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

362. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers specifically directed toward LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,410 companies reported that they were engaged in the provision of local exchange service as incumbents. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs that may be affected by this Order. We also note that, with the exception of our clarification of the definition of rural carrier under section 153(37) and the modification of reporting requirements, the rules adopted by this Order apply only to larger, non-rural LECs.

363. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* This Order imposes no new reporting, recordkeeping, or other compliance requirements. As discussed, this Order immediately eliminates the requirement that carriers serving study areas with fewer than 100,000 access lines must annually file letters certifying themselves as rural carriers in order to remain in the rural carrier universal service support mechanism. Further, this Order eliminates, after the July 1, 2000, filing deadline, the requirement that rural carriers serving study areas with more than 100,000 access lines must file annual self-certification letters. All rural carriers must, however, notify the Commission in the event of a change in rural status.

364. The overall effect of this Order will be to reduce reporting, recordkeeping, and other compliance requirements for small entities. This benefit will apply to all carriers deemed rural under section 153(37), regardless of whether they are a small or large entity. Carriers serving study areas with fewer than 100,000 access lines—which are more likely to be small entities than those serving study areas with more than 100,000 access lines—will be most immediately benefited, as no further filings will be required of them unless and until their rural status changes. The largest carriers will generally be non-rural and not affected by this change in reporting. To the extent that large and small entities are treated differently, therefore, small entities will not carry a disproportionately high cost of compliance.

365. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* As noted, with respect to reporting requirements affecting small entities, we eliminate the burden of an annual filing requirement for rural carriers. For carriers serving study areas with fewer than 100,000 access lines, this change is effective immediately. Rural carriers serving study areas with more than 100,000 access lines will be required to file a self-certification letter by July 1, 2000, but will not be required to refile additional annual certifications unless their status changes. These changes have at their heart consideration of the resources of small entities, and will reduce, if not eliminate, the costs of compliance for small entities. The alternative to this approach would have been to require additional unnecessary self-certification letters from the vast majority of filing carriers, even though the data supporting those self-certifications are easily verified by publicly available documentation. The other changes to Commission rules that we adopt in this Order affect only larger, non-rural LECs, and should have no direct affect on small entities.

366. *Report to Congress.* The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of this Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

367. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104–13, and has been approved in accordance with the provisions of that Act. On August 4, 1999, the Office of Management and Budget approved the proposed requirements contained in the *Inputs Further Notice* under OMB control number 3060–0793.

C. Ordering Clauses

368. It is ordered, pursuant to sections 1, 4(i) and (j), 201–209, 218–222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 218–222, 254, and 403 that this Report and Order is hereby adopted.

369. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Universal service.

47 CFR Part 69

Communications common carrier.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–30877 Filed 11–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; FCC 99–306]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service adopts 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. This document also addresses 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. It also modifies 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.

DATES: Effective December 1, 1999 except for §§ 36.611(h), 36.612, 54.307(b), (c), 54.309(c), 54.311(c), and 54.313 which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the Federal Register announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Ninth Report and Order and Eighteenth Order on Reconsideration in CC Docket No. 96–45 released on November 2, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

I. Introduction

1. In the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act), 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. 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.

2. Based on recommendations from the Joint Board in the *Second Recommended Decision,* 63 FR 67837 (December 9, 1998), and building on the framework the Commission set forth in the *First Report and Order,* 62 FR 32862 (June 17, 1997) and *the Seventh Report and Order,* 64 FR 30917 (June 9, 1999), we establish in this Order a new federal high-cost support mechanism that will be sufficient to enable non-rural carriers' 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. 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. 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. 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.

II. Order

A. Introduction

6. 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. The methodology for this mechanism is based on the framework outlined in the *Seventh Report and Order,* with certain modifications. 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.

7. The new forward-looking support mechanism that we adopt will provide forward-looking support effective January 1, 2000. As discussed, 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.

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

8. 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. 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, many state rate structures have included significant implicit support for universal service. The states' historical authority over intrastate ratemaking, and thus their primary responsibility for intrastate universal service, has been recognized by the Commission. 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.

9. *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. 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. 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.

10. In the *Second Recommended Decision,* the Joint Board recognized that section 254 does not alter the states' historical responsibility for intrastate universal service. 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.'' 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.'' 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.'' 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

11. 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. Moreover, for the reasons discussed, 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.

12. In the *First Report and Order,* the Commission concluded that high-cost support should be based on forward-looking costs. Since that time, the Commission has continued to work to adopt a cost model that is reasonably accurate and verifiable. 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. 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. 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. 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. 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.

13. 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. 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.*

14. Consistent with the goals of federal universal service support

discussed, 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

15. *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. Of all the potential approaches suggested, 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). 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.

16. 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, 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. We recognized the states' jurisdiction over intrastate support in the *Seventh Report and 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.'' Thus, we believe that statewide averaging, together with the rest of the methodology we adopt, is consistent with the division of federal and state responsibility for achieving reasonable comparability for non-rural carriers.

17. *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, and stated that federal support should be provided to achieve reasonably comparable rates across states. The Joint Board envisioned that the states should have the primary responsibility for ensuring reasonable comparability within states. 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. The carrier-by-carrier interim hold-harmless approach that we adopt, however, alleviates the Joint Board's concern. 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. 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.

18. *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. 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.

19. For example, assume that the Commission chose to average costs at the wire center level. 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.

20. The same issue arises if costs are averaged at the UNE cost zone level. 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. 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. 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, 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.

21. Study area cost averaging suffers from the same infirmities as wire center or UNE cost zone averaging. 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. 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.

22. 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. We reject this assertion. Congress stated that the Commission shall establish specific, predictable, and *sufficient* mechanisms to preserve and advance universal service. 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 * * *.'' Thus, despite our general agreement with the Joint Board's conclusion that the federal fund should not increase substantially at this time, our primary goal in this proceeding must be to provide sufficient universal service support to enable reasonable comparability of rates among states. We meet this policy goal, however, in a manner consistent with the federal role for providing universal service support, which, as discussed, we find to be transferring funds among states. 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

23. 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' 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. In the *Seventh Report and Order,* the Commission adopted the Joint Board's interpretation. 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. 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.

24. 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. 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. Vermont and US West, for example, advocated benchmarks of 80 percent and 115 percent, respectively. California stated that it uses an affordability benchmark of 150 percent. CBT, Sprint, and Western Wireless also advocate a 150 percent benchmark, and AT&T urges us to use a 200 percent benchmark. 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.

25. 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, 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.'' 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.

26. 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, of the appropriate, respective roles of the state and federal jurisdictions in providing universal service support.

27. 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, 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 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.

28. Some commenters have suggested that our choice of a benchmark will necessarily be arbitrary, and some have suggested that we will intentionally set the benchmark with an eye to minimizing the size of the federal support mechanism. 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, 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

29. 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, 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, and we conclude that using one of the proposals described to limit the amount of support available to states from the federal mechanism would not provide sufficient support and would be contrary to Congress' goals and the Fifth Circuit's decision. Therefore, we reject all four of these proposals.

30. We observe, however, that providing support for all loop costs that exceed the federal benchmark would not properly take account of our separations rules. 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. 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.

31. 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. 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. 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. We emphasize that this will not undermine the federal mechanism's ability to provide sufficient support. 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

32. 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.*

33. 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.'' 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), represents the best policy choice at this time. Furthermore, we conclude that, together with the statewide averaging approach discussed, 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

34. 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, 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. 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.

35. As discussed, 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, 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, and could result in support not being used for the purposes for which it was intended, in contravention of section 254(e).

36. 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.'' 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.

37. Under the methodology we adopt, 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 (((\$20×10)+(\$30×10)+(\$40×10))/30 lines). Assume further that the national benchmark equates to $25 per line. Using the statewide methodology adopted, the total amount of support provided to the carriers in the state would be $114.00 ((\$30–\$25)×30 lines×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)×10 lines×76%). Wire Center 3's wc-scale support would be $114.00 (($40 − $25)×10 lines×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 ($38.00×75%/10). In Wire Center 3, support will be $8.55 per line ($114.00×75%/10). Total support in the state, distributed in this way, is $114.00 (($2.85×10)+($8.55×10)). 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.

38. By comparison, a uniform distribution in the hypothetical state described 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.

39. 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.

40. 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. 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.

D. Interim Hold-Harmless Provision

41. 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, 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. Interim hold-harmless support also shall include LTS under § 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. 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 § 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.

42. Existing federal high-cost support under part 36 and § 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 § 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. 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, 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.

43. We emphasize, however, that we do not intend for the continuation of high-cost support under part 36 and § 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 § 54.303 of our rules. In addition, our continuation of support under part 36 and § 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 § 54.303 of our rules on an ongoing basis is a better policy choice than simply ''freezing'' support levels as of a certain date. 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 § 54.303. Therefore, we reject the frozen hold-harmless approach.

44. 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. 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. Under the interim carrier-by-carrier hold-harmless provision that we adopt, 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 § 54.303 of the Commission's rules. Specifically, all carriers will continue to report cost and loop count data pursuant to part 36. In the event that carriers in a particular state do not qualify for forward-looking support pursuant to part 54 of our rules because the statewide average forward-looking cost per line is below the national cost benchmark, or the amount determined pursuant to § 54.309 of our rules is less than the amount that would be determined under part 36 and § 54.303, then those carriers shall receive interim hold-harmless support pursuant to part 36 and, if applicable, § 54.303. 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.

45. 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.

46. Because the interim hold-harmless support provided pursuant to part 36 and § 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. 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 § 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 § 54.309 of our rules. As we explained, 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.

47. 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 lines = $20/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 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.

48. 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, the distribution described 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, 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.

49. 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.

50. As discussed, 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.

51. We stress that the interim carrier-by-carrier hold-harmless provision that we adopt 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. 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. 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.

E. Portability of Support

52. 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. 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. 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.

53. 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. The remainder of the support associated with that element, if any, will go to the incumbent LEC.

54. As discussed, we are modifying our reporting requirements to synchronize non-rural carrier submissions under part 36 and part 54 of our rules. Under our current part 36 rules, incumbent LECs are required to report cost and loop-count data on July 31st of each year. If they so choose, incumbent LECs may update the July 31st data on a quarterly basis. 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. 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 § 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. 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, and should allow more accurate projections based on regular quarterly loop counts.

F. Use of Federal High-Cost Support by Carriers

55. 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. 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). 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).

56. 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.

57. 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. 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. 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. 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.

58. 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.

59. 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. 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.

60. 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. 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. USAC then uses the contribution factor to bill carriers and collect the appropriate amount of support to fund the universal service programs. 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.

61. 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, 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. 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.

62. 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. 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.

63. 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).

64. 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.

65. 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.

66. 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.

67. As noted, 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.

68. 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. 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. We decline to condition support on such extensive state actions. We believe that the less onerous certification requirements described 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.

69. 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. 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.

70. 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. 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. 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

71. 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. 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. 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.

72. As discussed, 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. The court also reversed and remanded for further consideration the Commission's decision to assess the international revenues of carriers with interstate revenues. In addition, the court reversed the Commission's ''decision to require

ILECs to recover universal service contributions from their interstate access charges.'' In response to the court's decision, the Commission removed intrastate revenues from the contribution base; 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; and revised its rules to allow incumbent LECs to recover their contributions through access charges or through end-user charges. 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

73. 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. If such implicit support does exist, the Commission concluded that, to the extent possible, it should make that support explicit. 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. 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. 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. 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

74. 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.

75. 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.

76. 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

77. In August 1996, the Commission promulgated certain rules in the *Local Competition Order,* 61 FR 45476 (August 29, 1996), to implement section 251 of the Communications Act of 1934, as amended. One such rule, § 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.'' 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. In July 1997, the Eighth Circuit vacated the deaveraging rule, among others, on the grounds that the Commission lacked jurisdiction. 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.

78. 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 § 51.507(f) on May 7, 1999, to allow the states to bring their rules into compliance. 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. The Commission did so to allow the states to coordinate their consideration of deaveraged rate zones with issues raised in that proceeding. 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 § 51.507(f) of the Commission's rules.

III. Procedural Matters

A. Regulatory Flexibility Act Certification

79. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA) 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. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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). The SBA defines a small telecommunications entity in SIC code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

80. 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,* 64 FR 31780 (June 14, 1999), in this docket, the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) seeking comment on the economic impacts on small entities. 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. 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. 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. 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.

B. Effective Date of Final Rules

81. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the **Federal Register,** except for sections 36.611(h), 36.612, 54.307 (b), (c), 54.309(c), 54.311(c), and 54.313 which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. 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**.

C. Paperwork Reduction Act

82. This *Report and Order* contains either new 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, Public Law 104–13, of the information collections contained in this rulemaking.

IV. Ordering Clauses

83. 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, the Ninth Report and Order and Eighteenth Order on Reconsideration is adopted. This Order is effective December 1, 1999 except for sections 36.611(h), 36.612, 54.307 (b), (c), 54.309(c), 54.311(c), and 54.313 which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

84. Parts 36 and 54 of the Commission's Rules, 47 CFR parts 36 and 54, are amended as set forth, effective immediately upon publication in the **Federal Register**.

85. 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.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

Parts 36 and 54 of Title 47 of the Code of Federal Regulations are amended as follows:

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

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (I) and (j), 205, 221(c), 254, 403, and 410 unless otherwise noted.

2. Amend § 36.601 by revising paragraph (c) to read as follows:

§ 36.601 General.

* * * * *

(c) The annual amount of the total nationwide expense adjustment shall consist of the amounts calculated pursuant to § 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 § 36.612(a) and § 36.631. 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 § 36.611. 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 § 54.311 of this chapter for interim hold-harmless support.

3. Amend § 36.611 by revising the introductory text and paragraph (h) 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 for each of its study areas, with the exception of the information listed in paragraph (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 § 36.612.

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 § 51.5 of this chapter.

* * * * *

(h) For rural telephone companies, as that term is defined in § 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.

4. Amend § 36.612 by revising paragraph (a) 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 § 51.5 of this chapter, may update the information submitted to the National Exchange Carrier Association (NECA) on July 31st pursuant to § 36.611 (a) through (h) one or more times annually on a rolling year basis according to the schedule. Every non-rural telephone company must update the information submitted to NECA on July 31st pursuant to § 36.611 (a) through (h) according to the schedule.

(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.

* * * * *

5. Amend § 36.622 by removing paragraph (d) and by revising paragraphs (a)(1) and (b)(1) 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.

* * * * *

(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.

* * * * *

6. Amend § 36.631 by revising paragraph (d) introductory text to read as follows:

§ 36.631 Expense adjustment.

* * * * *

(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 paragraphs (d) (1)–(4). After January 1, 2000, the expense adjustment (additional interstate expense allocation) shall be calculated pursuant to § 54.309 of this chapter or § 54.311 of this chapter (which relies on this part), whichever is applicable.

* * * * *

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

8. Amend § 54.5 by adding the following definition in alphabetical order to read 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 of this chapter. The wire center boundaries define the area in which all customers served by a given wire center are located.

9. Amend § 54.307 by revising paragraph (a) introductory text, paragraphs (a)(1), (a)(2), and (a)(3), and (b), and by adding paragraph (c) 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 § 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 § 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 § 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 paragraph (c) of this section. For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in § 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 § 51.5 of this chapter, the carrier may update the information submitted to the Administrator on July 31st pursuant to paragraph (b) of this section one or more times annually on a rolling year basis according to the schedule. 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 paragraph (b) of this section according to the schedule.

(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.

10. Add § 54.309 to subpart D to read 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 § 54.313. 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 § 54.311. 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 § 54.311, the carrier shall be eligible for support pursuant to § 54.311.

(b) *Distribution of total support available per state.* The total amount of support available per State calculated pursuant to paragraph (a) of this section 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 paragraph (a)(3) of this section, shall receive forward-looking support;

(2) The wire center scale support amount for each wire center identified in paragraph (b)(1) of this section 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 paragraph (a)(4) of this section shall be divided by the sum of the total wire center scale support amounts calculated for each wire center pursuant to paragraph (b)(2) of this section;

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

(5) The total amount of support calculated for each wire center pursuant to paragraph (b)(4) of this section 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 paragraph (b)(5) of the section 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 paragraph (b) of this section, asking the Commission to distribute support calculated pursuant to paragraph (a) of this section 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 paragraph (b) of this section will further the preservation and advancement of universal service within the State.

11. Add § 54.311 to subpart D to read 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 § 54.303, 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 § 54.309(a), 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, § 54.303. In the event that a State's statewide average FLEC per line, calculated pursuant to § 54.309(a), 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 § 54.309(b) is less than the amount that would be provided pursuant to part 36 and, if applicable, § 54.303, the carrier shall be eligible for support pursuant to part 36 and, if applicable, § 54.303. 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 paragraph (b) of this section.

(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 paragraph (a) of this section 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 paragraph (b) of this section, 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 paragraph (b) of this section will further the preservation and advancement of universal service within the State.

12. Add § 54.313 to subpart D to read 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 §§ 54.309 and/or 54.311 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 §§ 54.309 and/or 54.311 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 in paragraph (c) of this section. 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 paragraph (b) of this section, 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 § 54.311. If a State files the certification described in this section during the first program year, carriers eligible for support pursuant to § 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 § 54.309 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 § 54.311 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 § 54.309 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 § 54.311 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 § 54.309 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 § 54.309 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 §§ 54.309 or 54.311 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 §§ 54.309 or 54.311, 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 §§ 54.309 or 54.311, whichever is applicable, in the second, third, and fourth quarters of 2001. Such carriers shall not receive support pursuant to §§ 54.309 or 54.311, 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 §§ 54.309 or 54.311, whichever is applicable, in the third and fourth quarters of 2001. Such carriers shall not receive support pursuant to §§ 54.309 or 54.311, 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 §§ 54.309 or 54.311, whichever is applicable, in the fourth quarter of 2001. Such carriers shall not receive support pursuant to §§ 54.309 or 54.311, 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 §§ 54.309 or 54.311, 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 § 54.309 or § 54.311 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 § 54.309 or § 54.311, 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 § 54.309 or § 54.311, whichever is applicable, in the second, third, and fourth quarters of that year. Such carriers shall not receive support pursuant to § 54.309 or § 54.311, 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 § 54.309 or § 54.311, whichever is applicable, in the third and fourth quarters of that year. Such carriers shall not receive support pursuant to § 54.309 or § 54.311, 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 § 54.309 or § 54.311, whichever is applicable, beginning in the fourth quarter of that year. Such carriers shall not receive support pursuant to § 54.309 or § 54.311, 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 § 54.309 or § 54.311, whichever is applicable, in that year.

[FR Doc. 99–30876 Filed 11–30–99; 8:45 am]

BILLING CODE 6712–01–P