Act of 1995, as amended (41 Stat. 1063; 16 U.S.C 791a); or any project or construction activity that would affect free-flowing characteristics, as that term is defined in the Act, of a designated Wild and Scenic River or congressionally authorized Study River. Any project or construction located within the bed or banks of a designated Wild and Scenic River or congressionally authorized Study River, or located below, above, or on any stream tributary thereto is a water resources project. Examples of water resources projects include, but are not limited to, fisheries habitat and watershed restoration/enhancement projects: water diversion projects; transmission lines; bridge and other roadway construction/reconstruction projects; dams; water conduits; bank stabilization projects; channelization projects; powerhouses; levee construction; reservoirs; recreation facilities, such as boat ramps or fishing piers; or dredge and fill activity that requires a Federal permit, such as from the U.S. Army Corps of Engineers as required by Section 404 of the Clean Water Act (33 U.S.C. 1344).

Wild and Scenic River means a river designated as a component of the National Wild and Scenic Rivers System pursuant to section 3(a) and 2(a)(ii) of the Act.

§ 39.3 What procedures must a Federal department or agency follow to receive consideration from the applicable Wild and Scenic River administering agency before providing Federal assistance to, or authorization of, a water resources project?

(a) *Notice.* (1) As soon as practicable, but not less than 60 days before the date of the proposed Federal assistance, the Federal agency must provide a written notice of the agency's intent to construct, authorize or provide Federal assistance to a water resources project located on or affecting any portion of a DOI administered Wild and Scenic River or congressionally authorized Study River, or located below, above, or on any stream tributary thereto.

(2) Notice must be sent to the designated official of the applicable Wild and Scenic River administering agency, or his or her designee, as follows:

(i) BLM administered rivers: State Director, BLM, or his/her designee; or

(ii) NPS administered rivers: Director, NPS or his/her designee; or

(iii) FWS administered rivers: Director, FWS or his/her designee.

(b) *Contents of Notice.* The Federal agency must include the following information in the notice to facilitate the Section 7 determination of effects:

(1) Name and location of the affected designated River or Study River;

(2) Location of the project or construction;

(3) Nature of the permit, assistance, or other authorization proposed to be issued;

(4) Description of the proposed activity or construction; and

(5) Any relevant information, such as plans, maps, environmental studies, assessments, or environmental impact statements, alternatives, and mitigating measures.

§ 39.4 Under what conditions will the applicable Wild and Scenic River administering agency consent to Federal assistance to, or authorization of, a water resources project?

(a) The applicable Wild and Scenic River administering agency will consent to Federal assistance to, or authorization of, a water resources project if it determines based on the applicable standard below:

(1) The water resource project will not have a direct and adverse effect on the values for which a Wild and Scenic River was designated or Study River authorized by Congress, when any portion of the project or construction is within the boundaries of such river;

(2) The effects of the water resources project will neither invade nor unreasonably diminish the scenic, recreational, and fish and wildlife values of a designated Wild and Scenic River, when any portion of the project or construction is located below, above, or on any stream tributary thereto.

(3) The effects of the water resources project will neither invade not diminish the scenic, recreational, and fish and wildlife values of a congressionally authorized Study River when the project or construction is located below, above, or on any stream tributary thereto during the study period.

(b) If the project or construction would impermissibly affect wild and scenic river values, as described above, the designated official of the applicable Wild and Scenic River administering agency will advise the assisting or authorizing agencies the water resources project may not proceed as proposed. The applicable Wild and Scenic River administering agency may recommend measures to eliminate adverse effects, and the assisting or authorizing agencies may submit revised plans for consideration.

§ 39.5 What is the estimated time that the applicable Wild and Scenic River administering agency will take to review a proposal to provide Federal assistance to, or authorization of, a water resources project?

The designated official of applicable Wild and Scenic River administering agency, or designee, will attempt to make a determination for the proposed water resources project within 60 calendar days of receiving a Federal agency's notice. However, the designated official is authorized to make the determination sooner or later than 60 days depending on the simplicity or complexity of the project or construction being analyzed. Further, the designated official, to the extent possible, will expedite consideration of a notice for a project or construction needed to address any emergency.

Subpart B—[Reserved]

PART 8350—[REMOVED]

2. Remove 43 CFR part 8350.

[FR Doc. 98–32581 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–55–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; FCC 98J–7]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission

ACTION: Proposed rule; recommended decision.

SUMMARY: On November 24, 1998, the Federal-State Joint Board adopted a Second Recommended Decision regarding universal service. In this decision, the Joint Board made numerous recommendations on universal service issues. The Joint Board recommends a federal high cost support mechanism for non-rural carriers that enables rates to remain affordable; that the Commission replace the 25/75 jurisdictional division of responsibility for high cost support; that the Commission compute federal high cost support for non-rural carriers through a two-step process; and that the mechanisms outlined be reviewed no later than three years from July 1, 1999. The Commission seeks comment on the Second Recommended Decision.

DATES: Comments should be filed on or before December 23, 1998 and Reply

Comments on or before January 13, 1999.

ADDRESSES: All filings should reference: Comments on Joint Board *Second Recommended Decision*, CC Docket No. 96–45, and should include DA 98–2410. Interested parties must file an original and six copies of their comments with the Office of Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW–A325, Washington, D.C. 20554. Parties should send one copy of their comments to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036. Copies of documents filed with the Commission, including the *Second Recommended Decision*, may be obtained from the International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. Documents are also available for review and copying at the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554, from 9:00 a.m. to 4:30 p.m.

Parties may also file comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be submitted. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the lead docket number for this proceeding, which is CC Docket No. 96–45. Parties not submitting their comments via the Internet are also asked to submit their comments on diskette. Parties submitting diskettes should submit them to Sheryl Todd, Common Carrier Bureau, Federal Communications Commission, 2100 M. St, N.W., 8th Floor, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding (including the lead docket number in this case, Docket No. 96–45, type of pleading—comment or reply comment), date of submission, and the name of the electronic file on the diskette. Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, parties must send copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Chuck Keller, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400, TTY (202) 418–0484, or via e-mail: <ckeller@fcc.gov>.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on November 24, 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, N.W., Washington, D.C. 20554.

Summary of Second Recommended Decision

I. Introduction

1. The Telecommunications Act of 1996 (''1996 Act'') explicitly recognized the need for federal and state support to ''preserve and advance universal service.'' In the 1996 Act, legislators recognized that existing support mechanisms could be threatened as effective competition materializes. Congress also made clear in the 1996 Act that federal and state regulators together must ensure that universal service is preserved and advanced as we move from a monopoly to a competitive market. Although never quantified or targeted in traditional rate designs, these mechanisms have included support flowing from urban to rural consumers implicit in rate averaging, and from interstate and intrastate access charges.

2. The Act requires that rates be ''just, reasonable and affordable,'' and that rates in rural, insular and high cost areas be ''reasonably comparable'' to rates charged for similar services in urban areas. The Act also requires ''specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.'' Goals of reforming universal service include: (1) revising support mechanisms that do not currently meet new statutory mandates, such as the need for nationwide reasonably comparable rates; (2) ensuring that support mechanisms are not eroded as local competition develops; and (3) establishing universal service support mechanisms that are part of a new regulatory structure consistent with Congress's pro-competitive goals.

3. The Joint Board and the Federal Communications Commission (''Commission'') determined previously that rates generally are affordable. While keeping in mind the need to ensure continued affordability, we focus to a greater degree in this *Second Recommended Decision* on the issue of reasonable comparability, and how to ensure the sufficiency of federal support to assure both of those important public interest goals. As effective competition develops for high-volume, urban customers, one consequence may be erosion of the implicit support system that protects consumers in rural, insular and high cost areas from unaffordable rates. The Joint Board recommends a federal high cost support mechanism for non-rural carriers that enables rates to remain affordable and reasonably comparable, even as competition develops, but that is no larger than necessary to satisfy that statutory mandate. The Joint Board believes that sizing the fund correctly is essential to ensuring that all consumers across the country benefit from universal service. The transition to a competitive environment requires us to be mindful of two competing goals: (1) supporting high cost areas so that consumers there have affordable and reasonably comparable rates; and (2) maintaining a support system that does not, by its sheer size, over-burden consumers across the nation.

4. As an initial matter, we note and support the Commission's ''hold harmless'' commitment not to reduce the current levels of explicit high cost support to states. In this *Second Recommended Decision*, consistent with that commitment, we outline an initial methodology for directing sufficient federal support to non-rural carriers to offset high intrastate costs in states with insufficient internal resources to ensure affordable and reasonably comparable rates. We recognize that further changes may be necessary as competition develops to change certain amounts of current implicit support into explicit support. We recommend that the Commission replace the 25/75 jurisdictional division of responsibility for high cost universal service support, adopted in the *Universal Service Order*, 62 FR 32862 (June 17, 1997), with the methodology for non-rural carriers outlined herein. Under this approach, the federal mechanism should instead provide the necessary support set by the methodology that we outline today.

5. We recommend that the Commission compute federal high cost support for non-rural carriers through a two-step process. First, the Commission should develop a total support amount necessary to reflect those areas considered to have high costs relative to other areas. Second, for areas that have high costs relative to other areas, the Commission should consider, in a consistent manner across all states, any particular state's ability to support high cost areas within the state. Federal support should be provided to the extent that the state would be unable to support its high cost areas through its own reasonable efforts. We also make

recommendations about the information that consumers should receive from carriers in connection with the recovery of universal service contributions. We recommend as well that the mechanisms outlined here be reviewed no later than three years from July 1, 1999. While we recommend a shared federal-state responsibility, we also conclude that, consistent with the statute, no state can or should be required by the Commission to establish an intrastate universal service fund.

6. The Act acknowledges and maintains the complementary roles that state and federal authorities have played in preserving and advancing universal service. Historically, both state and federal regulators have exercised their jurisdictional authority to ensure the availability of universal service. The ongoing cooperation throughout this proceeding between the federal and state staff and members of the Joint Board is a further example of the vitality of the federal-state partnership for ensuring universal service, and this referral proceeding represents the latest chapter in that cooperation. We look forward to continued collaboration with the Commission as universal service reform proceeds. In addition, we note that this proceeding involves the balancing of many difficult, competing interests. In resolving these issues in light of our guidance, therefore, the Commission has the difficult task of selecting a national solution that balances these competing interests.

7. This *Second Recommended Decision* is designed to take into account this dual federal and state responsibility in a manner that effectuates the principles and requirements of § 254. The federal mechanism should provide support in a manner that is designed to ensure that state universal service needs are fully met, consistent with the states' role with respect to universal service. We believe that this *Second Recommended Decision* establishes a framework for accomplishing that difficult mission.

II. The Purpose of Support

8. In mandating the reform of universal service support mechanisms, Congress clearly envisioned that the reform process would be conducted as a joint federal and state effort. The creation of this Joint Board is perhaps the plainest expression of this vision. Other provisions of § 254 reflect this shared responsibility. A primary aspect of the Joint Board's task in reforming universal service mechanisms is to ensure that consumers in high cost areas have access to telecommunications and information services that are affordable and reasonably comparable to those in urban areas, at rates reasonably comparable to those in urban areas. We believe that the demarcation of the respective responsibilities of state and federal regulators can be found in the mandate to ensure reasonably comparable rates. Regulators in the two jurisdictions have different tools available to them to meet universal service challenges. Issues of affordability and reasonable comparability can be dealt with through a combination of approaches, including: (1) through the rate design issues of a single local carrier, (2) through mechanisms that affect the rates of all carriers within a state, and (3) through mechanisms that affect rates across state lines. State commissions and the Commission each can use the first two tools with respect to rates in their respective jurisdictions. Only the Commission is able to employ the last. Our recommendations reflect both the availability of, and the relationship among, these approaches.

9. While the Act does not define reasonable comparability, we interpret that term to refer to a fair range of urban and rural rates both within a state's borders, and among states nationwide. We note that existing federal high cost loop support provides additional federal support to areas that have particularly high costs, and our recommendations herein continue that policy. It is proper to begin an inquiry by focusing on universal service issues closest to the consumer. Present rates are sufficient to cover the costs of serving most consumers across the nation. The costs of serving other consumers, however, are in excess of rates. To address these concerns, support mechanisms have been set up to offset these higher costs.

The Joint Board acknowledges that, absent reform to these mechanisms, the forces of competition could erode certain of these support mechanisms and potentially have a negative impact on the provision of universal service.

10. The first step in dealing with this potential impact concerns the rates currently being charged to consumers, and the ability of the state to respond to competitive entry through its own ratemaking methods. This responsibility falls within the state's jurisdiction. To the extent the Commission determines that the totality of reasonable state efforts would not be sufficient to address universal service funding without violating the principles of reasonable comparability and affordability, the federal universal support mechanism should complete the effort. With this framework in mind, then, the Joint Board will set forth the method it recommends that the Commission use to size, calculate, and distribute federal support among the nation's non-rural carriers.

11. In formulating this *Second Recommended Decision*, our goal has been to ensure that rates in rural and high cost areas served by non-rural carriers are affordable and reasonably comparable through specific, predictable, and sufficient support mechanisms that are, to the extent possible, explicit. To do this, commenters proposed three possible ways in which universal service support could be used: (1) To provide support for high cost areas to enable the comparability of rates; (2) to make existing interstate support explicit; and (3) to make existing intrastate support explicit. In this section, we will address each of these three possible uses of support.

A. Enabling ''Reasonably Comparable'' Rates

12. The Act requires that consumers have access to rates and services ''in rural, insular and high cost areas'' that are ''reasonably comparable'' to rates and services in urban areas. While the Act does not define reasonable comparability, we interpret that term to refer to a fair range of urban/rural rates both within a state's borders, and among states nationwide. We note that existing federal high cost loop support provides additional federal support to areas that have particularly high costs, and we propose to continue that policy as we move to a forward-looking cost methodology for determining high cost support.

13. We recommend that federal support be available to non-rural carriers serving consumers in areas with costs significantly above the national average and whose average costs throughout its study area significantly exceed the national average. This support should be available where, considered in a consistent manner across all states, a state would find it particularly difficult to achieve reasonably comparable rates, absent such federal support. To the extent that additional federal high cost support to non-rural carriers, beyond the amount currently provided, is necessary to help meet the statutory goal of reasonably comparable rates, that additional federal support should be used to help ensure that intrastate rates are able to satisfy this statutory goal. The state commission has the authority to indicate which intrastate rates shall be affected to help ensure that the carrier does not double recover. Because rate setting methods and goals may vary

across jurisdictions, we recommend, for purposes of determining federal high cost support, that the Commission use the *cost* of providing all supported services, rather than local rates. These costs are used in the methodology we describe below to calculate the level of federal support that will be available to help achieve reasonable comparability in rates across all states.

B. Making Interstate Support Explicit

14. In the *Universal Service Order* and the *Access Reform Order,* the Commission made several changes to its access charge rules, with the goal of reforming the mechanisms for recovery of subscriber loop costs to move from implicit to explicit federal universal service support mechanisms. In summary, the Commission decided that: (1) Long term support (LTS) should be removed from interstate access charges and made part of explicit federal support mechanisms; and (2) incumbent LECs should use any universal service support from the new support mechanisms to reduce support implicit in access charges, pending further reform.

15. The Commission concluded that universal service support implicit in rates cannot be sustained if competition emerges in the marketplace, and that removing implicit universal service support from interstate rates and replacing such support either with improved revenue recovery mechanisms or with explicit support should remain a goal of federal telecommunications reform. The Commission also found that, unless implicit support is identified and eventually stripped from interstate access charges, those access charges could remain artificially high.

16. The Commission's efforts to remove implicit universal service support from interstate access charges will not affect intrastate rates directly. This issue is intertwined with the Commission's ongoing access reform proceeding, and the Commission should continue to synchronize the access reform and universal service proceedings with any action it takes to remove implicit universal service support from interstate access charges.

17. If the Commission determines that there is implicit universal service high cost support currently in interstate access rates, it is within the Commission's jurisdiction to determine what that implicit support is and what action the Commission should take to make that support explicit. Although we make no recommendation regarding whether the Commission should eliminate implicit support from interstate access rates, we recognize that it has the authority to do so. We do recommend, however, that, to the extent that the Commission determines that implicit support needs to be removed from interstate access charges and replaced with explicit universal service support, interstate access rates, such as the carrier common line charge (CCLC), presubscribed interexchange carrier charge (PICC), or subscriber line charge (SLC), be reduced dollar for dollar to reflect the corresponding explicit support. We further recommend that the Commission seek to ensure that any reductions in interstate access rates inure to the benefit of consumers. When considering such recommendations, the Commission should give due regard to the requirement that universal service shall bear no more than a reasonable share of joint and common costs. Moreover, the Commission should ensure that any efforts to replace implicit support in interstate access charges with explicit support do not jeopardize the reasonable comparability standard, or harm consumers generally, or any class of consumers in particular. Before taking any final action on removing this support from interstate access charges, the Commission should first consult with the Joint Board.

C. Making Intrastate Support Explicit

18. The Act requires that the Joint Board recommend changes to the Commission's rules that may be necessary to implement §§ 214(e) and 254, ''including the definition of the services that are supported by Federal universal service support mechanisms.'' Section 254(b)(5) provides that there should be ''specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.'' Thus, the Act envisions that both states and the federal government have authority and responsibility to ensure that universal service needs are met. The Act further allows the states in § 254(f) to create state universal service support mechanisms. The Act clearly envisions the role of the Joint Board to be that of advising the Commission on matters related to federal support mechanisms, and preserves the ability of each state to design intrastate support mechanisms, although these state support mechanisms may not be inconsistent with the federal rules or burden the federal support mechanism. In this *Second Recommended Decision,* we recommend a shared responsibility, but we also conclude, consistent with the statute, that the Commission may not mandate that a state establish an intrastate universal service fund.

19. Historically, intrastate rate design has helped promote universal service. While techniques such as rate averaging have served states well in the past, the onset of competition in local markets is likely to erode the ability of states to fund universal service through implicit support mechanisms. States possess the jurisdiction and responsibility to address these implicit support issues through appropriate rate design and other mechanisms within a state.

20. The same competitive forces that Congress anticipated would require making interstate universal service support explicit may militate for making intrastate universal service support explicit as well. The Act, however, did not mandate such an outcome. States should bear the responsibility for the design of intrastate funding mechanisms. The federal support mechanism should not be contingent upon, nor should it require, any particular action by the state.

III. Proposed Method for Ensuring Sufficient Support for Affordable and Reasonably Comparable Rates

A. Basing Federal High Cost Support on Forward-Looking Economic Costs

21. In the *Universal Service Order,* the Commission adopted the Joint Board's recommendation that the revised universal service support mechanism would determine non-rural carriers' high cost support based on forward-looking economic costs, instead of the incumbent carrier's book costs, of providing supported services in order to ''send the correct signals for entry, investment, and innovation in the long run.'' We continue to believe that federal high cost support should be based on forward-looking economic costs.

22. Without a complete forward-looking economic cost model, it is not possible for the Joint Board to make a final recommendation as to the most reasonable forward-looking methodology to be used in distributing federal high cost support to the states and/or carriers. We note, however, that the vast majority of proposals on the record in this proceeding would use a model to estimate the forward-looking cost of providing the supported services. No party has suggested that there is a method preferable to a model to determine support based on forward-looking costs. We recommend, therefore, that the Commission continue to work with the Joint Board to select the input values to complete a forward-looking cost model and to finalize the methodology for distributing federal high cost support. We do recommend a framework, discussed in more detail below, that relates federal support to

high average forward-looking costs and to states' ability to address their own universal service requirements.

23. Because the Commission's cost proxy model results are not complete, our recommendation on using a model to estimate forward-looking costs is a work in progress, and therefore tentative. We fully anticipate that the model results will furnish reasonable cost estimates for all regions of the country that can provide the basis for determining federal high cost support. Nevertheless, significant uncertainties need to be eliminated before a model can serve as the basis for federal support distributions. For example, a model must meet the openness criterion required of all model developers. At present the federal platform has been tested using geocoded customer location data that is treated as proprietary information by its supplier. We also understand that the Commission is seeking to identify alternative data sources at this time. We urge the Commission not to adopt those particular data as input values unless the Commission determines that such data are sufficiently open and available for testing and comment. Despite these uncertainties, we recommend that the states, the Commission, and the Joint Board continue their joint efforts to develop an accurate cost proxy model. In the event that the Commission has not defined all elements necessary to calculate support based on forward-looking costs in time for implementation by July 1, 1999, then the Joint Board recommends that the present method for determining support be continued for an interim period. In that event, we also recommend that the Commission make interim adjustments to the present rules to resolve any comparability issues in rural states primarily served by a large carrier, consistent with our general recommendation on comparability issues.

24. We emphasize, however, that, in recommending this framework for determining non-rural carriers' high cost support based on forward-looking cost, we do not intend for the Commission to create any precedent for any potential revisions to support mechanisms for rural carriers. The model platform that the Commission adopted in October was designed to estimate *non-rural carriers'* costs. Pursuant to the Joint Board's recommendation, the Commission has provided that the determination of the appropriate manner in which a model should be applied to rural carriers, if at all, will take into account the recommendation of this Joint Board, after the Joint Board receives a report from the Rural Task Force. The Joint Board intends to look closely at these issues to ensure that rural carriers' unique situations and challenges are addressed in the separate proceedings examining their high cost support mechanisms.

25. We further recommend that the Commission reconsider its decision to allow state cost studies to be used in place of the federal model for non-rural companies. We believe that it is more appropriate that the federal universal service support mechanisms be based upon a national yardstick for determining cost. Without such a national yardstick, it will be difficult to establish a consistent nationwide measurement of rate comparability. Although the Commission should fully evaluate any comments on this issue, we recommend that, absent a clear showing that basing federal support on a state cost study is necessary and appropriate to achieve statutory goals, the Commission base all federal support on a uniform methodology that derives from a single, national model. States may, of course, base any intrastate high cost support mechanisms on their own cost studies, rather than a federal model.

B. Size of Area Over Which Costs Are Averaged

26. In the *Universal Service Order,* the Commission adopted the Joint Board's recommendation that forward-looking economic costs be determined at the wire center level or below. While we acknowledge the value of a cost model that is capable of estimating costs at that level of granularity, we now recommend that federal support initially be determined by measuring costs at the study area scale, a scale considerably larger than the wire center. In general, a study area is an area served by a local exchange carrier in a single state. The existing high cost support program measures costs and distributes support at the study area level.

27. We recommend measuring costs at the study area level at this time because we believe that support calculated at this level will properly measure the support responsibility that ought to be borne by federal mechanisms given the current extent of local competition. We noted above that the primary purpose of federal support should be to ensure that rates remain affordable and reasonably comparable throughout the nation. By ensuring that cost disparities among study areas and among states are limited, we believe that federal support will be sufficient to maintain rate comparability and affordability.

28. We also recognize that, as competition develops within a study area, calculating costs using the aggregate characteristics of the study area may become less appropriate. Again, in light of the second goal of reforming universal service—ensuring that support mechanisms are not eroded as competition develops—we recommend that the Commission consider the possible impacts of competition on federal universal service support mechanisms.

29. We have considered the use of statewide average cost (as opposed to study area costs) to determine the need for universal service support. While we agree that the states can be expected to participate as full partners in preserving universal service, a statewide approach could require states to create mechanisms to transfer support among non-rural carriers. At present, however, some states may lack such a mechanism. Given the short time to implement the new mechanism, we find it prudent to average costs at the study area level.

C. State Responsibility for Reasonably Comparable Rates

30. In this section, we conclude that the law gives the Commission an important role in universal service, but that the federal role is not exclusive. The states also bear part of the shared responsibility for universal service. States are free under the Act to establish or refrain from establishing explicit universal service support mechanisms. As we noted above, furthermore, federal support may not be made contingent upon any actions taken, or not taken, by the states. Federal support should not rely on a state's actions with respect to universal service but depend only upon the total support amount generated by the methodology described herein for calculating the amount of federal support for each state. The Joint Board believes therefore, that the level of federal support should reflect, in a consistent manner, each state's ability to use its own resources to address its universal service needs, regardless of whether that or any other amount of support is explicitly provided by the state.

31. While there is no mandate that a state create such an explicit fund, the state should have in place ''specific, predictable and sufficient'' mechanisms to preserve and advance universal service. The federal support mechanism need not take into account the state's authority and ability actually to establish state universal service support mechanisms, since carriers may be required to recover more total support than the amount used exclusively for purposes of developing the federal fund. Such discretionary variations in support

at the state level are left intentionally independent of the standard determinations of federal support levels, precisely in order to allow states to set their own levels of corresponding affordability and funding requirements. In contrast, federal funding requirements should be those amounts necessary to establish a standard of reasonable comparability of rates across states. Any state is then able to supplement, as desired, any amount of federal funds it may receive under this standard.

32. While we recommend a shared responsibility, we also conclude that, consistent with the statute, no state can or should be required by the Commission to establish an intrastate universal service fund. Each state is uniquely qualified to determine, based upon its own costs, rates and other circumstances, when and if it needs an explicit universal service support mechanism.

33. Implicit support in state rates is a matter intimately related to each state's rate design. The success of these state efforts is demonstrated by the fact that rates today are generally affordable and subscribership is currently very high in most areas of the nation. This indicates a limited need for additional federal involvement. We believe it is consistent with the Act for the Commission to assume that the states will address issues regarding implicit intrastate support in a manner that is appropriate to local conditions. We also conclude that, under the Act, where states have the capacity today to accomplish this task, states are the most appropriate governmental level to address this issue.

34. Some states may face significant obstacles in maintaining reasonably comparable rates, and may find that solving this problem by state action alone is impossible or unreasonable in some instances. For this reason, we believe that additional federal support may be needed to ensure that rates are reasonably comparable, as required by § 254(b)(3).

D. Methodology for Federal Support of Reasonably Comparable Rates

35. We have considered numerous distribution options, including all those submitted by the parties. The methodology we propose incorporates elements from the various plans filed in this proceeding. Our methodology would average costs at a study area level. Our methodology incorporates a reasonable ''hold harmless'' component, and is grounded in the principle that additional federal high cost support should be targeted to areas with the greatest need. Our recommended methodology includes a cost-based benchmark. Finally, as advocated by a number of parties, our methodology takes into account each state's ability to support its universal service needs internally. The framework below addresses only the affordability and comparability goals of the Act. As indicated previously, we cannot at this time provide the details of a recommendation for a specific mechanism to distribute federal support to eligible carriers. We can, however, outline the basic elements that we believe should be considered in designing the distribution methodology.

36. We recommend that the distribution methodology contain two primary elements. First, study areas with average forward-looking per-line costs significantly in excess of the national average cost should be identified. Second, the state's ability to support its own universal service needs should be determined. Federal support should be provided only for costs that exceed both these thresholds.

37. In the first step of the process, identifying areas with high costs, we recommend that the Commission use the *cost* of providing supported services, rather than local rates, to evaluate rate comparability, because rate setting methods and goals may vary across jurisdictions. We recommend that federal support be available to non-rural carriers with average costs significantly above the national average. Specifically, we recommend that the Commission select a single national cost benchmark against which the forward-looking cost in a given study area would be compared to determine whether that study areas has costs that are significantly above the national average. We recommend that the Commission consider setting this national benchmark at a level somewhere between 115 and 150 percent of the national weighted average cost per line.

38. The second step in determining federal support should reflect that, for the reasons outlined above, federal support is only one portion of the shared federal-state responsibility established in § 254. Federal support should only be used to supplement a state's ability to address its own universal service needs. In order to accomplish this second step, it will be necessary to calculate a level of support that could equitably and reasonably be assumed to be provided by implicit or explicit state support. There are potentially several ways to estimate a state's ability to support its universal service needs. For example, the ratio of lines in a state with costs above a certain threshold could be determined, as a general indication of whether a state has a higher or lower percentage of high cost lines than other states. This ratio of high cost to low cost lines could then be factored into the support equation to reflect that states with a higher percentage of high cost lines will be less able to support their own universal service needs. Other approaches could set each state's presumed support responsibility at a given level, which might be expressed as a dollar value per line or as a percentage of intrastate revenue. The ratio of intrastate traffic volume to total traffic volume could also be used.

39. An example of how this system would work in practice would be an approach that calculated the state's ability to support its own universal service needs based on a percentage of intrastate revenues. Such a limit on a state's presumed responsibility, if adopted, could be between 3 and 6 percent of intrastate telecommunications revenues. Once the first step in the methodology has identified the amount by which costs in the study areas in the state exceed the cost benchmark, the percentage of intrastate revenues would be calculated that would be required to meet this high cost responsibility. If that amount exceeded the state revenue threshold, then the federal mechanism would provide support for the difference.

40. We urge the Commission to continue its deliberations with this Joint Board and to consult with Congress in order to specify further the proper parameters of these two variables as the study area costs are derived from the Commission's model and choice of inputs. It is our goal to recommend a plan that achieves the Act's goals of affordability and reasonable comparability without overburdening consumers across the nation.

IV. Size of the Federal Support Mechanism

41. We described above the general outlines of a method for calculating federal support to high cost areas. Finalization of that method will determine the overall size of federal support for reasonably comparable rates. So long as the fund is for the purposes established in the Act, the Commission has discretion in providing remedies that are designed to ''preserve and advance'' universal service. Nevertheless, for several reasons we conclude that the federal high cost support fund should be only as large as necessary, consistent with other requirements of the law. This will ensure that there is balance between consumers who directly receive the

benefits of universal service support and those consumers who must pay for the support through their rates.

42. Enabling reasonably comparable rates among states is a task that can likely be accomplished only with federal assistance. Federal support must be sufficient so that, when combined with a reasonable state effort, rates within service areas may be reasonably comparable both within and among states. Until we resolve several other pending policy decisions, as well as obtain more precise cost data, however, it is not possible to define, in dollars, the amount of support required by the comparability standard.

43. We do not believe, however, that current circumstances warrant a high cost support mechanism that results in a significantly larger federal support amount than exists today. We recognize that some states currently may not receive support sufficient to enable reasonably comparable rates, and thus we believe the support level may rise somewhat.

44. These principles can be implemented through a plan that, at least initially, calculates support on a study area basis and allocates a reasonable and equitable share of responsibility for support to state universal service efforts. The plan can enable reasonably comparable rates if the combination of state and federal support can keep the net cost differences (after receipt of universal service support) between high cost and low-cost areas within reasonable bounds. We recognize that competition may develop in unpredictable ways. As competition threatens rate comparability or affordability in high cost areas served by non-rural carriers, it may be necessary to re-evaluate the appropriate level of federal support. Incumbent LECs to date have not demonstrated that implicit support has eroded as a result of competition.

V. Hold Harmless

45. When a new federal support mechanism is implemented, some carriers could receive more or less support than in the past. If substantial reductions were to occur in a single year, some consumers could experience rate shock. Both significant, sudden increases in the fund size overall, and significant decreases in the support that goes to a particular carrier, could have a notable impact on consumers' rates.

46. Rural companies have been assured by the Commission that their support systems will not be altered until January 1, 2001, at the earliest, and in no event before the Joint Board has completed further deliberations on high cost support mechanisms for rural carriers, in light of the recommendations received from the Joint Board-appointed Rural Task Force. In addition, the Commission has stated to Congress that no state should receive less support than it currently receives. The Puerto Rico Telephone Company has asked, notwithstanding its non-rural status, to continue to receive support at present levels, until the transition to a forward-looking high cost support mechanism is implemented for rural companies.

47. We support the Commission's commitment to continue to hold states harmless, so that no non-rural carrier, including the Puerto Rico Telephone Company, will receive less federal high cost assistance than the amount it currently receives from explicit support mechanisms. We recommend, depending on the final amounts of support estimated on a forward-looking basis, that the Commission consider a gradual phase-in of any increase in federal universal service high cost support for non-rural carriers.

VI. Unserved Areas

48. The Arizona Corporation Commission (Arizona Commission) submitted a proposal to use a portion of federal support to address the problem of unserved areas and the inability of low-income residents to obtain telephone service because they cannot afford to pay the required line extension or construction charges. The Arizona Commission's proposal is not intended to be a comprehensive alternative to the high cost fund distribution model, but rather is intended to address a discrete concern related to low-income residents in remote areas.

49. The framework created in the Act was designed to accelerate deployment of services to all Americans, and the universal service program plays an important role in that framework. The issue raised by the Arizona Commission is of interest to the Joint Board, even though it was not among those specifically referred to the Joint Board for further recommendation. States have generally addressed the ''unserved household'' concern through intrastate proceedings that establish reasonable rates for line extension agreements and encourage carriers to minimize unserved regions of the state. We recognize that investments in line extensions have historically been an issue addressed by the states, and we believe they should continue to be dealt with by the states, to the extent that the states are able to do so. Unserved areas are not unique to Arizona; other states may also face this issue. Although historically a state issue, we recognize that there may be some circumstances which may warrant federal universal service support for line extensions to unserved areas. We recommend that the special needs of unserved areas be investigated and subject to a more comprehensive evaluation in a separate proceeding. The Commission should seek information on unserved areas throughout the nation and determine, in consultation with the Joint Board, whether such areas warrant any special federal universal service consideration.

VII. Mechanism for Distributing Support

A. Portability of Support

We recommend that the Commission continue with the policy established in the *Universal Service Order* of making high cost support available to all eligible telecommunications carriers, whether they be an incumbent LEC or a competitive carrier, including wireless carriers. We believe that portable support is consistent with the principle of competitive neutrality that we previously recommended and the Commission subsequently adopted in the *Universal Service Order.* We continue to support the use of competitive neutrality as a guiding principle of universal service reform and endorse the Commission's definition of this important principle in the *Universal Service Order.*

B. Use of Support

51. One issue raised in comments was whether the Commission should condition the receipt of federal high cost support to ensure that support is used in a manner consistent with § 254. We recommend that the Commission require carriers to certify that they will apply federal high cost universal service support in a manner consistent with § 254.

52. We recognize that some states may lack the authority or the desire to impose constraints or conditions on the use of federal high cost support. We do not recommend, therefore, that the Commission require that states provide any certification, or require any other state action, as a condition for carriers to receive high cost support. At the same time, parties may have a legitimate concern that federal support should be used by carriers to further the goals of § 254. We further recognize that, even if costs are calculated at the study area level, high cost support should be targeted to consumers living in the highest cost areas of the study area. We therefore recommend that the Commission permit, but not require,

states to certify that, in order to receive federal universal service high cost support, a carrier must use such funds in a manner consistent with § 254. For example, in order to provide efficient incentives for competitive entry, a state might require that federal support be targeted to those consumers living in the highest cost areas within a study area.

53. To the extent that the law permits, the Commission could reduce or eliminate federal high cost support if it finds that a carrier has not applied its federal universal service funds consistent with § 254, or if the state finds that the carrier has not adequately demonstrated that the federal support is being used in a manner consistent with § 254(e), which provides that carriers receiving universal service support ''shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' We also clarify that this decision is intended only to affect the amount that carriers receive from the federal universal service high cost support mechanism. We recommend that the Commission clarify procedures by which a party, including a state, may initiate action against a carrier that fails to apply federal universal service support in an appropriate manner.

54. We do not believe that conditioning support on a demonstration that funds are being used for the advancement of universal service places any restrictions on the determination of a carrier's status as an eligible telecommunications carrier. As the *Universal Service Order* notes, ''section 214(e)(2) does not permit the Commission or the states to adopt additional criteria for the designation as an eligible carrier.''

55. One proposal recommends that the Commission distribute universal service funding directly to state commissions rather than to carriers. We recognize that some state commissions may be able to ensure that high cost support is distributed to carriers and is used in a manner, consistent with federal rules, that best ensures that rates are just, reasonable, and affordable throughout that particular state. Nevertheless, we cannot recommend that the Commission adopt that mechanism, in light of the long-standing practice at the time that the 1996 Act became law of distributing federal universal service support to the carriers providing the supported services, and the absence of any affirmative evidence in the statute or legislative history that Congress intended such a fundamental shift to a state block grant distribution mechanism. In addition, distributing funding directly to state commissions is likely to create substantial administrative burdens for states currently lacking this ability, especially because there is very little time, prior to the July 1, 1999 implementation date, for the state to take the steps necessary to administer federal high cost support pursuant to the rules that Commission will be adopting in the spring.

VIII. Assessing Contributions from Carriers

56. In the *Universal Service Order,* the Commission determined that assessment of contributions for the interstate portion of the high cost and low-income support mechanisms shall be based solely on end-user interstate telecommunications revenues, and assessment of universal service support for eligible schools, libraries and rural health care providers shall be based on interstate and intrastate end-user telecommunications revenues. The Commission declined to assess both intrastate and interstate end-user revenues for the high cost and low-income support mechanisms because the states are currently reforming their own universal service programs, and it would have been premature to assess contributions on intrastate revenues before appropriate forward-looking mechanisms and revenue benchmarks are developed. The Commission also concluded that carriers shall be permitted to recover their contributions to universal service support mechanisms only through rates for interstate services.

57. Pending the decision of the Fifth Circuit, our recommendation on this issue is necessarily tentative. Continuing to assess contributions for high cost and low income support based solely on interstate revenues, as set forth in the *Universal Service Order,* could have certain benefits. Under this approach, state commissions would have the greatest flexibility to tap into their intrastate revenue bases to advance universal service at the state level. Assessing only interstate revenues for federal high cost support also has some significant disadvantages, however. For instance, many carriers that do not routinely have to separate intrastate and interstate revenues for regulatory or business purposes now must do so solely for federal universal service purposes. This creates additional burdens on these carriers, and may create incentives for carriers to misclassify revenues between jurisdictions based on different assessment rates. A jurisdictional assessment base also makes it difficult for carriers to allocate the revenues associated with packages, or bundles, of services that include both intrastate and interstate components. Finally, a non-jurisdictional assessment base would enable both the state and federal mechanisms to tap broader revenue bases, thereby lowering the assessment rates needed. Thus, if the Fifth Circuit determines that the Commission may properly assess all revenues for universal service contributions, the Commission may wish to consider using that assessment methodology for high cost support. If the Commission determines that it may assess universal service contributions based on all revenues, the Commission should find that states may do the same for their state universal service mechanisms. Alternatively, the Commission could consider assessing carriers high cost universal service contributions on a flat, per-line basis, which also addresses some of the difficulties of assessing only interstate revenues.

IX. Carrier Recovery of Universal Service Contributions from Consumers

58. In this section, we recommend that the Commission provide to telecommunications carriers that contribute to universal service strict guidance regarding the extent to which they recover their universal service contributions from consumers. We also recommend that the Commission provide such carriers with express instructions regarding the manner in which carriers may depict on bills charges used to recover universal service contributions. Specifically, we recommend that, to the extent permitted by law, the Commission prohibit carriers from depicting such charges as a ''tax'' or as mandated by the Commission or the federal government by terms or placement on the bill. We note that, in truly competitive markets, firms recover a wide variety of costs in a wide variety of ways with no itemized notification of similar increases or decreases to individual consumers.

1. Recovery of Universal Service Contributions from Consumers

59. We reiterate that the choice of whether to collect universal service assessments from end users via a line-item charge on their bills should remain with the carriers, and that carriers are free to tell consumers that the carrier is required to pay to support universal service. Specifically, we recommend, that the Commission give careful consideration to a rule that provides that, for carriers that choose to pass through a line item charge to consumers, the line item assessment be no greater than the carrier's universal

service assessment rate. This will help prevent consumers or classes of consumers from being charged excessively for a carrier's universal service contribution. Such a rule will help prevent consumers or classes of consumers from being charged excessively for a carrier's universal service contributions. Some carriers may attempt to exercise market power and recover through universal service charges in a non-competitive fashion more than they are contributing to universal service, believing that they can describe those charges as mandated by the Commission or federal action. We are also concerned that some carriers may be allocating a disproportionate share of universal service costs to certain classes of consumers. Such practices might contravene § 201(b) of the Act. As noted above, consumers may be less likely to engage in comparative shopping for a carrier if they are led to believe that certain charges are fixed by the Commission or federal government.

2. Characterization of Universal Service Charges to Consumers

60. We believe that a carrier's billing and collection practices for communications services are subject to regulation as common carrier services under Title II of the Act. We believe that inaccurately identifying or describing charges on bills that recover universal service contributions may violate § 201(b) of the Act. For instance, it is important for consumers to understand that universal service support has long been implicit in the rates for various intrastate and interstate telecommunications services. We therefore recommend that the Commission take decisive action to ensure that consumers are not misled as to the nature of charges on bills identified as recovering universal service contributions. Specifically, we recommend that the Commission consider prohibiting carriers from identifying as a ''tax'' or as mandated by the Commission or federal government any charges to consumers used to recover universal service contributions. Similarly, we recommend that the Commission consider prohibiting carriers from incorrectly describing as mandatory or federally-approved any universal service line items on bills. This restriction would include both written descriptions of the charges and any oral descriptions from consumer service representatives as well as placement on the bill. While interstate telecommunications providers are required to contribute to the universal service support mechanisms, they are not required to impose such charges on consumer bills.

61. Cognizant of the First Amendment implications in regulating the manner in which carriers may convey information on consumers' bills, we note that the Supreme Court has held that the government may require a commercial message to ''appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive.'' On the other hand, restrictions on speech that ban truthful, non-misleading commercial speech about a lawful product cannot withstand scrutiny under the First Amendment. We believe that, pursuant to these Supreme Court rulings, it would not violate the First Amendment to specifically prohibit carriers from including on their bills untruthful or misleading statements regarding the nature of line items used to recover universal service contributions. We urge that the Commission carefully review the record in its proceeding before reaching any conclusion on these issues.

62. We also recommend that the Commission continue to explore, through its Truth-In-Billing proceeding, the possibility of establishing standard nomenclature that carriers could use on their bills to consumers regarding universal service charges. Such standardized language would represent the Commission's view of language that is accurate and not misleading. Standard nomenclature could benefit consumers by having common language across carriers so that consumers can easily identify the charge. We urge that the Commission consider using ''Federal Carrier Universal Service Contribution'' as standard nomenclature describing any universal service line item on consumer bills. The line item should be accompanied by an explanation that the carrier has chosen to separate its universal service contribution from its other costs of business, and to display the contribution as a line item on the consumer's bill.

63. Finally, we note that many state regulatory agencies either have in place or are considering establishing requirements that will curtail the practice of some carriers of mischaracterizing universal service line items on bills. In addition, other federal agencies, such as the Federal Trade Commission, may have jurisdiction that overlaps or is concurrent with that of the Commission or state regulatory agencies. We therefore recommend that the Commission work closely with these agencies to ensure that consumers are provided with complete and accurate information regarding the nature of universal service line items.

X. Periodic Review

64. The Act contemplates that universal service is an ''evolving'' level of service. The Act further contemplates that the Joint Board may periodically make recommendations to the Commission regarding modifications in the definition of services supported by the federal universal service support mechanism. Moreover, we recognize that the telecommunications industry is rapidly changing and that both competition and technological changes will affect universal service needs in rural, insular, and high cost areas of the nation. We therefore recommend that the Commission continue to consult with this Joint Board on matters addressed in this *Second Recommended Decision*. We also recommend that the Joint Board and the Commission broadly reexamine its high cost universal service mechanism no later than three years from July 1, 1999.

XI. Recommending Clauses

65. For the reasons discussed herein, this Federal-State Joint Board, pursuant to § 254(a)(1) and § 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 254(a)(1) and 410(c), recommends that the Federal Communications Commission adopt the proposals described above relating to high cost universal service support mechanisms for non-rural carriers.

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.

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1526 and 1552

[FRL–6196–6]

Acquisition Regulation: Contractor Proposal Evaluations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule with request for comments.