

Radioactive Contaminated Prop.” and the city/county “Monticello.”

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96-45; FCC 99-396]

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 makes a procedural change to the new high-cost universal service support mechanism for non-rural carriers adopted in the High-Cost Methodology Order on October 21, 1999. The change concerns the targeting of high-cost support amounts to individual wire centers, which was set to occur beginning in the first quarter of 2000.

DATES: Effective December 30, 1999.

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 Nineteenth Order on Reconsideration in CC Docket No. 96-45 released on December 17, 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, SW, Washington, DC 20554.

I. Introduction

1. In this Order, the Commission on its own motion makes a procedural change to the new high-cost universal service support mechanism for non-rural carriers adopted in the *High-Cost Methodology Order*, 64 FR 67416 (December 1, 1999), on October 21, 1999, and scheduled to become effective on January 1, 2000. The change concerns the *targeting* of high-cost support amounts to individual wire centers, which was set to occur beginning in the first quarter of 2000. Because non-rural carriers will be filing wire center line count data for the first time on December 30, 1999, the Commission will not have a sufficient opportunity to review and verify that data to enable targeting during the first and second quarters of 2000. We

therefore find that support payments targeted to the wire center level shall be issued beginning with payments provided in the third quarter of 2000. This change affects only the *targeting* of support during the first and second quarters of 2000, and does not alter the January 1, 2000 effective date of the new mechanism or the aggregate *amount* of support provided to each non-rural carrier under the new mechanism.

II. Discussion

2. We conclude that support payments should be calculated using the targeting approaches previously adopted. We conclude, however, that the provision of forward-looking support should be deferred until the third quarter of 2000. Until targeted support is provided in the third quarter of 2000, interim hold-harmless support shall be provided at the study-area level. Because non-rural carriers will be formally submitting wire center line count data for the first time on December 30, 1999, we do not believe that there will be sufficient time to analyze and verify the data before carriers are scheduled to receive targeted interim hold-harmless support in the first quarter of 2000 and targeted forward-looking support in the second quarter of 2000. Our decision to postpone the targeting of support will allow us to work with carriers and USAC to address any anomalies in carriers' first-time filings and to ensure that the wire center line count data are valid and sufficiently accurate for targeting purposes. We emphasize, however, that this decision does not change the January 1, 2000 effective date of the new mechanism or the aggregate amount of high-cost support provided to non-rural carriers under the new mechanism.

3. We therefore reconsider and amend on our own motion §§ 54.313(c) and 54.311(b) of our rules, as set forth. Specifically, we delete § 54.313(c)(1)(i) of our rules, thereby eliminating the January 1, 2000 state certification option, which would have permitted any carrier in a state that filed a certification by that date to receive targeted forward-looking support for the first and second quarters of 2000 in the second quarter of 2000. The elimination of this filing option, however, does *not* eliminate a carrier's ability to obtain forward-looking support for the first and second quarters of 2000. Under the rules adopted in the *High-Cost Methodology Order*, if a state files the requisite certification by April 1, 2000, carriers subject to that certification shall receive forward-looking support for the first and third quarters of 2000 in the third

quarter of 2000, and forward-looking support for the second and fourth quarters of 2000 in the fourth quarter of 2000. We also amend § 54.311(b) of our rules, so that for the first and second quarters of 2000, non-rural carriers eligible for interim hold harmless support shall receive such support at the study-area level, rather than the wire center level. Targeting of interim hold-harmless support shall occur at the wire center level beginning in the third quarter of 2000.

4. We also correct an oversight in the rules that we adopted in the *High-Cost Methodology Order* concerning the calculation of the expense adjustments for non-rural carriers. In that order, we amended § 36.631(d) of our rules so that the expense adjustment for study areas reporting more than 200,000 working loops would be calculated pursuant to the new forward-looking support mechanism or the interim hold-harmless provision, whichever is applicable, effective January 1, 2000. We inadvertently did not make a similar amendment to § 36.631(c) of our rules, which concerns study areas reporting 200,000 or fewer working loops, even though a small number of non-rural carriers serve such study areas. To remedy this oversight, we now amend § 36.631(c) so that the expense adjustment for non-rural carriers serving study areas reporting 200,000 or fewer working loops will be calculated pursuant to the new forward-looking support mechanism or the interim hold-harmless provision, whichever is applicable, effective January 1, 2000.

III. Procedural Matters

A. Regulatory Flexibility Act Certification

5. 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.

6. In the *High-Cost Methodology Order*, the Commission certified pursuant to the RFA that the final rules adopted in that order would not have a significant economic impact on a substantial number of small entities. We concluded that the *High-Cost Methodology Order* adopted 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 adopted in this docket, the Commission prepared an IRFA seeking comment on the economic impacts on small entities. No comments were received in response to that IRFA.

7. The rule changes adopted in this order are merely procedural and affect only the timing of the implementation of certain aspects of the *High-Cost Methodology Order*, and the correction of an oversight in the rules accompanying the *High-Cost Methodology Order*. The changes adopted in this order will affect only non-rural LECs. As mentioned, non-rural LECs generally do not fall within the definition of a small business concern. Therefore, we certify pursuant to section 605(b) of the RFA, that the final rules adopted in this order will not have a significant economic impact on a substantial number of small entities. The Consumer Information Bureau, Reference Information Center, will send a copy of the *Nineteenth Order on Reconsideration*, including a copy of this final certification, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA. In addition, this certification and order will be published in the **Federal Register**. Finally, the Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the *Nineteenth Order on Reconsideration*, 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

8. We conclude that the amendments to our rules adopted herein shall be effective December 30, 1999. In this

order, we make minor amendments to the rules adopted in the *High-Cost Methodology Order*, which implement a new forward-looking high-cost support mechanism, effective January 1, 2000. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the required January 1, 2000 implementation 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**.

IV. Ordering Clauses

9. 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, and § 1.108 of the Commission's rules, the Nineteenth Order on Reconsideration is adopted.

10. Parts 36 and 54 of the Commission's Rules, 47 CFR 36 and 54, are amended as set forth, effective December 30, 1999.

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Nineteenth Order on Reconsideration, including the Final Regulatory Flexibility 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.

William F. Caton,
Deputy 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 § 36.631 by revising paragraph (c) introductory text to read as follows:

§ 36.631 Expense adjustment.

* * * * *

(c) Beginning January 1, 1998, for study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (c)(1) through (2). After January 1, 2000, the expense adjustment (additional interstate expense allocation) for non-rural telephone companies serving study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h) 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

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

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

4. Amend § 54.311 by revising paragraph (b) to read as follows:

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

* * * * *

(b) *Distribution of Interim Hold-Harmless Support Amounts.* Until the third quarter of 2000, interim hold-harmless support shall be distributed pursuant to part 36 and, if applicable, § 54.303 of this subpart. Beginning in the third quarter of 2000, 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) 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.

* * * * *

5. Amend § 54.313 by revising paragraph (c) to read as follows:

§ 54.313 State certification.

* * * * *

(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), 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 of this subpart. 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 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 of this subpart for the first and third quarters of 2000 in the third quarter of 2000, and support for the second and fourth quarters of 2000 in the fourth quarter of 2000. Such support shall be net of any support provided pursuant to § 54.311 of this subpart for the first or second quarters of 2000.

(ii) *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 of this subpart for the fourth quarter of 2000 in the fourth quarter of 2000.

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

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73****[CS Docket No. 98–201; FCC 99–278]****Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: This document revises the rule applicable to the antenna and equipment testing procedure of the collection of field strength data to determine television broadcast signal intensity at individual locations. The action was taken in response to petitions filed by DIRECTV and EchoStar in connection with the Satellite Home Viewer Act. This action is intended to allow for flexibility in testing and reduced cost to the public.

DATES: Effective December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Jay Heimbach at (202) 418–7200 or via Internet at jheimbac@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration, FCC 99–278, CS Docket No. 98–201, adopted October 5, 1999 and released October 7, 1999. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service ("ITS"), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at www.fcc.gov/csb. For copies in alternative formats, such as Braille, audio cassette or large print, please contact Sheila Ray at ITS.

Paperwork Reduction Act: The requirements adopted in this Order on Reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose no new or modified information collection requirements on the public.

Synopsis of Report and Order**Introductory Background**

1. In this proceeding, we address an issue involving petitions filed by two satellite carriers, DIRECTV and EchoStar, for reconsideration of the Commission's February 1, 1999 *Report and Order* concerning the 1988 Satellite Home Viewer Act ("SHVA") (47 CFR 73). That Order addressed an issue

involving the television broadcast industry, the direct-to-home satellite industry, and consumers who subscribe to satellite services for their broadcast network television programming.

2. Broadly stated, the issue is whether and where home satellite carriers may retransmit television broadcast network signals under the SHVA. Federal copyright law, which the SHVA is a part of, contains a copyright compulsory license authorizing the carriage of certain network broadcast signals by home satellite carriers. (17 U.S.C. 119(a)(2)(A)) The compulsory license is limited, however, because it does not permit satellite carriers to retransmit a particular network's signal to a subscriber unless the subscriber is "unserved" by the local affiliate of the network. (17 U.S.C. 119(a)(2)(B)) "Unserved" is defined in the SHVA as a household that cannot receive an adequate television signal (defined as a signal of "Grade B" intensity) using a conventional outdoor rooftop antenna. The Grade B values (which represent the required field strength in dB above one micro-volt per meter) are defined for each over-the-air television channel in the Commission's rules. (47 CFR 683) There are also Grade A and "city grade" field strength values, which represent stronger signals.

(In dBu's)

	Grade B	Grade A	City grade
Channels 2–6 ...	47	68	74
Channels 7–13	56	71	77
Channels 14–69	64	74	80

Several judicial proceedings involving the SHVA have resulted in findings that some satellite carriers have violated that statute and have highlighted the significant disputes between broadcast networks and satellite carriers over which consumers are eligible to receive satellite-delivered network programming.

3. The *SHVA Report and Order* sought to help the consumers caught in these disputes by refining two tools to more accurately determine whether a household is truly unserved. The first tool is an on-site (or at-home) signal measurement test to determine the strength of a television signal at a consumer's household. The second tool is a computer-generated prediction model that might obviate the need for large numbers of on-site tests and that could be used by consumers when first signing up for satellite service (at the