cost credit system, the Notice sets forth for comment three primary approaches to reform of the USF. The first of these would modify the USF while continuing to base assistance on carrier's reported costs. If this "reported costs" approach is adopted, the Notice proposes, at a minimum, three reforms: (1) require carriers to calculate the costs and number of loops in a study area based on all loops served by affiliated companies in the same state, (2) exclude administrative costs from the loop costs that form the basis for high-cost assistance, and (3) base assistance on the average number of lines in a study area over a year, rather than the number of lines at the end of the year.

In addition to these reforms, the Notice seeks comment on reforming the "reported costs" approach by adopting one or more of the following measures: (1) increase the threshold for receiving assistance, (2) reconsider the current rules' distinctions between small and large study areas, (3) eliminate assistance to LECs receiving minimal assistance per line per month, and (4) adopt a permanent indexed cap. The Notice also requests comment on whether to implement the use of high-cost credits in a "reported costs" system, and whether to base high-cost assistance on local switching and loop costs combined, thereby combining the DEM weighting and USF programs.

The second primary approach would base assistance not on carriers' reported costs, but instead on objectively ascertainable factors that would serve as proxies for the cost of providing service. Using proxy factors rather than reported costs would encourage recipients to control their costs, and would further the policy of competitive neutrality. The Notice seeks comment on four proxy factors: (1) subscriber density per square mile, (2) average distance from the nearest wire center, (3) terrain, and (4)

climate. The Notice also seeks comment on whether it is advisable to incorporate local switching costs into the proxy model, and whether the use of a proxy methodology should be limited to the larger LECs.

The third primary approach would allow State utility commissions significant control over distribution of the USF. The Notice proposes a three-step process. First, proxy factors would be used to determine the amount of high-cost assistance allocated for distribution within each State. Second, within each State, the State utility commission would decide, in accordance with general guidelines adopted by the Commission, the process for allocating the assistance among the carriers serving high-cost areas. Third, the Commission would review the distribution plans filed by the State commissioners. The Commission would prescribe a default mechanism for States that decline to participate in the distribution process.

Notice of Inquiry: Comment Requested Regarding the Need for Further Rulemaking

Market-based Incentives to Reduce the USF Through Least-cost Bidding

The NOI sets out for comment a possible methodology to harness market forces to reduce the size of the USF once competition for local phone service is established. Local service providers would reverse-bid to set the amount of USF assistance, with the lowest bidder setting the level of subsidy per subscriber in an area for all carriers serving that area. To encourage carriers to bid, the winner would receive an additional incentive or bonus, such as a percentage of the savings to the fund. To bid, carriers would have to serve as an essential carrier, or "carrier of last resort," by providing ubiquitous service at a reasonable rate within the specified area.

More generally, the NOI solicits suggestions, information, and analyses regarding the appropriate long-term treatment of universal service issues in the light of rapidly-changing technologies and advances in competitive markets.

Regulatory Flexibility Act

In the Notice the Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because, if the proposals in this proceeding are adopted, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of

the Regulatory Flexibility Act.⁵ Because of the nature of local exchange and access service, the Commission has concluded that LECs, including small LECs, are dominant in their fields of operation and therefore are not "small entities" as defined by that act.⁶ The Secretary has sent a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of that act.⁷

Ordering Clauses

Accordingly, it is ordered that, pursuant to Sections 1, 4(i), 4(j), 403, and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 403 and 410(c), notice is hereby given of proposed amendments to Part 36 of the Commission's Rules, 47 CFR Part 36, as described in this Notice of Proposed Rulemaking.

It is further ordered that, pursuant to Section 410(c) of the Communications Act of 1934, 47 U.S.C. § 410(c), the proposals set forth in the Notice of Proposed Rulemaking are hereby referred to the Federal-State Joint Board established in this proceeding for the preparation of a recommended decision.

It is further ordered that, pursuant to Sections 1, 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(1), 154(j), and 403, notice is hereby given of the initiation of a Notice of Inquiry regarding the need for further rulemaking to address the use of a competitive bidding process to establish levels of high cost assistance, and regarding the appropriate long-range treatment of universal service issues.

List of Subjects in 47 CFR Part 36

Communications common carriers, Jurisdictional separations procedures, Reporting and recordkeeping requirements, Telephone, Universal system of accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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⁵ 5 U.S.C. § 601(3).

⁶ See MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983).

⁷ 5 U.S.C. § 603(a).