

restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;

(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;

(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and

(5) Whether the violation was knowing and wilful.

(c) Financial assistance provided to a recipient may also be suspended by the Corporation pursuant to a recommendation by the Office of Inspector General when the recipient has failed to have an acceptable audit in accordance with the guidance promulgated by the Corporation's Office of Inspector General.

§ 1623.4 Suspension procedures.

(a) When the Corporation has made a proposed determination, based on the grounds set out in § 1623.3, that financial assistance to a recipient should be suspended, the Corporation shall serve a written proposed determination on the recipient. The proposed determination shall:

(1) State the grounds and effective date for the proposed suspension;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the suspension;

(3) Specify what, if any, corrective action the recipient can take to avoid or end the suspension;

(4) Advise the recipient that it may request, within 5 days of receipt of the proposed determination, an informal meeting with the Corporation at which it may attempt to show that the proposed suspension should not be imposed; and

(5) Advise the recipient that, within 10 days of its receipt of the proposed determination and without regard to whether it requests an informal meeting, it may submit written materials in opposition to the proposed suspension.

(b) If the recipient requests an informal meeting with the Corporation, the Corporation shall designate the time and place for the meeting. The meeting shall occur within 5 days after the recipient's request is received.

(c) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at an informal meeting. If, after considering such materials, the Corporation determines that the recipient has failed to show that the

suspension should not become effective, the Corporation may issue a written final determination to suspend financial assistance to the recipient in whole or in part and under such terms and conditions the Corporation deems appropriate and necessary.

(d) The final determination shall be promptly transmitted to the recipient in a manner that verifies receipt of the determination by the recipient, and the suspension shall become effective when the final determination is received by the recipient or on such later date as is specified therein.

(e) The Corporation may at any time rescind or modify the terms of the final determination to suspend and, on written notice to the recipient, may reinstate the suspension without further proceedings under this part. Except as provided in paragraph (f) of this section, the total time of a suspension shall not exceed 30 days, unless the Corporation and the recipient agree to a continuation of the suspension for up to a total of 60 days without further proceedings under this part.

(f) When the suspension is based on the grounds in § 1623.3(c), a recipient's funds may be suspended until an acceptable audit is completed.

§ 1623.5 Time extensions and waiver.

(a) Except for the time limits in § 1623.4(e), any period of time provided in this part may be extended by the Corporation for good cause. Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 30 days of the service of the proposed determination.

(b) Any other provision of this part may be waived or modified by agreement of the recipient and the Corporation for good cause.

(c) Failure by the Corporation to meet a time requirement of this part shall not preclude the Corporation from suspending a recipient's grant or contract with the Corporation.

§ 1623.6 Interim funding.

(a) Pending the completion of suspension proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) Funds withheld pursuant to a suspension shall be returned to the recipient at the end of the suspension period.

Dated November 18, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98-31252 Filed 11-20-98; 8:45 am]

BILLING CODE 7050-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 96-45; FCC 98-160]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission refers to the Joint Board the issues on which referral was sought, and requests that the Joint Board issue a Recommended Decision on the issues by November 23, 1998. The Commission will then issue an order on the issues addressed in the Joint Board recommended decision in time to implement the revised mechanism for non-rural carriers by July 1, 1999.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT:

Charles Keller, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on July 17, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC, 20554. This document is also available from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036.

I. Introduction

1. Section 254 of the Communications Act codified the Commission's long-standing commitment to ensuring the preservation and advancement of universal service in rural, high cost, and insular areas. As section 254 required, the Commission convened a Federal-State Joint Board on Universal Service and, in light of the Joint Board's recommendations, the Commission on May 8, 1997, released the *Universal Service Order*, 62 FR 32862 (June 17, 1997), which, among other things, identified the services included within the definition of universal service and

established a specific timetable for implementation of revised universal service support programs. The Commission determined that carriers should receive support for serving rural and high cost areas based on the forward-looking cost of providing the supported services. Non-rural carriers would begin to receive high cost support based on forward-looking costs on January 1, 1999, while rural carriers would continue to receive high cost support based on existing support levels pending further review by the Commission, the Joint Board, and a Joint Board-appointed Rural Task Force, but at least until January 1, 2001.

2. The Commission determined that non-rural carriers' high cost support should be determined by computing the forward-looking cost of providing the supported services and subtracting from it a revenue benchmark amount, and that the share of support provided by federal mechanisms initially should be set at 25 percent. The Commission acknowledged that this share of support was based on the need to avoid double-recovery by carriers pending reform of state rates and support mechanisms, and stated that the federal share of support would be subject to review in light of state proceedings, the development of competition, and other relevant factors. The Commission's determination relating to the federal share of support generated several petitions for reconsideration and significant comment. Recently, the Commission committed to completing a proceeding reconsidering the federal share of support before revised support mechanisms are implemented for non-rural carriers.

3. On March 11, 1998, the state members of the Joint Board filed a request that certain issues related to the determination of high cost support, including issues regarding the share of federal high cost support, be referred to the Joint Board. Shortly after an en banc hearing on these issues convened by the Commission with the participation of the state Joint Board commissioners, the state members filed a letter requesting referral of two additional issues.

4. In this Order, the Commission refers to the Joint Board the issues on which referral was sought, and requests that the Joint Board issue a Recommended Decision on these issues by November 23, 1998. The Commission will then issue an order on the issues addressed in the Joint Board recommended decision in time to implement the revised mechanism for non-rural carriers by July 1, 1999.

II. Discussion

5. The state Joint Board members' referral request, as supplemented by their June 18 letter, requested referral of six issues: (1) Whether the FCC should take responsibility only for 25% of the high cost subsidy calculated by the new soon-to-be-adopted federal funding model and leave the remaining 75% for States to support; (2) Whether to apply federal universal service funds to reduce the cost of interstate access charges; (3) An appropriate method for formulating and distributing high cost funds among the States; (4) Whether and to what extent the FCC should have a role in making intrastate support systems explicit, and, as part and parcel of any such examination, a referral of the section 254(k) issue concerning recovery of joint and common costs; (5) The revenue base upon which the FCC should assess and recover providers' contributions for universal service; and (6) Whether, to what extent, and in what manner providers should recover contributions to universal service through their rates.

6. Although we recognize that the Joint Board has considered and given recommendations on many of these issues previously and has been consulted on an ongoing basis regarding matters in this docket, we find that further Joint Board input will be beneficial as we move forward on implementing universal service and high cost support. We find that further coordination between state and federal regulators on these issues will enhance the development of universal service and competition policy. We also find that a recommendation from the Joint Board on these issues will assist us in our review of the pending petitions for reconsideration on these issues. In consultation with the state members of the Joint Board, we have clarified, expanded, and reorganized the issues to be referred. Accordingly, we refer to the Joint Board the following issues:

(1) An appropriate methodology for determining support amounts, including a method for distributing support among the states and, if applicable, the share of total support to be provided by federal mechanisms. If the Commission were to maintain the current 25/75 division as a baseline, the Commission also requests the Joint Board's recommendation on the circumstances under which a state or carrier would qualify to receive more than 25 percent from federal support mechanisms.

(2) The extent to which federal universal service support should be applied to the intrastate jurisdiction. In its recommendation on this issue, the

Commission requests the Joint Board's recommendation on the following topics:

(a) To the extent that federal universal service reform removes subsidies that are currently implicit in interstate access charges, whether interstate access charges should be reduced concomitantly to reflect this transition from implicit to explicit support, and whether other approaches would be consistent with the statutory goal of making federal universal service support explicit. The Commission also requests a recommendation on how it can avoid "windfalls" to carriers if federal funds are applied to the intrastate jurisdiction before states reform intrastate rate structures and support mechanisms.

(b) Whether and to what extent federal universal service policy should support state efforts to make intrastate support mechanisms explicit. The Commission recognizes that section 254(k) envisions separate state and federal measures related to the recovery of joint and common costs, but nevertheless welcomes the Joint Board's input on how section 254(k) may relate to the Commission's role in making intrastate support systems explicit.

(c) The relationship between the jurisdiction to which funds are applied and the appropriate revenue base upon which the Commission should assess and recover providers' universal service contributions and, if support for federal mechanisms continues to be collected solely in the interstate jurisdiction, whether the application of federal support to costs incurred in the intrastate jurisdiction would create or further implicit subsidies, barriers to entry, a lack of competitive neutrality, or other undesirable economic consequences.

(3) To what extent, and in what manner, is it reasonable for providers to recover universal service contributions through rates, surcharges, or other means.

7. We request that the Joint Board provide a recommended decision on these issues by November 23, 1998. We will then consider the Joint Board's recommendations and issue an order specifying the methodology for determining high cost support for non-rural carriers so that the new mechanism can be implemented by July 1, 1999.

8. In order to allow sufficient time for the Joint Board's deliberations and for the Commission to receive public comment on the Joint Board's recommendations, we hereby extend the implementation date for the revised high cost support mechanism for non-

rural carriers specified in the *Universal Service Order* by six months from January 1, 1999, to July 1, 1999. We find that the potential benefits of a referral justify this limited extension of the implementation timeline specified in the *Universal Service Order*. During the extension period, non-rural carriers (as well as rural carriers) will continue to receive support flows based on historical support levels, which have been sufficient to produce rates that the Joint Board has previously characterized as generally affordable. No convincing evidence has been presented to the Commission to show that circumstances, such as the development of local exchange competition, will significantly affect support flows before the revised implementation date.

9. In order to ensure that existing support flows continue until the revised implementation date, the Commission hereby amends § 36.601(c) of the Commission's rules to specify that non-rural carriers (as well as rural carriers) may continue to receive the expense adjustment for high cost loops specified in Subpart F of Part 36 of the Commission's Rules (the existing high cost loop fund) until July 1, 1999.

10. In light of this change to the implementation timeline for high cost support for non-rural carriers, we believe that additional time may be necessary to complete our review of support mechanisms for rural carriers described in the *Universal Service Order*. In the *Universal Service Order*, the Commission stated that it intended to release a further notice of proposed rulemaking on forward-looking cost methodologies for rural carriers in October 1998. This projected date was premised on the assumption that the Commission's proceedings related to non-rural carriers would have been essentially completed by that time. Given the amended date for implementing revised support mechanisms for non-rural carriers, we hereby clarify that we do not expect to issue a further notice of proposed rulemaking related to high cost support for rural carriers until a later date, to be determined by the Commission once further proceedings have been conducted by the Joint Board and its Rural Task Force. Rural carriers will continue to receive support based on historical support flows until the Commission adopts a forward-looking cost mechanism for rural carriers, which would become effective no earlier than January 1, 2001.

III. Procedural Matters and Ordering Clauses

A. Supplemental Final Regulatory Flexibility Analysis

11. This Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order*, only to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA. As required by section 603 RFA, 5 USC section 603, the FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Notice of Proposed Rulemaking and Order Establishing the Joint Board (NPRM), 61 FR 63778 (December 2, 1996), and an IRFA, prepared in connection with the Recommended Decision, which sought written public comment on the proposals in the NPRM and the Recommended Decision. The actions taken in this Order and Order on Reconsideration do not change the analysis included in the FRFA in the *Universal Service Order* because neither the referral of issues to the Joint Board nor the extension of the timetable for implementing a revised high cost support mechanism for non-rural carriers will affect reporting, recordkeeping, or other compliance requirements. Further, the actions taken in this Order and Order on Reconsideration only affect telecommunications carriers that are so large as not to meet the definition of a rural telephone company by extending the date when they will begin to receive high cost support based on the forward-looking cost of providing the supported services.

B. Ordering Clauses

12. Accordingly, it is ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that this Order and Order on Reconsideration is adopted.

13. It is further ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that the issues specified herein are referred to the Federal-State Joint Board on Universal Service for a recommendation to be received by the Commission no later than November 23, 1998.

14. It is further ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that section 36.601(c) of the Commission's rules, 47 CFR § 36.601(c), is hereby amended as noted in Appendix A. This rule change shall be effective December 23, 1998.

15. It is further ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that the timetable established in the *Universal Service Order* for implementation of revised high cost support mechanisms for non-rural carriers is extended such that revised mechanisms for non-rural carriers will take effect July 1, 1999.

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

List of Subjects in 47 CFR Part 36

Reporting and recordkeeping requirements and Telephone.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

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

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

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

Authority: 47 USC Secs. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410.

§ 36.601 General.

2. In § 36.601 remove "January 1, 1999" where ever it occurs and replace it with "July 1, 1999".

[FR Doc. 98-31208 Filed 11-20-98; 8:45 am]

BILLING CODE 6712-01-P