

rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

24. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 1, 1996, and reply comments on or before April 11, 1996. We find these periods for the filing of comments and reply comments to be reasonable in light of the 1996 Act's mandate that the Commission complete all actions necessary (including any reconsideration) to prescribe certain regulations concerning open video systems. See *Florida Power & Light Co. v. United States*, 846 F.2d 765 (D.C. Cir. 1988) cert. denied, 490 U.S. 1045 (1989). To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Larry Walke of the Cables Services Bureau, 2033 M Street, N.W., Room 408A, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

25. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Larry Walke of the Cable Services Bureau, 2033 M Street, N.W., Room 408A, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

V. Ordering Clauses

26. It is ordered that, pursuant to Section 302 of the 1996 Act; and

sections 1, 2, 4(i), 201-205, 215, 220, 303(r), 601-602, 611-616, 621-624, and 625-634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201-205, 215, 220, 303(r), 521-522, 531-536, and 545-554, Notice is hereby given of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this NPRM and that comment is sought regarding such proposals, discussion, and statements of issues.

27. It is further ordered that, the Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

28. For additional information regarding this proceeding, contact Rick Chessen or Larry Walke, Policy & Rules Division, Cable Services Bureau (202) 416-0800.

Federal Communications Commission.  
William F. Caton,  
Acting Secretary.  
[FR Doc. 96-6146 Filed 3-11-96; 3:40 pm]  
BILLING CODE 6712-01-P

**47 CFR Parts 36 and 69**

[CC Docket No. 96-45; FCC 96-93]

**Federal-State Joint Board on Universal Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On March 8, 1996, the Federal Communications Commission ("Commission") adopted a Notice of Proposed Rulemaking and Order Establishing Joint Board. The Commission initiates this rulemaking: to define the services that will be supported by Federal universal service support mechanisms; to define those support mechanisms; and to otherwise recommend changes to our regulations to implement the universal service directives of the Telecommunications Act of 1996.

**DATES:** Comments must be filed on or before April 8, 1996, and reply comments must be filed on or before May 3, 1996.

**ADDRESSES:** Comments should be addressed to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Senior Attorney,

202-418-0850, Accounting and Audits Division, Common Carrier Bureau.

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## I. Introduction

1. This Notice of Proposed Rulemaking and Order Establishing Joint Board (Notice) implements, in part, the Congressional directives set out in Section 254 of the Communications Act of 1934, as added by the Telecommunications Act of 1996 (1996 Act).<sup>1</sup> As required by Section 254(a)(1), we initiate this rulemaking to do the following: (1) Define the services that will be supported by Federal universal service support mechanisms; (2) define those support mechanisms; and (3) otherwise recommend changes to our regulations to implement the universal service directives of the 1996 Act.<sup>2</sup> We seek comment on all the matters discussed in this Notice. Also, pursuant to Section 254(a)(1), we order that a Federal-State Joint Board be convened in this docket, we appoint the individual members of the Federal-State Joint Board, and we refer the issues raised in this Notice to that Joint Board for the preparation of a Recommended Decision on these matters by November 8, 1996.<sup>3</sup>

2. We intend that our undertaking in this Notice be consistent with the language of the 1996 Act and the underlying Congressional intent. We are further guided by our past experience in addressing universal service issues, but only to the extent that experience can assist us in interpreting and effectuating our new statutory mandate. This Notice reflects our newly articulated statutory obligation to ensure that the definition of services supported by universal service support mechanisms and those mechanisms themselves evolve as advances in telecommunications and information technologies continue to present consumers with an ever increasing array of telecommunications and information services.<sup>4</sup> In accordance with Section 254(c)(2) of the 1996 Act, and as described below, we will periodically review, after obtaining further Joint Board recommendations, the definition of services supported by universal service mechanisms that we adopt in this proceeding, as well as the regulations adopted to implement the universal service mandates of the 1996 Act.<sup>5</sup>

<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 151 *et seq.*). For clarity, we refer to provisions of the 1996 Act using the sections at which they will be codified.

<sup>2</sup> 1996 Act sec. 101(a), Section 254(a)(1).

<sup>3</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 131 (1996).

<sup>4</sup> 1996 Act sec. 101(a), § 254(c)(1).

<sup>5</sup> *Id.* § 254(c)(2).

## II. Goals and Principles of Universal Service Support Mechanisms

3. Section 254(a)(1) of the Communications Act, as amended, requires the Commission to "institute and refer to a Federal-State Joint Board under section 410(c) a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) and [Section 254], including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations."<sup>6</sup> Section 254(b) requires that:

[T]he Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) **QUALITY AND RATES.**—Quality services should be available at just, reasonable, and affordable rates.

(2) **ACCESS TO ADVANCED SERVICES.**—Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) **ACCESS IN RURAL AND HIGH COST AREAS.**—Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) **EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.**—All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) **SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.**—There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) **ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.**—Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) **ADDITIONAL PRINCIPLES.**—Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.<sup>7</sup>

Prior to the 1996 Act, the Commission relied on Section 1 of the Communications Act of 1934<sup>8</sup> as the

<sup>6</sup> *Id.* § 254(a)(1).

<sup>7</sup> *Id.* 254(b).

<sup>8</sup> 47 U.S.C. 151.

touchstone for virtually all major universal service policy discussions. The principles in Section 254(b) particularize and supplement our responsibility under that section of the Communications Act, as amended by the 1996 Act, "to make available, so far as possible, to all the people of the United States *without discrimination on the basis of race, color, religion, national origin, or sex* a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."<sup>9</sup>

4. We solicit comment on how each of the seven principles enunciated in Section 254(b) should influence our policies on universal service. For example, the first principle introduces the concept of "quality services."<sup>10</sup> We seek comment on how we can assess whether quality services are being made available. In particular, we seek comment on the utility of performance-based measurements to evaluate our success in reaching that Congressional objective. The first principle also directs us to ensure that quality service be available at "just, reasonable, and affordable rates."<sup>11</sup> While the Commission has often determined "just and reasonable" rates, we have not generally grappled with the notion of "affordable"<sup>12</sup> in the context of universal service. We seek comment on whether there are appropriate measures that could help us assess whether "affordable" service is being provided to all Americans.<sup>13</sup>

5. As to the second principle, we seek comment on how to design our policies to foster access to advanced telecommunications and information services for "all regions of the Nation."<sup>14</sup> While in the past, the Commission has focused on bringing basic telecommunications services to as many American homes as possible, this principle instructs us to focus specifically on advanced telecommunications and information services. We seek comment on which advanced telecommunications and information services should be provided, and how to provide access effectively to Americans in various

<sup>9</sup> 47 U.S.C. 151, as amended by 1996 Act sec. 104, 151 (new language emphasized).

<sup>10</sup> 1996 Act sec. 101(a), § 254(b)(1).

<sup>11</sup> *Id.*

<sup>12</sup> Webster's New World Dictionary defines the term "afford" as follows: "to have enough or the means for; bear the cost of without serious inconvenience." Webster's New World Dictionary at 23 (William Collins, Second College ed. 1980).

<sup>13</sup> For example, one such measure might be the level of telecommunications service subscribership among targeted populations.

<sup>14</sup> 1996 Act Sec. 101(a), § 254(b)(2).

geographic regions. We also seek comment on the cost of providing such access.

6. The third principle stresses that consumers in "rural, insular, and high-cost areas" and "low-income consumers" should have access to "telecommunications and information services" that are "reasonably comparable to those services provided in urban areas."<sup>15</sup> In light of the further legislative intent to "accelerate rapidly private sector deployment of advanced services to all Americans,"<sup>16</sup> we believe that our goal should be to ensure that consumers "in all regions of the Nation"<sup>17</sup> and at all income levels, including low-income consumers, enjoy affordable access to the range of services available to urban consumers generally. We recognize, however, that the range of services is not likely to be identical for all urban areas, and may, as a practical matter, vary according to the demographic characteristics of consumers located in a given urban area. We seek comment on how best to incorporate that variation in our use of urban area service as a benchmark for comparative purposes.

7. The fourth and fifth principles refer to support mechanisms for universal service and will guide our efforts to establish those mechanisms through which funding essential to realizing our universal service goals will be collected and distributed. The fourth principle calls for "equitable and non-discriminatory contributions: from 'all providers of telecommunications services,'"<sup>18</sup> while the fifth principle directs that the "Federal and State mechanisms" be "specific, predictable and sufficient."<sup>19</sup> The sixth principle that will shape our deliberations states that "elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services. \* \* \*"<sup>20</sup> We discuss these principles in Sections V and VI, below.

8. The final principle listed in Section 254 of the new legislation authorizes the Commission and the Federal-State Joint Board to base universal service policies on "[s]uch other principles as [they] determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are

consistent with this Act."<sup>21</sup> We invite interested parties to propose additional principles relevant to the choice of services that should receive universal service support. We note, for example, a fundamental underlying principle of the 1996 Act is the Congressional desire "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans."<sup>22</sup> In that context, we seek comment on whether we should ensure that the means of distributing universal service support should be competitively-neutral,<sup>23</sup> and the least regulatory possible, consistent with our statutory obligations. In addition, we specifically ask that commenters address whether and to what extent concerns for low income consumers or those in rural, insular, or high cost areas can or should be articulated as additional universal service principles pursuant to Section 254(b)(7) or should be considered in determining whether a particular service is "consistent with the public interest, convenience, and necessity under Section 254(c)(1)(D)."<sup>24</sup> We request the Joint Board's recommendations regarding all of these general policy issues raised by Section 254(b).

9. Section 254(c)(1) of the Act directs that:

[T]he Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services—

- (A) are essential to education, public health, or public safety;
- (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
- (C) are being deployed in public telecommunications networks by telecommunications carriers; and
- (D) are consistent with the public interest, convenience, and necessity.<sup>25</sup>

We interpret the statutory language of Section 254(c)(1) as manifesting Congressional intent that the Joint Board and the Commission consider all four criteria when deciding what services to support through Federal universal service. We interpret this language, however,—particularly the use of the

word "consider"—to allow the Joint Board and the Commission to include services that do not necessarily meet all of the four criteria. We seek comment and the Joint Board's recommendation on this interpretation. We also ask how we should evaluate whether a service or feature is "essential to education, public health, or public safety."<sup>26</sup>

10. The fourth principle dictates that we must collect the revenues required to fund the universal service support mechanisms discussed here in an equitable and non-discriminatory manner. We seek detailed comments on the implications of this directive with respect to the mechanisms that will be employed to collect universal service contributions, below. Here, however, we seek comment on what standards we might use to help determine which, if any, "providers of telecommunications services" might be treated differently than others for "equitable" reasons.

11. The 1996 Act provides universal service support for two primary categories of services, each of which has two separate subcategories of intended beneficiaries: (1) A "core" group of services, the provision of which is to be supported for consumers with low incomes or in rural, insular, and high cost areas; and (2) additional services, including advanced telecommunications and information services, for providers of health care or educational services, as described in Sections 254(b)(6) and 254(h). As we interpret the 1996 Act, our first responsibility is to identify what core group of services should be supported by Federal universal support mechanisms, to enable the first group of beneficiaries to purchase those services at just, reasonable, and affordable rates. As to the second category of services, advanced telecommunications services for schools, libraries, and health care providers, Section 254(c)(3) authorizes the Commission "to designate a separate definition of universal service applicable only to public institutional telecommunications users."<sup>27</sup> We note that, in regard to this provision, "the conferees expect the Commission and the Joint Board to take into account the particular needs of hospitals, K-12 schools and libraries."<sup>28</sup> In Section 254(h), the Act created two distinct mechanisms for assuring the availability of these additional services to schools, libraries and health care providers. Section 254(h)(1) contemplates that there will be Federal support

<sup>15</sup> *Id.* § 254(b)(3). "Insular" areas refer to areas such as the Pacific Island territories. S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. at 131.

<sup>16</sup> S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. 1 (1996).

<sup>17</sup> *Id.* § 254(b)(2).

<sup>18</sup> *Id.* § 254(b)(4).

<sup>19</sup> *Id.* § 254(b)(5).

<sup>20</sup> *Id.* § 254(b)(6).

<sup>21</sup> *Id.* § 254(b)(7).

<sup>22</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

<sup>23</sup> The contribution mechanism is expressly required to be "equitable and non-discriminatory." 1996 Act sec. 101(a), § 254(d).

<sup>24</sup> *Id.* § 254(b)(7).

<sup>25</sup> *Id.* § 254(c)(1).

<sup>26</sup> See *Id.* § 254(c)(1)(A).

<sup>27</sup> S. Conf. Rep. No. 104-230, 104th Conf., 2d Sess. 133 (1996).

<sup>28</sup> *Id.*

mechanisms to enable eligible health care providers in rural areas, schools and libraries to obtain access to these additional services, as well as the core services discussed above. In addition, the second mechanism, found in Section 254(h)(2), directs the Commission to adopt competitively neutral rules to enhance for all eligible health care providers,<sup>29</sup> libraries and schools access to advanced telecommunications and information services to the extent technically feasible and economically reasonable. In this Notice, we will address both of these definitions and their respective potential support mechanisms separately.

12. We do not address Sections 254(f), 254(g), or the last sentence in Section 254(k) in this Notice, nor do we refer issues relating to them to the Federal-State Joint Board convened by this Order. Section 254(f) is directed to the states and to what they may or may not do to advance universal service goals. Section 254(g) has an explicit timetable separate and distinct from that in Section 254(a),<sup>30</sup> and we believe these separate timetables, which are not reconcilable, indicate that Section 254(g) does not need Joint Board consideration. The last sentence in Section 254(k) states that “[t]he Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that the services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.”<sup>31</sup> The explicit

<sup>29</sup> Section 254(h)(5)(B) defines “health care provider” to mean:

- (i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;
- (ii) community health centers or health centers providing health care to migrants;
- (iii) local health departments or agencies;
- (iv) community mental health centers;
- (v) not-for-profit hospitals;
- (vi) rural health clinics; and
- (vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi).

1996 Act sec. 101(a), 254(h)(5)(B).

<sup>30</sup> Section 254(a) requires the Joint Board to make its recommendation to the Commission nine months after the date of enactment of the 1996 Act and requires the Commission to complete its proceedings within 15 months of the date of enactment. *Id.* § 254(a). Section 254(g), however, requires the Commission to adopt rules “within 6 months after the date of enactment” of the 1996 Act “to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.” *Id.* § 254(g).

<sup>31</sup> *Id.* § 254(k).

use of the language “the Commission, with respect to interstate services, and the States, with respect to intrastate services,” indicates that Congress intended to give the separate jurisdictions the flexibility to review these issues separately.<sup>32</sup>

### III. Support for Rural, Insular, and High-Cost Areas and Low-Income Consumers

#### A. Goals and Principles

13. In this section, we seek to answer several basic questions concerning the design and operation of the support mechanisms for rural, insular, and high cost areas as well as for low-income consumers. In our search, we are guided by the principles in Section 254 relating to our obligations toward rural, insular, and high-cost areas and low-income consumers.

14. The first universal service principle relevant to consumers in rural, insular, and high-cost areas set forth in the 1996 Act is that “[q]uality services should be available at just, reasonable, and affordable rates.”<sup>33</sup> Prior to the 1996 Act, the Communications Act of 1934 required that rates for telephone services subject to our jurisdiction be just and reasonable, without unjust or unreasonable discrimination,<sup>34</sup> but did not expressly require that the rates be affordable to the average telephone subscriber or to any designated group of subscribers. The 1996 Act makes explicit that our universal service policies should promote affordability of quality telecommunications services. We seek comment proposing standards for evaluating the affordability of telecommunications services. We note that the Act specifically provides that telecommunications services—not just the narrow category of telephone exchange service—be affordable.<sup>35</sup> The second relevant principle is that

<sup>32</sup> We are planning to commence a rulemaking shortly to implement the provision in Section 254(k) calling for the Commission “with respect to interstate services \* \* \* [to] establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.” *Id.* § 254(k). This proceeding will be a vehicle for all interested parties, including State regulators and consumer advocates, to address issues of common concern and interest relating to development of accounting safeguards for universal service support mechanisms.

<sup>33</sup> *Id.* § 254(b)(1).

<sup>34</sup> See 47 U.S.C. 201–202.

<sup>35</sup> See 1996 Act sec. 101(a), § 254 (c), (i). The 1996 Act defines “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” *Id.* § 153(51).

“[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.”<sup>36</sup> We seek comment on whether the Act requires that all regions of the country must have access to all telecommunications and information services, and if so, how this can best be effectuated in a “pro-competitive, de-regulatory environment.”<sup>37</sup> The third principle we address here is that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services” reasonably comparable to those provided in urban areas and at reasonably comparable rates.<sup>38</sup> This principle directs us to go beyond the purpose and approach of the current Universal Service Fund (USF) program<sup>39</sup> by focusing on the comparability of access to services available throughout the country, as well as on the comparability of rates.<sup>40</sup>

#### B. Support for Rural, Insular, and High Cost Areas

##### 1. What Services to Support

15. In this section, we discuss specific telecommunications services we propose to include among the services that, with respect to rural, insular, and high cost areas, should receive universal service support. As to each of these “core” services, we seek comment on our proposal to designate the service for

<sup>36</sup> 1996 Act sec. 101(a), § 254(b)(2).

<sup>37</sup> S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996).

<sup>38</sup> 1996 Act sec. 101(a), § 254(b)(3).

<sup>39</sup> The current USF program is designed to “preserve universal service by enabling high cost companies to establish local exchange rates that do not substantially exceed rates charged by other companies.” MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983).

<sup>40</sup> By means other than through the USF, the Commission has also sought to ensure service to rural areas. For example, in Basic Exchange Telecommunications Radio Service, Report and Order, 3 FCC Rcd 214 (1988), we acknowledged that many rural households do not have standard telephone service because the cost of wiring remote locations is prohibitive. In response, the Commission established the Basic Exchange Telephone Radio Systems (BETRS) to allow access by LECs to shared frequencies to provide wireless local loops. More recently, in amending our rules for competitive bidding for Personal Communications Systems (PCS) licenses, we permitted rural telephone companies to obtain broadband PCS licenses that are geographically partitioned from larger PCS service areas (through a partial license transfer) in an effort to ensure that rural areas receive broadband PCS. Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

universal service support. We also ask commenters to discuss the extent to which each of the proposed services is in accordance with the principles and criteria in Sections 254(b) and 254(c)(1), discussed above. In accordance with the principle of the 1996 Act that support mechanisms should be "specific, predictable, and sufficient,"<sup>41</sup> we also ask the commenters to identify the total amount currently required for each included service.

16. We seek comment regarding whether the following services should be included among those core services receiving universal service support: (1) Voice grade access to the public switched network, with the ability to place and receive calls; (2) touch-tone; (3) single party service; (4) access to emergency services (911); and (5) access to operator services.

17. We invite commenters to identify additional services that meet the statutory criteria of Section 254(c)(1) and therefore should be among the services that should receive universal service support.<sup>42</sup> Commenters should discuss the extent to which each of the proposed services specifically meet those statutory criteria and further the principles established in Section 254(b). In addition, given that the 1996 Act specifies that common carriers "shall \* \* \* offer the services that are supported by Federal universal service support mechanisms" in order to be designated as eligible telecommunications carriers and thus eligible for universal service support,<sup>43</sup> and that the Joint Statement stresses the importance of "opening all telecommunications markets to competition,"<sup>44</sup> we seek comment regarding the competitive effect of our proposed definition. Specifically, we ask whether providing universal service support for each proposed service could serve as a barrier to entry by new competitors or favor one technology over another, perhaps more efficient, technology. Our goal is to adopt universal service rules that are competitively and technologically neutral so that our rules do not unreasonably advantage one particular technology or class of service provider

over another technology or service provider.<sup>45</sup>

18. *Voice Grade Access to the Public Switched Telecommunications Network.* We believe that voice grade service, whether provided by wireline or wireless technologies,<sup>46</sup> should be considered indispensable because it enables direct calling into the network, is provided throughout public telecommunications networks,<sup>47</sup> and is subscribed to by a substantial majority of residential customers.<sup>48</sup> Because it enables consumers to reach schools, emergency medical assistance, doctors, law enforcement authorities, and fire departments, it appears to be essential to education, public health, and public safety.<sup>49</sup> Including voice grade service among the services that should receive universal service support would also appear to be consistent with the public interest, convenience, and necessity. We seek comment as to whether, and at what performance level, voice grade service should be included among the services that should receive universal service support.

19. *Touch-tone.* Touch-tone is a generic term for technology that involves the use of a push-button telephone set that transmits, and a local switch that receives, a dual-tone multifrequency signal (DTMF). Touch-tone is widely deployed throughout public telecommunications networks, and consumers widely subscribe to it.<sup>50</sup> We note that touch-tone is becoming increasingly indispensable for subscribers in order for them to interact with automated information systems, and thus may be essential for effective use of educational services. It also increases the speed at which subscribers are able to reach emergency service providers, and thus appears essential for public health and safety.<sup>51</sup> Including touch-tone service among the services that should receive universal service support would also appear to be consistent with the public interest, convenience and necessity.<sup>52</sup> We seek comment as to whether touch-tone service should be included among those

supported services. We also request that interested parties provide information regarding any service other than touch-tone that would serve the same general function as touch-tone service.<sup>53</sup> In addition, we ask whether the provision of such services should be treated the same as the provision of touch-tone service for purposes of determining a carrier's designation as an eligible carrier.<sup>54</sup>

20. *Single Party Service.* Single party service is also generally available throughout the public telecommunications network and is subscribed to by a majority of residential customers.<sup>55</sup> Single party service helps ensure that subscribers will be able to reach emergency service and health care providers without delay and may therefore be essential to public health and public safety.<sup>56</sup> In addition to affording subscribers privacy, single party service facilitates access to many information technologies. Many residential subscribers use modems to access advanced services like home banking, the Internet and commercial computing services. Because modems currently are required for computer users to have access to those services, single party service may be becoming even more important to residential computer users in the future, and requiring it may therefore be consistent with the public interest, convenience, and necessity. We seek comment as to whether single party service should be included among the services that should receive universal service support.

21. *Access to Emergency Services.* Access to emergency services, including 911 service, is essential to public health or public safety and, as such, consistent with the public interest, convenience, and necessity.<sup>57</sup> Additionally, such services are widely deployed throughout public telecommunications networks and, though generally provided as part of residential service without any customer intervention, are available to a substantial majority of residential customers.<sup>58</sup> In much of the nation, 911 service merely connects subscribers with an emergency service that includes local police and fire

<sup>45</sup> See, e.g., 1996 Act sec. 101(a), § 254(h)(2) (directing Commission to "establish *competitively neutral* rules—to enhance \* \* \* access to advanced \* \* \* services for \* \* \* school classrooms, health care providers, and libraries") (emphasis added).

<sup>46</sup> We recognize that all voice grade services may not have identical transmission characteristics and, in particular, that there may in some cases be differences in the capacity of wireline and wireless services.

<sup>47</sup> 1996 Act sec. 101(a), Section 254(c)(1)(C).

<sup>48</sup> *Id.* § 254(c)(1)(B).

<sup>49</sup> *Id.* § 254(c)(1)(A).

<sup>50</sup> *Id.* § 254(c)(1)(B)–(C).

<sup>51</sup> *Id.* § 254(c)(1)(A).

<sup>52</sup> *Id.* § 254(c)(1)(D).

<sup>53</sup> Push button telephone sets are used with ISDN lines but signalling typically is accomplished through the transmission of digital signals instead of DTMF signals. Bellcore's BOC Notes on the LEC Networks, 1994, Section 14. These digital signals provide all of the functionalities available with DTMF signals.

<sup>54</sup> See 1996 Act sec. 102(a), § 214(e)(1)(A).

<sup>55</sup> *Id.* § 254(c)(1)(B)–(C). Single party service occurs when exactly one subscriber may use a local loop to originate or terminate calls.

<sup>56</sup> *Id.* § 254(c)(1)(A), (D).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* § 254(c)(1)(B)–(C).

<sup>41</sup> 1996 Act sec. 101(a), § 254(b)(5).

<sup>42</sup> We have expressly not included Telecommunications Relay Services (TRS) within the list of services proposed for universal service support, because those services are already served by the existing TRS support mechanism, established pursuant to Section 401 of the Americans with Disabilities Act, 47 U.S.C. 225.

<sup>43</sup> 1996 Act sec. 102(a), § 214(e)(1).

<sup>44</sup> See S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996).

departments. Enhanced 911 service adds capabilities, such as automatic number identification and automatic location information,<sup>59</sup> to the basic 911 service. These additional capabilities "are being deployed in public telecommunications networks by telecommunications carriers"<sup>60</sup> and appear "consistent with the public interest, convenience, and necessity."<sup>61</sup> They also may be "essential to "public health[] or public safety,"<sup>62</sup> and, in the future, provided to a substantial majority of residential subscribers.<sup>63</sup> To ensure a complete record on this issue, we invite comment on whether we should include access to enhanced 911 service among the services that should receive universal service support in the event we include basic 911 service in that group.

## 22. Access to Operator Services.

Similarly, access to operator services would appear indispensable for both at-home and away-from-home users in public health or public safety emergencies and, as such, would appear to be consistent with the public interest, convenience, and necessity.<sup>64</sup> Operator services are available throughout the public switched network and are used by at least a substantial majority of residential customers, even though customers are often charged for using those services.<sup>65</sup> We seek comment as to whether access to operator services should be included among the services that should receive universal service support.

23. We also invite commenters to identify services other than those listed above that should be included among the services that should receive universal service support, based on the four criteria specified in Section 254(c)(1). For instance, interested parties may wish to address the inclusion of relay services, directory listings, and equal access, to the extent that such a requirement would be consistent with the Act.<sup>66</sup> In particular,

<sup>59</sup> Automatic number identification provides the called party with the telephone number from which the call was placed. Automatic location information allows the called party to use that telephone number to determine the address or other location from which the call was placed.

<sup>60</sup> 1996 Act sec. 101(a), § 254(c)(1)(C).

<sup>61</sup> *Id.* § 254(c)(1)(D).

<sup>62</sup> *Id.* § 254(c)(1)(A).

<sup>63</sup> *See id.* § 254(c)(1)(B).

<sup>64</sup> *Id.* § 254(c)(1)(A), (D).

<sup>65</sup> *Id.* § 254(c)(1)(D).

<sup>66</sup> We note, for example, that Section 705 of the 1996 Act leaves, for a future Commission proceeding, the issue of whether commercial mobile service providers should be required to provide equal access. Any proposal to include unblocked access as an element of universal service obligation for commercial mobile service providers thus would be premature. 1996 Act sec. 705.

because of the directive in Section 254(b)(3) relating to "access to \* \* \* interexchange services,"<sup>67</sup> we seek comment on whether access to interexchange services should also be included among those services receiving universal service support. Finally, we invite parties to discuss advanced services that may warrant inclusion, now or in the future, in the list of services that are supported by universal service support mechanisms. For example, within the context of the criteria discussed in Section 254(c)(1),<sup>68</sup> commenters may wish to discuss Internet access availability, data transmission capability, optional Signalling System Seven features or blocking of such features, enhanced services, and broadband services.

## 2. How to Implement

24. With respect to each support mechanism, we must determine the beneficiaries of the support. For example, we ask parties to address whether support for rural, insular, and high-cost areas should be limited to residential users or residential and single-line business users, or should be provided to all users in such areas. We also seek comment on the method for calculating support amounts. We ask parties to address whether support should be calculated based on inputs (for example, facility costs would determine subsidy amounts) or based on outputs (the price of services would determine support levels). In answering these questions, commenters should consider all applicable provisions of the 1996 Act, especially the three general principles enumerated in the Act applicable to support for rural, insular and high-cost areas and for low-income consumers.<sup>69</sup> We seek comment on how assistance for rural, insular, and high cost areas should be calculated and distributed, and request that the Federal-State Joint Board prepare recommendations in this regard.

### a. How to Determine "Affordable" and "Reasonably Comparable".

25. Section 254(b)(3) states that rates for services in rural, insular, and high cost areas should be reasonably comparable to rates charged for similar services in urban areas of the country.<sup>70</sup> Section 254(i) charges this Commission and the States with responsibility for assuring that the service rates throughout this country should be "just, reasonable and

affordable."<sup>71</sup> We seek comment on how we should determine rate levels that would be "affordable" and "reasonably comparable" for services identified as requiring universal service support. We ask commenters to identify the criteria or principles that should guide this determination, the methods we should use to evaluate the required rate levels, and whether there should be procedures to recalibrate these rate levels to reflect changes in inflation or other factors that may make such recalibration periodically necessary.

26. We seek comment on, for example, whether support should be based on achieving specific end-user prices. We also seek comment on how we should determine the level of prices for designated telecommunications services that are "comparable to rates charged for similar services in urban areas."<sup>72</sup> In addition, we ask whether prices should vary depending on whether the customer is a non-business subscriber, a single-line business subscriber, or a multi-line business subscriber. Finally, we seek comment on the extent to which a subsidy should be provided to assure affordable and reasonably comparable rates for services using other than a primary line to a principal residence. We refer these issues to the Joint Board for its recommendation.

### b. How to Calculate the Subsidy.

27. We also seek comment to identify methods for determining the level of support required to assure that carriers are financially able to provide the services identified for inclusion among those to be supported by universal service funds in rural, insular, and high-cost areas. The method we ultimately adopt should be as simple to administer as possible, technology-neutral, and designed to identify the minimum subsidy required to achieve the statutory goal of affordable and reasonably comparable rates throughout the country. It should be equitable and non-discriminatory in the burden that it imposes upon contributors, and its distribution procedures should be direct, explicit, and specific.

28. The existing universal fund mechanism operates through our Part 36 rules. The subpart that concerns the universal service fund allows LECs with above-average costs to recover a designated portion of those above-average costs from the interstate jurisdiction and, in particular, from the universal service fund, to which only some interexchange carriers must contribute. This frees the LEC recipients

<sup>67</sup> *Id.* § 254(b)(3).

<sup>68</sup> *Id.* § 254(c)(1).

<sup>69</sup> *See* part III.B.1, *supra*.

<sup>70</sup> 1996 Act sec. 101(a), § 254(b)(3).

<sup>71</sup> *Id.* § 254(i).

<sup>72</sup> *Id.* § 254(b)(3).

from the need to recover all of their costs from their own customers and in so doing is intended to moderate local rate levels. The existing mechanism may, however, give recipients of assistance, currently limited to incumbent LECs, a substantial advantage over competitors who must recover all of their costs from their customers. It may also not be the sort of "explicit" support mechanism contemplated in Section 254(e).<sup>73</sup>

29. The dial equipment minute (DEM) weighting assistance program is based on the theory that smaller telephone companies have higher local switching costs than larger LECs have, because the smaller companies cannot take advantage of certain economies of scale.<sup>74</sup> Our jurisdictional separations rules allow LECs with fewer than 50,000 access lines to allocate to the interstate jurisdiction a greater proportion of these local switching costs than larger LECs may allocate. For these small LECs, the actual DEM is weighted (*i.e.* multiplied by a factor) to shift some intrastate costs to the interstate jurisdiction. DEM weighting is specifically provided outside of, and unrelated to, the USF program. Unlike the USF, DEM weighting applies only to small LECs, and to all small LECs, regardless of their actual costs.

30. We seek comment on whether continuing to use the Commission's jurisdictional separations rules to subsidize LECs with above-average loop costs, or the local switching costs of small LECs, is consistent with Congress's intent "to provide for a pro-competitive, de-regulatory national policy framework \* \* \* opening all telecommunications markets to competition,"<sup>75</sup> or with its intent relating to the characteristics of universal service support mechanisms to be adopted pursuant to Section 254. Many entities, among them non-wireline and non-dominant carriers, that might be designated "eligible telecommunications carrier[s]" by the appropriate State commission, are not now subject to our separations rules, which apply only to LECs.<sup>76</sup> We also seek comment in this connection regarding the statutory requirement "that any support mechanisms

continued or created under new section 254 should be explicit,"<sup>77</sup> and we request the Joint Board to address this principle in its recommendation.

31. We also request comment regarding a specific proxy model submitted to this Commission by several telecommunications carriers (Joint Sponsors), which we specifically incorporate by reference into this proceeding.<sup>78</sup> Once we determine what constitutes affordable rates for services designated for universal service support, this model might be used to determine the level of subsidy required to bring services priced at affordable levels to consumers in high-cost, rural, and insular areas. We seek comment on how this objective could be achieved. The Joint Sponsors collaborated during the past year to develop a Benchmark Costing Model (Model) for calculating a "benchmark" cost, or standard assumed level of expense, for the provision of local telecommunications access in every census block group<sup>79</sup> in the United States, excluding Alaska and the territories, if service is provided by a wireline carrier.<sup>80</sup>

32. The purpose of the Model is to identify areas where the cost of service can reasonably be expected to be so high as to require explicit high-cost support for the preservation of universal service. The Model produces a benchmark cost range for a defined set of residential telecommunications services assuming efficient wireline engineering and design, and using current technology. It is not based upon the costs reported by any company, nor the embedded cost to a company of providing service today. The Model bases projected costs on the least-cost wireline technology to serve a particular area, given that area's geographic and population characteristics. As a threshold inquiry, we ask whether the model should be made technology neutral, in order to provide for non-wireline service where such service would be economical. In addition, we ask whether, in addressing the Model specifically or these issues generally, we should base our determinations on embedded costs or forward-looking costs, to the extent that costs are relevant to the support

mechanisms for rural, insular, and high-cost areas.

33. We also solicit comment regarding a proxy model that incorporates data showing the location of actual residential and business customers.<sup>81</sup> The party offering this model claims it can be adapted for use by wire center, or even by specific consumer, as well as by census block group, but also acknowledges that, as currently designed, it relies on proprietary information that cannot be reviewed by other interested parties. We seek comment regarding the merits of this proxy model. Specifically, we ask whether using an incumbent LEC's wire centers as the geographic unit for calculating universal service support accords with our policy of competitive and technological neutrality.

34. In addition, we ask whether census block groups are the best geographic units for developing a proxy model, or whether alternative units would be more accurate or easier to administer. We invite comment regarding the Model's assumptions about the likely distribution of subscribers within a census block group. For example, we seek comment whether the assumption of uniform population distribution adequately reflects the possibility that in some rural areas, despite the theoretical sparsity, all lines are clustered near a single location. The Model also excludes business lines from its analysis.<sup>82</sup> We invite comment as to whether the Model might therefore show unduly high residential costs in some census block groups, in that the exclusion of business lines could produce an overstated calculation of the projected cost per line. We also ask whether a model that included business lines might be more accurate. We also seek comment regarding the engineering assumptions on which the Joint Sponsors rely, and whether the Model could be improved by the addition of other variables, such as climate or slope. Conversely, we seek comment on whether the Model contains any redundant or superfluous variables.

35. We also solicit comment on whether relying on a competitive bidding process to set the level of subsidies required in rural, insular, and high-cost areas would be consistent with Section 214(e), which addresses the circumstances under which telecommunications carriers are eligible

<sup>73</sup> *Id.* § 254(e).

<sup>74</sup> Dial equipment minutes are the minutes of holding time of originating and terminating local dial switching equipment. The jurisdictional separations rules allocate local switching equipment costs between the interstate and intrastate jurisdictions on the basis of each jurisdiction's relative number of dial equipment minutes of use.

<sup>75</sup> See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

<sup>76</sup> 1996 Act sec. 102(a), § 214(e).

<sup>77</sup> *Id.* § 254(e).

<sup>78</sup> MCI Communications Inc., NYNEX Corporation, Sprint/United Management Co., and US West, Inc., Benchmark Costing Model: A Joint Submission, Copyright 1995, CC Docket No. 80-286 (Dec. 1, 1995) (Joint Submission). The Joint Sponsors are US West, Nynex, MCI, and Sprint.

<sup>79</sup> A census block group is a geographic unit defined by the Bureau of the Census. Each census block group contains approximately 400 households.

<sup>80</sup> See Joint Submission.

<sup>81</sup> See *ex parte* submission in CC Docket No. 80-286 by Gina Harrison, Director, Federal Regulatory Relations, Pacific Telesis Group (February 29, 1996).

<sup>82</sup> Joint Submission at I-2.

to receive universal service support.<sup>83</sup> Carriers offering all of the services supported by universal service mechanisms would bid on the level of assistance per line that they would need to provide all supported services. Such an approach would attempt to harness competitive forces to minimize the level of high-cost assistance needed to implement our statutory mandate in areas where competition has developed.<sup>84</sup>

36. In such areas, competing carriers would bid to set the level of assistance per line that any carrier serving a specified area would receive, with the lowest bid winning. Although the low bidder would determine the amount of support per line served that eligible carriers would receive, any authorized carrier would be able to receive assistance at that level. The low bidder, however, would receive an additional "incentive bonus." The bonus would be necessary to induce competitors to underbid one another, rather than merely accepting the established level of assistance.

37. We acknowledge that market conditions may not warrant the introduction of this plan at present. Nevertheless, we believe competitive local exchange markets may develop even in high-cost areas, and therefore request comment regarding distributing high-cost assistance on the basis of competitive bids.

38. We request that the Federal-State Joint Board prepare recommendations regarding the best means of establishing a new universal service support mechanism for rural, insular, and high-cost areas. In preparing its recommendation, we ask the Joint Board to give the greatest weight to effective implementation of the Telecommunications Act of 1996, enabling us to carry out the requirements of the Act in the manner most consistent with the principles and intentions expressed in the Act itself.

39. The legislative history of the 1996 Act makes clear that we are to take a new approach in designing support mechanisms for universal service, and that the proceeding in CC Docket No. 80-286 is not an appropriate foundation on which to base this proceeding.<sup>85</sup> We

wish, however, to preserve the relevant portion of the record that would be consistent with the principles of the 1996 Act. To avoid unnecessary duplication of efforts by interested parties and regulators, we are incorporating by reference that portion of the CC Docket No. 80-286 record that relates to changing the support mechanisms in our jurisdictional separations rules into this proceeding.<sup>86</sup> With respect to the proposals raised in that proceeding, we request that interested parties specifically comment on which, if any, of those proposals are consistent with the requirements and intent of the 1996 Act.

#### c. Transition Issues.

40. At present, LECs with loop costs more than 115 percent above the national average receive support from the Universal Service Fund described in part II.B.2.b., above. At present, there is a cap on the rate at which the fund may grow. That cap is scheduled to expire on July 1, 1996. We seek comment on whether we should extend the cap until the completion of the Joint Board's and our deliberations in this proceeding. We also seek comment on whether the principles governing our deliberation would permit, or even require, a transition period for carriers, particularly recipients of subsidies achieved through our separations rules (e.g., the USF and DEM weighting rules), to adjust to operating the statutory framework erected by the Telecommunications Act of 1996.

### 3. Who Is Eligible for Support

41. In addition to instructing us to define which telecommunications services carriers receiving support must provide, the 1996 Act also specifies the eligibility requirements carriers must satisfy in order to receive universal service support. Under Section 214(e), support is available only to "common carrier[s]" designated as "eligible telecommunications carrier[s]" by the appropriate State commissions.<sup>87</sup> Section 254(e) also requires that "[a]ny carrier that receives support shall use that support only for the provision, maintenance, and upgrading of facilities

and services for which the support is intended." We request comment, and a corresponding recommendation from the Joint Board, regarding the need for any measures to ensure that support is used for its intended purpose. Similarly, we ask for comment regarding the need for additional measures to ensure that "telecommunications carrier[s]" do not "use services that are not competitive to subsidize services that are subject to competition."<sup>88</sup> We also invite commenters to propose means to ensure that all eligible carriers—and no ineligible carriers—receive the appropriate amount of universal service support.

42. In areas served by a "rural telephone company," as defined by Section 3 of the 1996 Act,<sup>89</sup> the State commission may choose to designate "more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission" if that commission finds "that the designation is in the public interest."<sup>90</sup> In other areas, the State commission must upon request designate as an "eligible carrier" any common carrier meeting the universal service requirements specified in Section 214(e)(1).

43. Section 214(e)(1) requires an eligible carrier to offer "the services that are supported by Federal universal service support mechanisms under Section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services."<sup>91</sup> Each eligible carrier must also "advertise the availability of such services" and the charges for those services "using media of general distribution."<sup>92</sup> We seek comment regarding, and ask the Joint Board to recommend, standards for compliance with these requirements.

44. Each State commission may specify the "service area" within which a common carrier is classified as an "eligible carrier." The 1996 Act defines "the term 'service area' [to mean] a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms."<sup>93</sup> With respect to rural telephone companies, "service area" means a company's study area,<sup>94</sup> "unless and

<sup>83</sup> Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking and Notice of Inquiry, 10 FCC Rcd 12309 (1995). We discuss Section 214(e) in part III.B.3., *infra*.

<sup>84</sup> We acknowledge that, at present, there may be only one eligible carrier in some rural, insular, or high cost areas. Bidding to set the level of support payments cannot take place until competitors enter the market.

<sup>85</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 131 (1996).

<sup>86</sup> Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Inquiry, 9 FCC Rcd 7404 (1994), and comments, reply comments, and *ex parte* submissions responsive thereto; Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Order, 9 FCC Rcd 7962 (1994) (*Data Request*) and responses thereto; and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking and Notice of Inquiry, 10 FCC Rcd 12309 (1995), and comments, reply comments, and *ex parte* submissions responsive thereto.

<sup>87</sup> 1996 Act sec. 102(a), § 214(e).

<sup>88</sup> *Id.* § 254(k).

<sup>89</sup> *Id.* § 153(47).

<sup>90</sup> *Id.* § 214(e)(2).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* § 214(e)(1)(B).

<sup>93</sup> *Id.* § 214(e)(5).

<sup>94</sup> "Each study area" is generally a LEC's service area in a given State. The study area boundaries are fixed as of November 15, 1984. MTS and WATS Market Structure; Amendment of Part 67 of the

until the Commission and the States, taking into account the recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such a company."<sup>95</sup> The 1996 Act defines "rural telephone company" as a "local exchange carrier operating entity to the extent that such entity—(A) Provides common carrier service to any local exchange carrier study area that does not include either—(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996."<sup>96</sup>

45. We solicit comment on how to define "study area" in the way that best comports with the Congress's expressed objective "to provide for a pro-competitive, de-regulatory national policy framework" for the "rapid[ ] private sector deployment of advanced telecommunications and information technologies."<sup>97</sup> Currently, a wireline LEC's study area generally includes all the territory of a single state within which that carrier operates. We ask that interested parties propose an appropriate basis for defining the "service area" of a "rural telephone company," taking into account the likely possible effect on competition of a "service area" definition for rural telephone companies. In conjunction with this issue, we request comment on whether we should amend our rules to revise existing study area boundaries. In the context of implementing a "pro-competitive, de-regulatory national policy framework,"<sup>98</sup> as required by the 1996 Act, we ask that the Joint Board

prepare recommendations regarding the appropriate "service area" boundaries of areas served by a "rural telephone company."

46. The Act also requires "eligible telecommunications carrier[s]" to "advertise the availability of such services and the charges therefore using media of general distribution."<sup>99</sup> The Joint Explanatory Statement adds that "such services must be advertised generally throughout" the service area.<sup>100</sup> To avoid future disputes, we believe it may be useful for us to adopt guidelines defining the steps that would be sufficient to advertise the availability of, and charges for, services. We ask interested persons to comment on this approach and suggest appropriate guidelines.

47. Section 214(e)(3) permits any unserved community—an area or a portion of a defined service area in which "no common carrier will provide the services that are supported by Federal universal service support mechanisms"—to request the Commission (for interstate services) and State commission (for intrastate services) to designate an eligible telecommunications carrier.<sup>101</sup> Upon such request, the Commission or State commission shall order a common carrier or carriers to provide service to the requesting community.<sup>102</sup> Pursuant to Section 214(e)(3) of the 1996 Act, such carriers shall be designated as an eligible telecommunications carrier. We ask commenters to address how we should implement our responsibilities under Section 214(e)(3), and whether we and the State commissioners should develop a cooperative program to ensure that all areas receive each of the services supported by Federal universal service support mechanisms.

48. Section 214(e)(4) provides procedures for a carrier to relinquish its designation as an eligible telecommunications carrier. States must permit this to occur if the requesting carrier gives advance notice to the State and if there is more than one eligible telecommunications carrier serving the area. The State commission must require the remaining telecommunications carrier or carriers in the area to ensure that all of the relinquishing carrier's customers will continue to be served. The State commission must also require sufficient notice to permit the purchase or construction of adequate facilities by

any remaining telecommunications carrier. Section 214(e)(4) requires that the State commission must establish a time, not to exceed one year from the date of approval of relinquishment, for the purchase or construction of adequate facilities.<sup>103</sup>

49. Section 214(e)(2) and (e)(4) reserve consideration of requests for relinquishment of the designation of eligible telecommunications carriers to the States.<sup>104</sup> We must amend any of our regulations that would be inconsistent with that reservation, and we invite commenters to identify any such regulations.<sup>105</sup> We refer these issues, and all of the issues raised above with respect to support for rural and high-cost areas, to the Joint Board for its recommendation.

### C. Support for Low-Income Consumers

#### 1. What Services To Support

50. In Part III.B.1 of this Notice, *supra*, we discuss the services that may be included among the services to consumers in rural, insular, and high-cost areas that should receive support.<sup>106</sup> We propose that these services should also be services supported by Federal universal service support mechanisms with respect to low-income consumers. In this part of our Notice, we seek comment on whether designation of additional services that would be specifically appropriate for low-income users. We note that the Joint Explanatory Statement added persons with low-income "to the list of consumers to whom access to telecommunications and information services should be provided."<sup>107</sup> Through the Commission's monitoring of subscriber levels and census data, we know that subscriber levels for low-income individuals fall substantially below the national average.<sup>108</sup> We request comment regarding the Commission's overall responsibilities under Sections 1 and 254 with regard to low-income consumers. We invite the commenters to address whether there are any particular services, technical capabilities, or features that would be of benefit to low-income consumers and that meet one or more of the criteria for inclusion among the services that should receive universal service support. Consistent with the Act's

<sup>103</sup> *Id.* § 214(e)(4).

<sup>104</sup> *Id.* § 214(e)(2), (4).

<sup>105</sup> *Id.* § 254(a).

<sup>106</sup> *Id.* § 254(b)(3).

<sup>107</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 131 (1996).

<sup>108</sup> See Subscriber Notice at 13003-4.

Commission's Rules and Establishment of a Joint Board, Decision and Order, 50 FR 939 (1985) (1985 Lifeline Order) (adopting, with minor modifications the Joint Board recommendations issued in MTS and WATS Market Structure; Amendment of the Commission's Rules and Establishment of a Joint Board, Recommended Decision and Order, 49 FR 28325 (1984)) (1984 Recommended Decision).

<sup>95</sup> 1996 Act sec. 102(a), § 214(e)(5).

<sup>96</sup> *Id.* § 153(47).

<sup>97</sup> See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

<sup>98</sup> *Id.*

<sup>99</sup> 1996 Act sec. 102(a), § 214(e)(1)(B).

<sup>100</sup> See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 141 (1996).

<sup>101</sup> 1996 Act sec. 102(a), § 214(e)(3).

<sup>102</sup> *Id.*

principle that support mechanisms should be "specific, predictable, and sufficient,"<sup>109</sup> we ask commenters to address potential costs associated with such support. We request a recommendation from the Federal-State Joint Board convened in this proceeding regarding all of the matters discussed in this part of the Notice.

51. *Free Access to Telephone Service Information.* In an Interim Opinion regarding universal service,<sup>110</sup> the California Public Utilities Commission tentatively concluded that free telephone access by subscribers to the telephone company central office, for purposes such as reporting the need for repairs and inquiring about bills or eligibility for special programs, is an essential telephone service.<sup>111</sup> Such free telephone access to the telephone company central office would be of primary significance for measured rate subscribers, who are charged for each local call they make on either a per call or per minute basis, because subscribers with flat rate local service generally may make routine service inquiries without incurring extra charges.

52. Many measured rate subscribers choose that service as a less expensive alternative to the flat rate, and thus would be expected to be especially sensitive to charges for service inquiries. Similarly, it appears likely that potential Lifeline and Link Up customers could benefit significantly from free access to information regarding those subsidy programs.<sup>112</sup> Indeed, such access may be needed to if we are to fulfill our statutory mandate to ensure that universal service is available at affordable rates.<sup>113</sup>

53. We seek comment on whether free access to the telephone service provider for low-income customers should be included within the group of services receiving universal service support, in order to allow those customers to receive information about telephone service activation, termination, repair, and information regarding subsidy programs.<sup>114</sup> Because access by subscribers to certain basic information concerning their telephone service may be a prerequisite to maintaining their

service, we seek comment on whether, like access to the loop itself, access to that information is essential to public health and safety and is otherwise consistent with the public interest, convenience, and necessity.<sup>115</sup> Commenters should also address the applicability of the criteria set forth in both Sections 254(c)(1)(B) and (C) to this service. We invite interested parties to provide information regarding the current availability of free access to information regarding telephone service activation and termination, repairs, and telephone subsidy programs.

54. *Toll Limitation Services.* In discussing toll limitation services, we consider both toll blocking and toll control services. Some LECs offer a service that limits only long-distance calls for which the subscribers would be charged (a form of toll blocking) or limits the toll charges a subscriber can incur during a billing period (a toll call control service). To the extent that toll blocking or limiting services allow low-income customers to avoid involuntary termination of their access to telecommunications services, we seek comment on whether such services are "essential to education, public health, or public safety" and "consistent with the public interest, convenience, and necessity."<sup>116</sup> Moreover, many LECs apparently offer toll limiting services to their subscribers at tariffed rates,<sup>117</sup> indicating that toll limiting service is "being deployed in public telecommunications networks by telecommunications carriers."<sup>118</sup> We seek comment regarding the remaining criterion for including services in the definition of "universal service," the issue of whether toll limiting has, "through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers."<sup>119</sup> We seek comment on whether, where such services are available, they should be offered to low-income subscribers without charge or at a discount and what criteria we should use to determine the support for which a carrier offering such services would be eligible.<sup>120</sup>

55. We recognize that various methods may exist to advance Section 254(b)(3)'s statutory principle that the Commission ensure that "low-income consumers \* \* \* have access to \* \* \* interexchange services."<sup>121</sup> We also note that, in the context of the Commission's regulation of the interstate interexchange marketplace, one interexchange carrier has voluntarily committed to institute an optional calling plan for low-income consumers in order to mitigate the impact of recent increases in basic schedule interstate long-distance rates in the marketplace.<sup>122</sup> For example, under the calling plan, low-income residential customers can place one hour of interstate direct dial service, during a one-month period, at a rate frozen at 15 percent below current basic schedule rates.<sup>123</sup> We solicit comment on whether and how we should encourage domestic interstate interexchange carriers to provide optional calling plans for low-income consumers to promote the statutory principles enumerated in Section 254(b)(3). We also seek comment on the potential impact of such plans upon subscribership to telecommunications services.

56. *Reduced Service Deposit.* Recent studies indicate that disconnection for non-payment of toll charges, and the high deposits carriers charge to cover the cost of noncollectible charges, may be more significant barriers to universal service than the cost of local service itself.<sup>124</sup> In our Subscribership Notice, we noted that LECs generally require deposits before connecting subscribers, and that, for many low-income subscribers, these deposits present a formidable obstacle to initiating service.<sup>125</sup> The availability of affordable toll limiting service, along with the lower deposits carriers would impose on customers who have limited the toll charges they can incur, appears likely to determine whether many low-income consumers have "affordable" access to any public telecommunications services.<sup>126</sup> Moreover, some states which require affordable voluntary toll limiting service have subscribership rates that are above the national average, suggesting that the means to control toll usage is an important component of

including interexchange services." 1996 Act sec. 101(a), § 254(b)(3).

<sup>121</sup> *Id.*

<sup>122</sup> Motion of AT&T Corp. to be Reclassified as a Non-dominant Carrier, FCC 95-427 (rel. Oct. 23, 1995).

<sup>123</sup> *Id.* at para. 84.

<sup>124</sup> Subscribership Notice at 13005-06.

<sup>125</sup> *Id.* at 13003-05.

<sup>126</sup> 1996 Act sec. 101(a), § 254(i).

<sup>109</sup> 1996 Act sec. 101(a), § 254(b)(5).

<sup>110</sup> Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643, R.95-01-020; and Investigation on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643, I.95-01-020, *Interim Opinion* (Cal. Pub. Utils. Comm'n, filed Jan. 24, 1995) (*CPUC Interim Opinion*).

<sup>111</sup> *Id.* at 18.

<sup>112</sup> We describe those programs in part III.C.2., *infra*.

<sup>113</sup> 1996 Act sec. 101(a), § 254(i).

<sup>114</sup> *Id.* § 254(c)(1)(B), (C).

<sup>115</sup> See *id.* § 254(c)(1)(A), (D).

<sup>116</sup> *Id.*

<sup>117</sup> For example, the Bell Atlantic Telephone Companies offer voluntary toll restriction services in Maryland, the District of Columbia and Pennsylvania; Pacific Bell offers voluntary toll restriction service in California.

<sup>118</sup> 1996 Act sec. 101(a), § 254(c)(1)(C).

<sup>119</sup> *Id.* § 254(c)(1)(B).

<sup>120</sup> We recognize that there is potential tension between affording consumers the ability to receive toll limitation services and the principle set forth in the Act that consumers should have access to "telecommunications and information services,

universal service, particularly for low-income households. We ask interested parties to present a reasoned analysis of whether, based on consideration of all four criteria in Section 254(c)(1), we should require discounted toll limiting service and reduced deposits for low-income consumers, and we request that the Federal-State Joint Board present recommendations on this proposal.

57. *Services Other Than Conventional Residential Services.* In the past, the Commission's universal service policies focused on the cost of traditional residential service. Nevertheless, we recognize that some individuals with low incomes do not have access to residential service.<sup>127</sup> For some individuals who move frequently or have no residence, access to conventional residential telecommunications service may not be practical. We therefore seek comment on specific services which may enable such low-income customers to gain access to the telecommunications network. We seek comment from parties to identify any historically underserved segments of the population and potential services and features<sup>128</sup> that the Joint Board may consider in addressing the provision of telecommunications services to these highly mobile groups. To determine whether these services should be included in our list of supported services, we seek comment on: whether these services are essential to the public health and public safety; whether a substantial majority of residential customers have subscribed to the services; the extent to which telecommunications carriers deploy, or plan to deploy, them in public networks; and, generally, how offering these services as part of universal service is consistent with the public interest, convenience, and necessity.<sup>129</sup> We also seek comment on how best to measure the extent to which low-income populations that are unable to maintain traditional residential service have access to facilities for making and receiving calls. We invite parties to

<sup>127</sup> Seasonal workers and homeless individuals, for example, are unlikely to subscribe to residential telephone service.

<sup>128</sup> For example, these may include services like community phone banks, availability of public interest payphones, community access centers, special discounted service plans for short-term subscribers, or low-cost voice mailboxes, which may provide a viable alternative for providing telecommunications service to the highly mobile populations. We note that we will not address public interest payphones in this proceeding because they will be addressed in a separate proceeding, as required under Section 276(b)(2) of the 1996 Act. See 1996 Act sec. 151(a), § 276(b)(2).

<sup>129</sup> 1996 Act sec. 101(a), §§ 254(c)(1) (A)-(D).

address the potential for provision of these services by wireless carriers.

58. *Other Services For Low-Income Subscribers.* We seek comment on whether there are other services that, with respect to low-income consumers, should be included in universal service support mechanisms. We note that low-income subscribers have significantly lower telephone subscribership rates than other subscribers,<sup>130</sup> and seek comment on the reasons underlying this disparity. Any commenter proposing inclusion of an additional service within the definition of services to be supported by federal universal service support mechanisms should discuss the extent to which the proposed service meets each of the criteria enumerated in Section 254(c)(1), and how inclusion of the proposed service would promote access by low-income consumers to telecommunications and information services.

## 2. How To Implement and Who Is Eligible for Support

59. *New Support Mechanisms.* We generally seek comment on how to determine the subsidy that would be necessary to make the services identified as the "core services" eligible for universal service support available to low-income consumers. We pose the same question with respect to any additional services specifically targeted to low-income users discussed above. As a threshold matter, we seek comment and a Joint Board recommendation on how to define eligible low-income customers. We seek comment on whether we should require a discount on all supported services and the amount of that discount. Parties endorsing specific services for low-income users, such as free toll limitation services, should propose specific mechanisms to define and distribute support for those offerings. For example, parties asserting that the support should be cost-based should describe how those costs should be determined. We intend to implement Section 254(k) consistent with the expressed Congressional intent "to provide for a pro-competitive, de-regulatory national policy framework."<sup>131</sup> We therefore seek comment on support methodologies involving the least regulatory methods.

<sup>130</sup> For example, according to Census Bureau statistics, 98 percent of households with annual income above \$30,000—the median income—have a telephone in the home, while only 84 percent of households with annual income under \$12,000—the poverty level for a family of three—have a telephone in the home.

<sup>131</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

60. We seek specific comment on how our proposed support mechanisms should apply to the services discussed in this part of our Notice. We are particularly interested in comment on how support should be calculated and paid if the provider of the service is not the local telephone company. We ask the Joint Board to address these issues in its recommended decision.

61. *Existing Support Mechanisms.* Currently we have two support mechanisms targeted to low-income consumers: the Lifeline Assistance Plan and Link Up America. States may choose to participate in either of two Lifeline Assistance plans. Plan 1 provides for a reduction in a subscriber's monthly telephone bill equal to the \$3.50 federal subscriber line charge (SLC) for residential subscribers.<sup>132</sup> Half of the reduction comes from a 50 percent waiver of the charge; the other half comes from the participating state, which matches the federal contribution by an equal reduction in the local rate. Under this plan, subscribers who satisfy a state-determined means test may receive assistance for a single telephone line in their principal residence. Of the 38 states and territories participating in Lifeline, only California still offers a Lifeline program under Plan 1.<sup>133</sup>

62. Under Plan 2, which expands Plan 1 to provide for waiver of the entire residential SLC (up to the amount matched by the state), a subscriber's bill may be reduced by twice the SLC (or more, if the state more than matches the value of the federal waiver).<sup>134</sup> The state contribution may come from any intrastate source, including state assistance for basic local telephone service, connection charges, or customer deposit requirements. Companies in 37 states or territories reported subscribers receiving Plan 2 Lifeline assistance as of April 1995.<sup>135</sup> In 1994, about 4.4 million households received \$123 million in federal Lifeline assistance through full or partial waiver of the SLC.<sup>136</sup> Under both plans, the interstate portion of Lifeline Assistance is billed to interexchange carriers by the National Exchange Carrier Association, Inc. (NECA).

63. The 1996 Act states that "[n]othing in this section shall affect the

<sup>132</sup> 1985 Lifeline Order.

<sup>133</sup> Indus. Analysis Div., FCC, *Monitoring Report May 1995 CC Docket No. 87-339*, at tbl. 2.1 (1995) (*Monitoring Report*).

<sup>134</sup> MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Decision and Order*, 51 FR 1371, paras. 4-6 (1986).

<sup>135</sup> Monitoring Report, tbl. 2.3.

<sup>136</sup> *Id.*

collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.”<sup>137</sup> Section 69.117 addresses the conditions and mechanisms for waiver of subscriber line charges.<sup>138</sup>

64. The Link Up program helps low-income subscribers begin telephone service by paying half of the first \$60 of connection charges.<sup>139</sup> Where a LEC has a deferred payment plan, Link Up will also pay the interest on any balance up to \$200, for up to one year.<sup>140</sup> To be eligible, subscribers must meet a state-established means test, and may not, unless over 60 years old, be a dependent for federal income tax purposes.<sup>141</sup> Link Up is available in all but two states (California and Delaware) and in the District of Columbia.<sup>142</sup> The 1996 Act does not directly address our rules relating to the Link Up program. Nonetheless, like the universal service fund, the Link Up support is a function of jurisdictional separations.<sup>143</sup> The Link Up program’s support comes, in part, through shifting LEC costs that would otherwise be recovered through rates for intrastate services to the interstate jurisdiction. Consistent with the Act’s requirement that support mechanisms be explicit, propose to amend our rules to remove the Link Up provisions from our jurisdictional separations rules. We further propose that the support mechanism for Link Up be the same as that developed to support other services that receive Federal universal service support.

65. We also seek comment on whether changes to the level of support or other changes to our Lifeline and Link Up programs should be made as part of an overall mechanism to ensure that quality services are available at just, reasonable, and affordable rates for low-income subscribers. Interested parties may, however, propose changes to the level of support. Parties suggesting changes to the level of support should provide evidence of the need for such changes and should address how the

proposed changes further the principle of universal service as stated in the 1996 Act, and should identify the effect of their suggested change on the level of subsidy required to fund these programs.

#### *D. Ensuring That Supported Services for Rural, Insular, and High-Cost Areas and Low-Income Consumers Evolve*

66. The 1996 Act states that “[u]niversal service is an evolving level of \_\_\_ telecommunications services” and requires that the Commission periodically establish the definition, “taking into account advances in telecommunications and information technologies and services.”<sup>144</sup> Thus, our list of services receiving universal service support should continue to evolve, as changes in technology and subscriber needs and preferences affect both the availability and subscribership patterns of various telecommunications services. That evolution should, however, be achieved in the context of regulatory objectives that include promoting competition and reducing regulation in a manner that is technology-neutral.<sup>145</sup> We, therefore, seek comment on how and with what frequency we should evaluate our initial list of services adopted in this proceeding in accordance with the Congressional recognition that universal service is an evolving level of telecommunications services.

67. Parties in a California Public Utilities Commission proceeding have suggested that any universal service definition should be revisited at fixed intervals, such as every three or five years.<sup>146</sup> Whether we decide to revisit the topic even sooner depends on the information we collect in the proceeding on advanced services mandated in Section 706 of the Act.<sup>147</sup> Moreover, although periodic review could help to ensure that the definition does not remain static, it could also entail the expenditure of resources on unnecessary proceedings. To apply the definitional criteria that Congress has set forth in Section 254(c)(1), we shall need to gather relevant facts, including the extent to which particular services “are being deployed in public telecommunications networks” and “have been subscribed to \* \* \* by a substantial majority of residential

customers.”<sup>148</sup> At the same time, we fully recognize that it could be unduly burdensome to impose extensive information collection requirements relating to those criteria. Since the list of services that should receive universal service support is partially defined by consideration of what services are widely subscribed to by residential customers,<sup>149</sup> it may be that we can rely on the marketplace to register its preferences without soliciting those preferences indirectly through burdensome data collection activities. We propose, instead, to rely on information sources that already exist, and to initiate additional information collection efforts only if that information proves inadequate and only when we contemplate changes in the list of services that should receive universal service support. Should it appear advisable to collect additional information, we would first conduct a cost/benefit analysis to ensure that the burden of collection would not outweigh the value of the information we would request. We seek comment on this proposal and, in addition, we ask that interested parties identify specific sources of information relevant to this list of services in accordance with the criteria set forth in Section 254(c)(1), including information sources available at State commissions and procedures for obtaining such information.

68. The 1996 Act also states that “[q]uality services should be available at just, reasonable, and affordable rates.”<sup>150</sup> As to the technical parameters of specific telecommunications services, we do not intend, in implementing Section 254, to prescribe technical standards for telecommunications carriers or other service providers. This Commission, historically, has let affected entities (IXCs, LECs, equipment manufacturers, and customers) develop technical standards and performance standards,<sup>151</sup> and implement those standards without our direct intervention, except as necessary. At present, there are several industry bodies that address standards for various aspects of communications networks.<sup>152</sup> Our preference, in implementing section 254, is to

<sup>137</sup> 1996 Act sec. 101(a), § 254(j).

<sup>138</sup> See 47 CFR 69.117.

<sup>139</sup> MTS and WATS Market Structure; Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board, *Report and Order*, 2 FCC Rcd 2953, 2955, (1987) (1987 *Report and Order*); MTS and WATS Market Structure Link Up America, and Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board, *Decision and Order*, 4 FCC Rcd 3634 (1989).

<sup>140</sup> 1987 *Report and Order* at 2955.

<sup>141</sup> *Id.* at 2956.

<sup>142</sup> Monitoring Report, tbl. 2.2.

<sup>143</sup> See 47 CFR 36.711–741.

<sup>144</sup> 1996 Act sec. 101(a), 254(c)(1).

<sup>145</sup> *Id.*

<sup>146</sup> *CPUC Interim Opinion* at 20.

<sup>147</sup> 1996 Act sec. 706, § 706(b). Section 706 requires the Commission to “initiate a notice of inquiry concerning the availability of advanced telecommunications to all Americans (including, in particular, elementary and secondary schools and classrooms) \* \* \*.”

<sup>148</sup> *Id.* § 254(c)(1)(B)–(C).

<sup>149</sup> See *id.* § 254(c)(1)(B).

<sup>150</sup> *Id.* § 254(b)(1) (emphasis added).

<sup>151</sup> For example, a “technical standard” would apply to the electrical and signaling parameters at the interface between carriers. A “performance standard” would apply to the speed, accuracy, dependability, availability, and survivability of the transmission/switching path.

<sup>152</sup> Those include the American National Standards Institute Committee T–1, Electronic Industry Association, and Telecommunications Industry Association.

encourage existing standard-setting bodies to discuss and establish relevant technical standards.

69. The 1996 Act requires the Commission to ensure that "[c]onsumers in all regions of the Nation, \* \* \* have access to telecommunications and information services \* \* \* that are reasonably comparable to those services provided in urban areas."<sup>153</sup> As stated above, the 1996 Act also requires that the Commission ensure that "[q]uality services should be available."<sup>154</sup> We seek comment on whether it would be useful to collect and publish certain basic information regarding technical performance levels of carriers subject to our jurisdiction. Information on service quality that would enable comparisons between the performance levels of various telecommunications carriers would potentially create a market-based incentive for carriers to provide quality services. By providing consumers with easy access to publicly available data on the performance level of various carriers, we could potentially spur carriers to compete for customers, among other things, on the basis of service quality in an increasingly competitive telecommunications marketplace.<sup>155</sup> We note, however, that because competition will probably not develop in a uniform fashion throughout the Nation, we seek comment on whether it may be necessary to obtain data that could be used by the public, regulators, and regulated entities, to monitor service quality performance from carriers, particularly those serving in rural areas, that are not currently subject to our existing service quality monitoring program.<sup>156</sup> In proposing to collect and publish this information, we wish to impose the least possible cost on the companies involved. We, therefore, solicit comment on whether industry organizations or State commissions already collect the information that should be contained in these performance reports, and whether it would be reasonable to rely upon such information rather than extending our existing requirements to all carriers. We also ask that the commenters attempt to estimate the potential costs associated

with these alternatives, in accordance with the principles stated in Section 254(b)(5) that support mechanisms should be "specific, predictable, and sufficient."<sup>157</sup>

70. Finally, we recognize that such reports may not, in the near future, be necessary for many urban and suburban areas, as local service competition develops and the technical characteristics of competitors' respective services are determined in response to market demands. We therefore ask whether we should take action at some fixed date to evaluate the need for continuing the performance reports, covering services offered to all or some areas of the nation. We request that the Joint Board prepare a recommended decision addressing all of the issues raised in this Notice with respect to monitoring of telecommunications services.

#### IV. Schools, Libraries, and Health Care Providers

##### A. Goals and Principles

71. Among the seven universal service principles established in the 1996 Act is the principle that "elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services."<sup>158</sup> The Act allows the Commission to designate additional, special services for universal service support for eligible schools, libraries and health care providers.<sup>159</sup> In this section we propose to implement Sections 254(c)(3) (allowing the Commission to designate additional services for such support mechanisms for schools, libraries, and health care providers) and 254(h)(1) (providing guidance on rates and discounts for rural health care providers and educational providers and libraries). As to Section (h)(1), we discuss and seek comment on what services, in addition to the core services discussed in Section III, should be made available to schools, libraries and rural health care providers at a discount.<sup>160</sup> We also seek comment on issues relating to the implementation of Section 254(h)(1) relating to support mechanisms that would enable eligible

schools, libraries, and rural health care providers to receive both the core and advanced telecommunications services included among those eligible for universal service support.<sup>161</sup>

72. Access to telecommunications services is important to schools, classrooms, libraries and rural health care providers for a number of reasons. Congress explicitly recognized the importance of telecommunications to these educational institutions and rural health care providers in enacting this legislation:

The ability of K-12 [kindergarten to 12th grade] classrooms, libraries and rural health care providers to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis. The provisions of subsection (h) will help open new worlds of knowledge, learning and education to all Americans rich and poor, rural and urban. They are intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of illness, to Americans everywhere via schools and libraries. This universal access will assure that no one is barred from benefiting from the power of the Information Age.<sup>162</sup> Modern two-way, interactive capabilities will not only enable users at schools, libraries and rural health care facilities to access information, but also give students the ability to participate in educational activities at other schools, including universities; allow students, teachers, librarians and rural health care providers to consult with colleagues or experts at other institutions; may allow parents to participate more easily in their children's education by communicating with the school's telecommunications system; and may facilitate the transmission of data for the practice of telemedicine. Finally, as advanced telecommunications services become ubiquitous, technological literacy will become even more important to our economy. Exposure to telecommunications services for our nation's school children will provide them with skills needed for jobs in a technologically advanced society.

73. In this section, we focus on three tasks that are essential to the implementation of the provisions of the 1996 Act discussed in the foregoing paragraph. First, we seek to identify the

<sup>153</sup> 1996 Act sec. 101(a), § 254(b)(3).

<sup>154</sup> *Id.* § 254(b)(1).

<sup>155</sup> Airline on-time information is published in "Air Travel Consumer Report," Aviation Consumer Protection Div., Dep't of Transp. (issued monthly).

<sup>156</sup> See 47 CFR 43.21-22. Information reported by LECs includes, *inter alia*, service installation and repair intervals, trunk blockage rates and switch outage information. These are reported on Automated Reporting and Management Information System (ARMIS) Report Nos. 43-05, 43-06 and 43-07.

<sup>157</sup> 1996 Act sec. 101(a), § 254(b)(5).

<sup>158</sup> *Id.* § 254(b)(6).

<sup>159</sup> *Id.* § 254(c)(3). We note that Section 254(h)(4) denies eligibility for discounts to any school or library that "operates as a for-profit business." *Id.* § 254(h)(4). In addition, the discounts are not available to any elementary and secondary school having an "endowment of more than \$50,000,000" or library that is "not eligible for participation in State-based" applications for library services and technology funds under Title III of the Library Services and Construction Act. *Id.* § 254(h)(A). See further discussion *infra* at part V.B.3.

<sup>160</sup> 1996 Act § 254(h)(1).

<sup>161</sup> We note that the statutory scheme of Section 254 distinguishes between eligible health care providers generally and rural health care providers. The support mechanisms created by Section 254(h)(1) would extend only to rural health care providers. Section 254(h)(2), which we discuss in part V., embraces all eligible health care providers as defined in Section 254(h)(5)(B) and not just those operating in rural areas.

<sup>162</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 132-33 (1996).

services to be supported by federal universal service support mechanisms for schools, libraries and rural health care providers.<sup>163</sup> For schools and libraries, the Act requires that services provided by telecommunications carriers receiving universal service support be “for educational purposes.”<sup>164</sup> For rural health care providers, services provided by telecommunications carriers supported by universal service support mechanisms must be those that are “necessary for the provision of health care services in a State.”<sup>165</sup>

74. Next, we consider ways to implement the support mechanisms for schools, libraries and rural health care providers. For schools and libraries, we seek comment on how to formulate discount methodologies that ensure that each discount is “an amount that \* \* \* is appropriate and necessary to ensure affordable access to and use of such services by such entities.”<sup>166</sup> For rural health care providers, this task includes, *inter alia*, determination of the method to be used by each carrier in calculating the “amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State,” for purposes of defining the offset or reimbursement due the carrier under our universal service support rules.<sup>167</sup>

75. We also seek to determine the terms and conditions for the provision of interstate support to telecommunications carriers serving schools and libraries and rural health care providers. We discuss the identification of the health care providers that serve “persons who reside in rural areas,” and, correspondingly, the “urban areas in that State.”<sup>168</sup> Finally, we discuss which telecommunications carriers may receive universal support pursuant to Section 254.

76. In addition to seeking comment on the approach to the implementation of Section 254(h)(1)(A) discussed below, we seek comment on additional measures that may be necessary to implement this section. We also refer all these issues to the Joint Board for its recommendation.

## B. Schools and Libraries

### 1. What Services To Support

77. Section 254(h)(1)(B) of the Act states:

All telecommunications carriers serving a geographic area shall, upon bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities.

Section 254(c)(3), in turn, states that “[i]n addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools [and] libraries \* \* \* for the purposes of subsection (h).” We propose that the set of services designated for federal universal service support pursuant to Section 254(c)(1) and any other services designated for support pursuant to Section 254(c)(3) be made available to schools and libraries pursuant to the discount to be considered in this proceeding.

78. We seek comment on Joint Board recommendation on the additional services that carriers must make available to schools and libraries under Section 254(h)(1)(B). As the legislative history makes clear, Congress “expect[ed] the Commission and the Joint Board to take into account the particular needs of \* \* \* K-12 [kindergarten to 12th grade] schools and libraries” in determining which services should be provided at a discount.<sup>169</sup>

79. A February 1996 study, *Advanced Telecommunications in U.S. Public Elementary and Secondary Schools, 1995*, commissioned by the National Center for Education Statistics, part of the United States Department of Education, observes that these services are not yet widely available in classrooms. Only 9 percent of all instructional rooms (classrooms, labs, and library media centers) are currently connected to the Internet.<sup>170</sup> Schools with large proportions of students from poor families are half as likely to provide Internet access as schools with

small proportions of such students.<sup>171</sup> Funding and inadequate telecommunications links were the most frequently cited barriers to acquiring or using advanced telecommunications services in public schools.<sup>172</sup>

80. In determining which telecommunications services to support through universal service mechanisms, our goal is to help elementary and secondary schools and classrooms and libraries to have access to advanced telecommunications services<sup>173</sup> and to help minimize the barriers which exist to provision of telecommunications services to schools and libraries. We seek comment on what functionalities should be supported through universal service mechanisms for schools and libraries and what facilities are required to provide those functionalities.<sup>174</sup> In this regard, we seek guidance on how to determine which services will be provided to schools and libraries at a discount pursuant to Section 254(h)(1)(B), without prescribing a specific technical standard for each funded service. We also seek comment on how we should define “geographic area” for purposes of Section 254(h)(1)(B).

81. In addition, we seek comment on whether wireless technologies may provide a more efficient way of delivering any of the services designated for support. Finally, we also invite comment on how our special definition of services for schools and libraries should reflect future “advances in telecommunications and information

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* at 3. In the survey instrument used for the study, public schools were asked which services they now make available to their students, including: (1) Computers connected to a local area network; (2) computers with connection or access to a wide area network; and (3) computers connected to the Internet. With respect to Internet access, the survey asked which Internet resources or capabilities a school has access to, including: (1) Electronic-mail; (2) news groups; (3) resource locations services; and (4) World Wide Web access. *Id.* at app. G.

<sup>173</sup> 1996 Act sec. 101(a), § 254(b)(6).

<sup>174</sup> For example, we note that many of the basic voice grade loops that would be available to schools and libraries at discounted prices as part of the basic package of services would permit them to connect to the Internet at the full 28.8 kilobyte per second (kbps) speed of the current fastest popular computer modems. If schools and libraries find it important to have instantaneous transmissions or to handle multiple connections simultaneously, they are likely to require higher capacity, higher speed links. Schools that desire video links to permit teleconferencing will generally find 1.5 Mbps T1 links quite adequate for the “talking head” lecture style of presentations that most teachers present. Yet others may note that to provide high-quality full-motion video in real time today may require a 45 Mbps DS3 link. Technical Personnel Bellcore and Bell Operating Companies, *Telecommunications Transmission Engineering* 363 (1990).

<sup>163</sup> 1996 Act sec. 101(a), §§ 254(h)(1) & 254(C)(3).

<sup>164</sup> 1996 Act sec. 101(a), § 254(h)(1)(B).

<sup>165</sup> *Id.* § 254(h)(1)(A).

<sup>166</sup> *Id.* § 254(h)(1)(B).

<sup>167</sup> *Id.* § 254(h)(1)(A).

<sup>168</sup> *Id.*

<sup>169</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 133 (1996).

<sup>170</sup> National Ctr. for Educ. Statistics, U.S. Dep’t of Educ., *Advanced Telecommunications in U.S. Public Elementary and Secondary Schools 1995*, (Feb. 1996).

technologies and services.”<sup>175</sup> We seek comment and Joint Board recommendation on all of these issues.

## 2. How To Implement

### a. Establishment of the Interstate Discount for Schools and Libraries.

82. As discussed above,<sup>176</sup> we interpret Section 254(h)(1)(B) of the new Act to entitle schools and libraries to receive discounts on all services falling either within our list of services under Section 254(c)(1) that should receive universal service support, or our list of services for schools and libraries under Section 254(c)(3). Each discount must produce a “rate[] less than the amounts charged for similar services to other parties” and be “an amount that \* \* \* is appropriate and necessary to ensure affordable access to and use of such services by such entities.”<sup>177</sup> The 1996 Act gives the Commission the responsibility to establish the discounts on interstate services, while the States are charged with establishing the discounts on intrastate universal services.<sup>178</sup>

83. We seek comment and Joint Board recommendation on the factors to be used in formulating a discount methodology for universal service support for schools and libraries. The methodology could reflect whether the services used are tariffed or whether the charges are for capital investments or recurring expenses. The methodology could also be based on the incremental costs of providing services rather than retail prices. We also seek comment on the estimated costs associated with each discount methodology, and how each methodology would comport with the Act’s principle of providing “specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”<sup>179</sup> Overall, we seek comment and a Joint Board recommendation on how the respective State and Federal discount methodologies can be harmonized to ensure that we fulfill Congress’s goal that, throughout the nation, elementary and secondary schools, classrooms and libraries have access to advanced telecommunications services.

### b. Terms and Conditions of Interstate Support for Telecommunications Carriers Providing Discounted Universal Services to Schools and Libraries.

84. Section 254(h)(1)(B) specifies that schools and libraries are entitled to a discount on telecommunications

services only if the requested services will be used “for educational purposes.”<sup>180</sup> We invite comment on what steps we should take to ensure that this requirement is met. One possible approach would be to have the school or library provide the carrier with a written certification that the requested services will be used for educational purposes and will not be “sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.”<sup>181</sup> We invite comment and Joint Board recommendation on this proposal. To ensure that schools and libraries have a meaningful opportunity to benefit from the discounts, we propose to require each carrier to inform annually each school and library within its geographic serving area of the available discounts.

85. Under the 1996 Act, each “telecommunications carrier[] serving a geographic area shall, upon bona fide request for any of its services that are within the definition of universal service” provide such service to schools and libraries “for educational purposes.”<sup>182</sup> We propose that any person qualified under State or local law to order telecommunications services for schools or libraries be deemed capable of making a “bona fide request” for service. We ask for comment and Joint Board recommendation on how to determine with as much precision as possible whether such a request is “bona fide.”

86. The Act instructs that “telecommunications services and network capacity” provided to schools and libraries through universal service support mechanisms “may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.”<sup>183</sup> We ask commenters and the Joint Board to address whether this provision will affect the ability of schools and libraries to receive universal service support if they are sharing a network with parties who are not eligible to receive support and what mechanisms could ensure that this provision does not discourage partnerships between schools and libraries and their communities.

## 3. Who Is Eligible for Support

87. The term “elementary and secondary schools” is defined for purposes of Section 254 by reference to the definition found in the Elementary and Secondary Education Act of

1965.<sup>184</sup> The term “elementary school” is defined there to be “a nonprofit institutional day or residential school that provides elementary education, as determined under State law.”<sup>185</sup> The term secondary school means “a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12.”<sup>186</sup> Consortia of educational institutions providing distance learning to elementary and secondary schools are considered as educational providers eligible for universal service support.<sup>187</sup> Section 254(h)(4) denies eligibility for discounts to any school or library that “operates as a for-profit business.” In addition, the discounts are not available to any elementary and secondary school having an “endowment of more than \$50,000,000” or library that is “not eligible for participation in State-based” applications for library services and technology funds under Title III of the Library Services and Construction Act.<sup>188</sup> To help ensure that these conditions are met, we propose to require that any certification address these eligibility requirements.

88. Each telecommunications carrier providing discounted service to schools and libraries is permitted either to have “the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service” or “receive reimbursement utilizing the support mechanisms to preserve and advance universal service.”<sup>189</sup> Unlike all other universal service support, which is to be restricted to “eligible telecommunications carriers” under the terms of Section 214(e) of the Act,<sup>190</sup> the offset or reimbursement provided under Section 254(h)(1)(B), pertaining to schools and libraries, must be given to “all telecommunications carriers serving a geographic area.” We ask for comment and Joint Board recommendation on how to implement these provisions. Section 254(h)(1)(B) specifies that all discounts shall apply to “the amounts charged for similar services to other parties.”<sup>191</sup> We invite comment and Joint Board recommendation on how we might determine those amounts.

<sup>184</sup> *Id.* 254(h)(5)(A).

<sup>185</sup> 20 U.S.C. 8801(14).

<sup>186</sup> *Id.* 8801(25).

<sup>187</sup> S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 134 (1996).

<sup>188</sup> 1996 Act sec. 101(a), § 254(h)(4); see also 20 U.S.C. 353.

<sup>189</sup> 1996 Act sec. 101(a), § 254(h)(1)(B).

<sup>190</sup> *Id.* 214(e).

<sup>191</sup> *Id.* § 254(h)(1)(B).

<sup>175</sup> 1996 Act sec. 101(a), § 254(c)(1).

<sup>176</sup> See Section V.B.1., *supra*.

<sup>177</sup> 1996 Act sec. 101(a), § 254(h)(1)(B).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* § 254(b)(5).

<sup>180</sup> *Id.* § 254(h)(1)(B).

<sup>181</sup> *Id.* § 254(h)(3).

<sup>182</sup> *Id.* § 254(h)(1)(B).

<sup>183</sup> *Id.* § 254(h)(3).

### C. Health Care Providers

#### 1. What Services to Support

89. Section 254(h)(1)(A) requires telecommunications carriers "upon receiving a bona fide request, [to] provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State."<sup>192</sup> According to the Joint Statement, Section 254(h) "is intended to ensure that health care providers for rural areas \* \* \* have affordable access to modern telecommunications services that will enable them to provide medical \* \* \* services to all parts of the Nation."<sup>193</sup> The Section is also intended to ensure that "rural health care provider[s] receive an affordable rate for the [telecommunications] services necessary for the purposes of telemedicine and instruction relating to such services."<sup>194</sup>

90. Section 254(c)(3) authorizes the Commission to designate support for "additional services" that are not included in the list of services that should receive universal service support under the four definitional criteria of Section 254(c)(1), when those services are provided to "health care providers for the purposes of [S]ubsection [254](h)."<sup>195</sup> Pursuant to Sections 254(c)(3) and 254(h), we propose to "designate additional services" provided to rural health service providers for support. We propose to designate for support these additional telecommunications services to the extent "necessary for the provision of [rural] health care services in a State."<sup>196</sup> We ask interested parties to propose descriptions of the kinds of telecommunications services that are "necessary for the provision of [rural] health care services."<sup>197</sup>

91. Current applications of telemedicine include storage and dissemination of patient records for diagnostic purposes, image compression for efficient storage and retrieval of image data, image-processing for diagnostic purposes, digital transmission of large two-dimensional and three-dimensional medical images, and computerized remote-control of

medical equipment.<sup>198</sup> They may also include the ability to gain easy and rapid access to medical databases, such as those of transplant candidates. Emerging telemedical applications include real-time transmission of video images (i.e., for physician-to-physician and physician-to-patient consultations); direct transmission of medical data to hospitals from medical devices to patients at home; and "data mining" of large databases of patient records for use in medical education and diagnostics.<sup>199</sup> In transmitting medical information, some aspects of telemedicine may require telecommunications services meeting high technical standards, such as standards for quality of visual resolutions.<sup>200</sup>

92. Many of the telemedical applications discussed above require high-speed telecommunications capability. Asynchronous transfer mode (ATM) and integrated systems digital network (ISDN) technologies may provide the most promising choices for transfer of telemedicine data.<sup>201</sup> In describing telecommunications services that they believe "necessary for the provision of [rural] health care services," commenters should discuss the number of simultaneous use transmission paths and the speed of transmission required by telemedicine practitioners. To the extent that specific telecommunications services constitute "advanced telecommunications and information services," as described in Section 254(h)(2)(A), we request that commenters evaluate the extent to which providing health care providers with access to those services is "technically feasible and economically reasonable."<sup>202</sup>

93. We seek comment on what "additional services"<sup>203</sup> are necessary "for the provision of [rural] health care services in a state."<sup>204</sup> In addition, we seek comment on the nature of the "instruction relating to such [health care] services" telecommunications carriers provide their subscribers.<sup>205</sup>

94. We seek technology-neutral descriptions of the telecommunications functionalities that health care providers require as well as the names

of the current technologies they are using to provide these functionalities. We also request comment on whether limiting discounts to outgoing services would be sufficient to meet the needs of rural health care providers or whether incoming services should also be discounted. We ask the Joint Board convened herein to prepare a recommended decision regarding these issues.

#### 2. How to Implement

95. To implement Sections 254(h)(1)(A) of the 1996 Act, we must designate areas as either urban or rural. This is necessary to determine whether a particular health care provider "serves persons who reside in rural areas" and to identify the "urban areas in that State," for purposes of establishing "reasonably comparable" rates for "telecommunications services which are necessary for the provision of health care services in a State." For these purposes, we seek a methodology that is based on publicly available data, is neither under-inclusive nor over-inclusive, and that is easily administered.<sup>206</sup>

96. One alternative could be to adopt the existing classification system developed by the Office of Rural Health Policy of the Health Resources and Services Administration (HRSA) for its Rural Health Services Outreach Grant Program.<sup>207</sup> The HRSA classifications are based initially on Metropolitan Statistical Areas (MSAs) designated by the Office of Management and Budget (OMB). MSAs divide the nation into metropolitan and nonmetropolitan counties, which we would treat as urban and rural areas, respectively. The HRSA criteria, however, recognize that some MSAs are extremely large and contain some very rural areas.

97. Another approach would use data prepared by the United States Department of Agriculture's Economic Research Service.<sup>208</sup> The Economic Research Service divides nonmetropolitan areas into six categories, depending on whether or not they are adjacent to a metropolitan county and whether the population of the county is a) less than 2,500, b) between 2,500 and 20,000, or c) greater than 20,000.<sup>209</sup> Because these data do

<sup>198</sup> Peter A. Ensminger, *Telemedicine*, Northeast Parallel Architectures Center (1996).

<sup>199</sup> *Id.*

<sup>200</sup> See American College of Radiology Standard for Teleradiology, Res. 21 (1994) (available from the American College of Radiology).

<sup>201</sup> Ensminger, *supra* n. 194. Because they have capacity to transmit large quantities of data quickly, ATM and ISDN would facilitate the high-speed transfer of telemedicine data.

<sup>202</sup> 1996 Act sec. 101(a), § 254(h)(2).

<sup>203</sup> *Id.* § 254(c)(3).

<sup>204</sup> *Id.* § 254(h)(1)(A).

<sup>205</sup> *Id.*

<sup>206</sup> See S. Conf. Rep. No. 104-230, 104th Cong., 2nd Sess. 1 (1996) (expressing a congressional intent to create a "pro-competitive, de-regulatory national policy framework").

<sup>207</sup> See Health Resources and Servs. Admin., Dep't of Health and Human Servs., Notice of Availability of Funds, 60 FR 64168, 64169 (1995).

<sup>208</sup> See U.S. Congress, Office of Technology Assessment, *Rural America at the Crossroads: Networking for the Future* 36-38 (1991).

<sup>209</sup> *Id.* at 38.

<sup>192</sup> *Id.* § 254(h)(1)(A).

<sup>193</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 132 (1996).

<sup>194</sup> *Id.* at 133.

<sup>195</sup> 1996 Act sec. 101(a), § 254(c)(3).

<sup>196</sup> *Id.* § 254(h)(1)(A).

<sup>197</sup> See *id.* § 254(h)(1)(A).

not define urban and rural areas, we invite the commenters to suggest ways we could use them to determine whether areas should be considered urban or rural.

98. We ask interested parties to comment on these methods for defining rural areas in a state for the purposes of the sections of the Act pertaining to rural health care providers. We also invite comment on alternative methodologies for delineating urban and rural areas for these purposes. We ask commenters to discuss whether each proposed methodology is based on publicly available data, is neither under-inclusive nor over-inclusive, and could be easily administered. In addition, we seek comment on use of these evaluative criteria and on the costs associated with these proposals pursuant to Section 254(b)(5), which requires universal service support mechanisms to be "specific, predictable and sufficient."

99. Section 254(h)(1)(A) requires telecommunications carriers to provide rural health care providers with the services that we define as necessary "at rates that are reasonably comparable to rates charged for similar services in urban areas in [their] State."<sup>210</sup> We believe that fulfillment of our responsibilities under Sections 254(h)(1)(A) and 254(h)(2) may require that we adopt guidelines for telecommunications carriers to follow in establishing such rates. We ask commenters to address whether compliance with those guidelines should be a condition of eligibility for telecommunications carriers to receive interstate support for telecommunications services provided to rural health care providers under Section 254(h).

100. In establishing an appropriate methodology for ensuring "reasonably comparable" rates, we wish to minimize, to the extent consistent with Section 254, the administrative burden on regulators and carriers. It could, for example, prove unduly burdensome to require the submission of information necessary to calculate weighted averages of the rates in all urban areas in order that the telecommunications services which are "necessary" for the provision of health care to be provided to rural health care providers are priced at reasonably comparable rates.<sup>211</sup> We interpret the "reasonably comparable" requirement as requiring less than absolute precision in determining the appropriate rates for rural health care providers under these provisions of the new Act. Accordingly, we request

comment on how carriers should derive the rates applicable to rural health care providers to ensure they are priced at a reasonably comparable rate.

101. In addition, the amount of credit or reimbursement to carriers from the health care support mechanism is based on the difference between the price actually charged to eligible health care providers and the rates for similar, if not identical, services provided to "other customers" in rural areas in that State.<sup>212</sup> We invite comments on how to determine the rate for rural non-health care providers and the rate for urban health care providers necessary to calculate the amount of credit. Commenters should discuss whether average rates should be computed or whether some other method would be more appropriate.

102. While it may be difficult for carriers to establish the rates for similar services provided to rural areas in a State if identical services are not provided, it is likely that similar services will generally be available. We seek comment, however, on whether there is a need to define when services are comparable and, if so, how we might do so.

103. We also ask that interested parties address the appropriate safeguards to ensure that telecommunications carriers providing service pursuant to Section 254(h)(1)(A) are, in fact, responding to the receipt of a "bona fide request" for "telecommunications services which are necessary for the provision of [rural] health care services in a State."<sup>213</sup> We seek comment on whether we might require certification from rural health care providers requesting telecommunications services under Section 254(h)(1)(A) or from telecommunications carriers that provide such services. One approach to such certification would be to require each telecommunications carrier providing telecommunications services to rural health care providers under this provision to obtain written certification that the services are necessary for the provision of health care services. We seek comment on this approach, as well as suggestions for alternative or additional measures to ensure that universal service support provided to telecommunications carriers under Section (h)(1)(A) is used for its intended purpose.

### 3. Who Is Eligible for Support

104. In order to receive support under the universal service support

mechanisms for service to rural health care providers, a telecommunications carrier must meet two criteria. First, it must provide service to a "health care provider" as defined by Section 254(h)(5)(B). Section 254(h)(5)(B) defines "health care provider" to mean:

- (i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;
- (ii) community health centers or health centers providing health care to migrants;
- (iii) local health departments or agencies;
- (iv) community mental health centers;
- (v) not-for-profit hospitals;
- (vi) rural health clinics; and
- (vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi).<sup>214</sup>

Second, a telecommunications carrier must provide service to "persons who reside in rural areas" in the state in which the health care services proposal for support are provided under Section 254(h)(1)(A).<sup>215</sup>

105. Section 254(h)(1)(A) states that a "telecommunications carrier" providing service under this paragraph "shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service."<sup>216</sup> This language differs from that of Section 254(h)(1)(B), which explicitly permits "[a]ll telecommunications carriers serving a geographic area" providing designated services to schools and libraries to be reimbursed for services, either through "an offset to its obligation to contribute to the mechanisms to preserve and advance universal service," or through "reimbursement utilizing the support mechanisms to preserve and advance universal service."<sup>217</sup>

106. In view of the differences described in the foregoing paragraph, we request comment on whether any statutory or policy rationale requires treating telecommunications carriers providing service under Section 254(h)(1)(A) differently than telecommunications carriers providing service under Section 254(h)(1)(B) for reimbursement purposes. We invite commenters to address whether Section 254(h)(1)(A) provides for an offset to contributions, and whether it prohibits direct compensation payments. Finally,

<sup>214</sup> *Id.* § 254(h)(5)(B).

<sup>215</sup> *Id.* § 254(h)(1)(A).

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* § 254(h)(1)(B).

<sup>210</sup> 1996 Act sec. 101(a), § 254(h)(1)(A).

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

we request comment addressing the desirability of using the same offset or reimbursement alternatives set forth in Section 254(h)(1)(B). We request the Joint Board's recommendation regarding the appropriate resolution of the issues described in this section.

#### V. Enhancing Access to Advanced Services for Schools, Libraries, and Health Care Providers

##### A. Goals and Principles

107. Section 254(b)(6) directs the Commission and the Joint Board to adopt policies designed to assure "elementary and secondary schools and classrooms, health care providers, and libraries \* \* \* access to advanced telecommunications services."<sup>218</sup> Section 254(c)(3) enables the Commission to designate additional, special services for universal service support for eligible schools, libraries and health care providers.

108. Section 254(h)(2) directs the Commission to establish "competitively neutral rules \* \* \* to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries."<sup>219</sup> As the Joint Statement explains with respect to advanced services:

New subsection (h)(2) requires the Commission to establish rules to enhance the availability of advanced telecommunications and information services to public institutional telecommunications users. For example, the Commission could determine that telecommunications and information services that constitute universal service for classrooms and libraries shall include dedicated data links and the ability to obtain access to educational materials, research information, statistics, information on Government services, reports developed by Federal, State, and local governments, and information services which can be carried over the Internet.<sup>220</sup>

The Commission is further directed to "define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users."<sup>221</sup>

<sup>218</sup> *Id.* § 254(b)(6).

<sup>219</sup> *Id.* § 254(h)(2)(A).

<sup>220</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 133 (1996).

<sup>221</sup> 1996 Act sec. 101(a), § 254(h)(2)(B). "Public institutional telecommunications user" is defined as an elementary or secondary school, a library or health care provider as defined in Section 254(h)(5)(C). *Id.* § 254(h)(5)(C).

##### B. How to Implement

109. In Section IV, we sought to identify a set of telecommunications services to be supported by Federal universal service support mechanisms for schools, libraries and rural health care providers. We now seek to identify those advanced telecommunications and information services that carriers should make available to all eligible health care providers, libraries and school classrooms to the extent technically feasible and economically reasonable. We ask commenters to identify such services and to identify the features and functionalities required to give eligible health care providers, libraries and school classrooms access to those services. We also ask commenters to suggest competitively neutral rules that we could adopt "to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries." Specifically, we ask whether the "advanced telecommunications and information services" addressed in Section 254(h)(2) should be a broader, narrower, or identical group to those supported under Section 254(h)(1). Further, we request suggestions as to any additional measures, other than discounts and financial support, that would promote deployment of advanced services to school classrooms, libraries and health care providers.

110. For each measure, we ask commenters to address: whether it would be competitively neutral for carriers, telecommunications providers, and any other affected entities, and whether it complies with the Act's requirement that "telecommunications services and network capacity" provided to public institutional telecommunications users "may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value."<sup>222</sup> We seek comment on how we should assess whether particular services that provide access to advanced telecommunications and information services are "technically feasible and economically reasonable."<sup>223</sup> We also ask that the commenters attempt to estimate the potential costs associated with such measures, pursuant to the principle stated in Section 254(b)(5) that support mechanisms should be "specific,

<sup>222</sup> *Id.* § 254(h)(3).

<sup>223</sup> *Id.* § 254(h)(2)(A).

predictable and sufficient."<sup>224</sup>

Similarly, we request proposals to implement our responsibility, under Section 254(h)(2)(B), "to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users."<sup>225</sup> We also refer these issues to the Joint Board for its recommendation.

##### C. Who Is Eligible for Support

111. For purposes of Section 254(h)(2), schools and libraries have definitions identical to those in Section 254(h)(1), discussed at part V.B.3., above. Congress also intended to benefit "all \* \* \* health care providers," as defined in Section 254(h)(5)(B),<sup>226</sup> not just rural health care providers. We invite interested parties to comment and ask the Joint Board's recommendation regarding this interpretation.

#### VI. Other Universal Service Support Mechanisms

112. The 1996 Act states that any federal universal service support provided to eligible carriers "should be explicit" and should be recovered from all telecommunications carriers that provide interstate telecommunications service "on an equitable and nondiscriminatory basis."<sup>227</sup> Currently, approximately 25 percent of the unseparated cost of incumbent LECs' subscriber loops (the lines connecting subscribers to local telephone company central offices) is allocated to the interstate jurisdiction. These carriers recover a significant portion of their loop costs allocated to the interstate jurisdiction directly from subscribers through flat monthly subscriber line charges (SLCs), but the Commission's rules impose caps on the SLC rate at \$3.50 per month for residential and single-line business users and \$6.00 per month for multi-line business users.<sup>228</sup> The incumbent LECs' remaining interstate allocated loop costs are currently recovered through a per-minute carrier common line (CCL) charge paid by IXCs, and ultimately by subscribers in the form of increased interstate long distance rates.

113. Many interested persons have argued that all costs associated with facilities dedicated to the use of a single subscriber should be recovered through

<sup>224</sup> *Id.* § 254(b)(5).

<sup>225</sup> *Id.* § 254(h)(2)(B).

<sup>226</sup> *Id.* § 254(h)(2)(A). See discussion *supra* at part V.C.3.

<sup>227</sup> 1996 Act sec. 101(a), § 254 (d), (e).

<sup>228</sup> 47 CFR 69.104(c)-(e), 69.203(a). If the interstate allocation of common line costs in a study area is lower than the SLC cap, the lower number is used.

a flat, non-traffic sensitive charge assessed on end users.<sup>229</sup> They contend that the existing CCL charge artificially raises rates for interstate long distance usage and distorts competitive incentives in the local exchange marketplace. Moreover, the imposition of per-minute charges on one class of service—interstate interexchange long distance—to reduce flat rates for end users (with the goal of increasing telephone subscribership) appears to constitute a universal service support flow. High-volume interstate long distance customers contribute more than the full cost of their subscriber lines, while low-volume customers contribute less. The Federal-State Joint Board that recommended a mandatory cap on the SLCs emphasized that this limitation was designed to support universal service.<sup>230</sup> The current CCL charge appears to be inconsistent with the directives of the 1996 Act that universal service support flows “be explicit” and be recovered on a “nondiscriminatory basis” from all telecommunications carriers providing interstate telecommunications service.<sup>231</sup> The Commission and a Federal-State Joint Board have found, in the past, that increased flat rate recovery of LECs’ subscriber loop costs has substantially stimulated demand for interstate switched services, and has produced major economic efficiency gains with minimal impact on subscribership.<sup>232</sup> At the same time, recovery of the full interstate allocation of common line costs directly from end-users might cause the flat monthly rates paid by certain subscribers to exceed acceptable levels, and could have an adverse impact on telephone subscribership.

114. In the mid-1980s, we referred to a Federal-State Joint Board questions relating to the recovery of interstate-

allocated subscriber loop costs.<sup>233</sup> We do so again here. We now seek comment on whether to continue the existing subsidy so as to preserve reduced end user common line charges, or to eliminate or reduce the subscriber loop portion of the interstate CCL charge and, instead, permit LECs to recover these costs from end users.<sup>234</sup> We invite parties to comment on whether the existing method for recovery of common line costs allocated to the interstate jurisdiction comports with economic efficiency and the specific mandates of the 1996 Act. We also seek comment on the extent to which increases in SLCs would reduce telephone subscribership, if at all, and the effect on subscribership across different income levels and telecommunications consumption patterns. We seek comment on the level of explicit universal service support that would be required to avoid unacceptable harm to subscribership under such a scenario, and the extent to which such support could be provided through the targeted support mechanisms to low-income customers and customers in rural, insular, or high-cost areas discussed above.<sup>235</sup> In the alternative, we seek comment on whether all or a portion of the current level of support for subscriber loop rates should be retained but restructured, consistent with the mandate of the 1996 Act, to “be explicit” and to be funded in a “nondiscriminatory” manner.<sup>236</sup> A combination of these approaches is also possible: For example, the caps on interstate SLCs could be increased gradually but not eliminated, with the balance recovered from the universal service support fund proposed below. We also seek comment on whether eligibility for these support mechanisms must, or should, be limited to state-certified eligible carriers, under the 1996 Act.

115. The CCL charge assessed by larger incumbent LECs also recovers revenues associated with long-term support (LTS) payments remitted to the

National Exchange Carrier Association, Inc. (NECA).<sup>237</sup> Until 1989, the Commission’s rules required all LECs to participate in a nationwide averaged common line pool. That mandatory pooling arrangement was replaced in 1989 by the current system, which permits LECs to leave the pool and set their CCL rates based on their own interstate separated costs of subscriber loops. The LECs that withdrew from the common line pool are required to remit LTS payments to NECA, which distributes the LTS payments to LECs remaining in the nationwide common line pool. With the introduction of price cap regulation, the uniform CCL rate assessed by LECs remaining in the pool is based on the average CCL rate charged by price cap LECs.<sup>238</sup> LTS payments, which directly increase interstate access charges assessed by some LECs so as to reduce charges assessed by other LECs, are an identifiable support flow in the existing interstate access charge system. We propose to eliminate the recovery of LTS revenues through incumbent LECs’ interstate CCL charges, and we seek comment on whether the LTS system should be eliminated or restructured in an explicit and nondiscriminatory manner, consistent with the universal service support mechanisms described elsewhere in this Notice and with the principles espoused in the 1996 Act. We also seek comment on whether the principles governing our deliberations in this proceeding permit, or even require, a transition period for carriers that receive LTS to adjust to any changes in the LTS system or rate structure for recovering loop costs allocated to the interstate jurisdiction. We seek a Joint Board recommendation on all of these issues.

## VII. Administration of Support Mechanisms

### A. Goals and Principles

116. The 1996 Act states that “[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service”<sup>239</sup> through “specific, predictable and sufficient Federal and State mechanisms.”<sup>240</sup> To accomplish this, the Act stipulates that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an

<sup>229</sup> See Com. Car. Bur., FCC, Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms 90–97 (1996); cf. Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket Nos. 95–185, 94–54, FCC 95–505, para. 43 (rel. Jan. 11, 1996), summarized in 61 FR 3644 (1996).

<sup>230</sup> MTS and WATS Market Structure; Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board, Recommended Decision and Order, 2 FCC Rcd 2324 (1987) (1987 Recommended Decision); 1984 Recommended Decision.

<sup>231</sup> 1996 Act sec. 101(a), § 254 (d), (e).

<sup>232</sup> 1987 Report and Order, at 2954, 2957; see also Jerry Hausman et al., The Effects of the Breakup of AT&T on Telephone Penetration in the United States, 83 Am. Econ. Ass’n Papers & Proc. 178, 183 (1993).

<sup>233</sup> See 1985 Lifeline Order (adopting, with minor modifications, the Joint Board recommendations issued in 1984 Recommended Decision); 1987 Report and Order (adopting, with minor modifications, the Joint Board recommendations issued in 1987 Recommended Decision).

<sup>234</sup> The LECs’ interstate CCL charge currently also recovers revenues associated with the provision of payphone service. Pursuant to the 1996 Act, within nine months after the date of its enactment, the Commission will initiate a proceeding to discontinue this element of the CCL charge and replace it with a per-call compensation system for recovering payphone costs. 1996 Act sec. 151(a), § 276(b)(1)(A), (B). The CCL charge also recovers common line long-term support (LTS) payments, which are discussed in the following paragraph.

<sup>235</sup> See supra part III.B., C.

<sup>236</sup> 1996 Act sec. 101(a), § 254(d), (e).

<sup>237</sup> 47 CFR 69.603(e), 69.612.

<sup>238</sup> Com. Car. Bur., FCC, Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms 71–77 (1996).

<sup>239</sup> 1996 Act sec. 101(a), § 254(b)(4).

<sup>240</sup> *Id.* § 254(b)(5).

equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>241</sup> It further stipulates that “[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State.”<sup>242</sup>

117. In view of these provisions, we seek comment on how financial responsibility should be divided between interstate telecommunications carriers and intrastate telecommunications carriers for the costs associated with the universal service support mechanisms authorized under Section 254. We invite commenters to discuss possible approaches for allocating this financial obligation, detailing the advantages and disadvantages of each approach. We ask, in particular, that interested parties address the question of whether passage of the 1996 Act should change existing assumptions about the sources of universal service support. Finally, we request that the Joint Board in this proceeding recommend an appropriate basis, with reference to the 1996 Act, upon which to assign responsibility between the interstate and intrastate jurisdictions for contributions needed to fund support for universal service.

#### B. Administration

##### 1. Who Should Contribute

118. Under the 1996 Act, we must ensure that telecommunications carriers’ contributions that fund universal service support are collected “on an equitable and nondiscriminatory basis” using “specific, predictable, and sufficient mechanisms.”<sup>243</sup> The Act states that “[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.”<sup>244</sup> To fulfill this obligation, Section 254(d) requires that “[e]very telecommunications carrier that provides interstate telecommunications services”<sup>245</sup> contribute to “preserve and advance universal service”<sup>246</sup> and that “[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and

advancement of universal service if the public interest so requires.”<sup>247</sup> The Act defines the term “telecommunications carrier” as “any provider of telecommunications services,” and the term “telecommunications service” as “the offering of telecommunications for a fee *directly to the public*, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”<sup>248</sup> In addition, the Act defines “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”<sup>249</sup>

119. We seek comments that identify which service providers fall within the scope of the term “telecommunications carrier[s] that provide[] interstate telecommunications services.”<sup>250</sup> We also seek comment on whether support obligations associated with universal service mechanisms should extend only to telecommunications carriers providing interstate telecommunications services, or whether we should impose universal service support obligations more broadly, as Section 254(d) of the Act authorizes us to do. Under Section 254(d), universal service support obligations could be imposed upon “other provider[s] of interstate telecommunications,” which, pursuant to the definition of “telecommunications” in Section 3 of the 1996 Act, would include entities that provide interstate “transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”<sup>251</sup> We seek comment and Joint Board recommendations on whether “the public interest \* \* \* requires” that we extend support obligations to “[a]ny other provider[s] of interstate telecommunications,”<sup>252</sup> and, if so, what categories of providers, other than telecommunications carriers, should be so obligated.

120. Section 254(d) authorizes the Commission to “exempt a carrier or class of carriers from [the obligation to make contributions] if the carrier’s telecommunications activities are limited to such an extent that the level of such carrier’s contribution to the

preservation and advancement of universal service would be de minimis.”<sup>253</sup> The Joint Explanatory Statement of the Committee of Conference clarifies that such exemption should be given “only \* \* \* in cases where the administrative cost of collecting contributions from a carrier or carriers would exceed the contribution that carrier would otherwise have to make under the formula for contributions selected by the Commission.”<sup>254</sup> We seek comment on whether we should establish rules of general applicability for exempting very small telecommunications providers, and if so, what the basis should be for determining that the administrative cost of collecting support would exceed a carrier’s potential contribution. Within those parameters, we also specifically seek comment on measures to avoid significant economic harm to small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.<sup>255</sup> In its Recommended Decision, we request that the Joint Board consider all of these issues related to defining the contributors to universal service support.

##### 2. How Should Contributions Be Assessed

121. Section 254(d) requires that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>256</sup> Furthermore, in evaluating different approaches to collecting contributions, we must ensure that “[a]ll providers of telecommunications services make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.”<sup>257</sup>

122. *Contributions Based on Gross Revenues.* One potential approach might be to adopt the mechanism used for the approximately \$30 million-per-year Telecommunications Relay Services (TRS) program. TRS provides “a telephone transmission service that allows persons with hearing or speech disabilities to communicate by telephone in a manner functionally equivalent to the ability of persons without such disabilities.”<sup>258</sup> Each

<sup>241</sup> *Id.*

<sup>242</sup> *Id.* § 153(49), (51) (emphasis added).

<sup>243</sup> *Id.* § 153(48). For example, the switched message and private line services offered by LECs and IXCs provide “telecommunications” to end users.

<sup>244</sup> See *id.* § 254(d).

<sup>245</sup> *Id.*

<sup>246</sup> *Id.* § 254(d).

<sup>247</sup> *Id.*

<sup>248</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 131 (1996).

<sup>249</sup> 5 U.S.C. 601(3).

<sup>250</sup> 1996 Act sec. 101(a), § 254(d).

<sup>251</sup> *Id.* § 254(b)(4).

<sup>252</sup> 47 U.S.C. 225(a)(3). TRS facilities have specialized equipment and staff who relay

<sup>241</sup> *Id.* § 254(d).

<sup>242</sup> *Id.* § 254(f).

<sup>243</sup> *Id.* § 254(d).

<sup>244</sup> *Id.* § 254(b)(4).

<sup>245</sup> *Id.* § 254(d).

<sup>246</sup> *Id.*

contributor's TRS payment is based on a pro rata share of its gross interstate revenues.<sup>259</sup>

#### 123. Contributions Based on Revenues Net of Payments to Other Carriers.

Alternatively, we could consider the mechanism employed for the assessment and collection of regulatory fees to recover part of the cost of the Commission's regulatory activities. This mechanism was established in our *Regulatory Fees Order*,<sup>260</sup> where we evaluated the advantages and disadvantages of alternative mechanisms for collecting Commission fees on a per line, per minute of use, and per dollars of revenue basis. That Order directed that fees be assessed based on gross interstate revenues net of payments made to other telecommunications carriers.

124. *Contributions Based on Per-Line or Per-Minute Units.* We also could adopt a mechanism based on per-line or per-minute charges. These approaches, however, would require the Commission to adopt and administer "equivalency ratios" for calculating the contributions owed by providers of services that were not sold on a per-line or per-minute basis into their respective per-line or per-minute units. In addition, these approaches may favor certain services or service providers over others.

125. We invite comment on the relative merits of these approaches and the extent to which they do or do not satisfy the requirements of the Act.<sup>261</sup> We seek comment on whether, for purposes of funding federal universal service support mechanisms, we should base contributions from interstate carriers (and, possibly, from other interstate service providers) on both their interstate and intrastate revenues or on their interstate revenues only. If commenters propose that contributions should be based on interstate revenues only, we ask for proposals on how to determine the interstate revenues for the many and varied telecommunications

conversations between persons using text telephones and persons using traditional telephones.

<sup>259</sup> Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, *Third Report and Order*, 8 FCC Rcd 5300 (1993).

<sup>260</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act, *Report and Order*, 10 FCC Rcd 13512 (1995) (*Regulatory Fees Order*).

<sup>261</sup> In using the TRS program and our *Regulatory Fees Order* as potential models, we are only proposing their methodologies. We are not suggesting that the range of contributors providing universal support should be limited to the contributors to those programs. Questions regarding who should contribute to universal fund support are discussed above in part VIII.B.1. of this Notice.

carriers and telecommunications service providers that are not subject to our jurisdictional separations rules and, in some cases, may not have a clear basis for delineating interstate and intrastate services. In particular, we ask for comment on the practicality of the approach used for the TRS fund.<sup>262</sup>

126. We also invite commenters to suggest alternative methodologies for calculating a carrier's or service provider's contribution to universal service support. The comments should address which method would be the most easily administered and competitively neutral in its effect upon contributing carriers and service providers. In addition, commenters should address how these methods could be adapted if we were to require non-carrier providers of telecommunications services to make contributions to the universal service funds. We ask the Joint Board to address these issues in its Recommended Decision.

### 3. Who Should Administer

127. Section 254(b)(4) of the 1996 Act states that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service."<sup>263</sup> Moreover, Section 254(d) requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."<sup>264</sup> The rules for assessing support obligations discussed above not only must conform to these provisions, but also must be administered fairly, consistently, and efficiently. We seek comment on the best approach to administer the universal service mechanisms fairly, consistently, and efficiently.

128. One way to administer the fund would be through a non-governmental fund administrator. We believe the fund should be administered by the candidate who can administer it in the most efficient, fair, and competitively neutral manner. In addition, considering

<sup>262</sup> The TRS work sheet instructs carriers to, wherever possible, calculate the percentage of total revenues that are interstate by using information from their books of accounts and other internal data reporting systems. Carriers that cannot calculate a percentage from their books or from internal data may elect to rely on special studies to determine interstate percentages.

<sup>263</sup> 1996 Act sec. 101(a), § 254 (b)(4).

<sup>264</sup> Id. § 254(d).

the large number of potential contributors and recipients of universal service funds under Section 254, it would appear that administration of the funds will require large-scale information processing and data base capabilities. Moreover, the administrator should have the ability to apply eligibility criteria consistently, ensuring that all carriers eligible for support, but no ineligible carriers, are properly compensated by the support mechanisms. Finally, the administrator should assure that all entities required to contribute to the fund do so, and in the appropriate amounts.

129. We ask that commenters discuss these criteria and any others we might use to assess qualifications of any candidates to administer the funds, for how long an administrator should be appointed, and any other matters related to the selection and appointment of a fund administrator. We also invite parties to suggest the most efficient and least costly methods to accomplish the administrative tasks associated with fund administration.

130. Rather than appoint a non-governmental fund administrator, we could have the funds collected and distributed by state public utility commissions. Under this approach, individual state commissions or groups of state commissions would be responsible for administering the funds' collection and distribution, operating under plans approved by the Commission. They might delegate the administration of the fund to a governing board composed of representatives from the state commissions, the fund contributors, and the fund recipients. This board could also function as a central clearinghouse to the extent collection and distribution issues extended beyond the boundaries of individual states. We request comment on this alternative approach and on what provisions should be incorporated in any plan that the Commission approves for administering the funds under this option. We also invite proposals for other means of administering support mechanisms.

131. Pursuant to the 1996 Act's principle that support for universal service should be "predictable,"<sup>265</sup> we seek comment estimating the cost of administration estimating the cost of administration using either of the two approaches that we have discussed. Commenters proposing an alternative method should also identify the costs of administration associated with their suggested method. Finally, we request that the Joint Board address these issues

<sup>265</sup> Id. § 254(b)(5).

regarding fund administration in its Recommended Decision.

#### VIII. Composition of the Joint Board

132. Under Section 254(a) of the 1996 Act, the Joint Board in this proceeding must consist of eight members: three Commissioners from this Commission; four State Commissioners nominated by the National Association of Regulatory Utility Commissioners (NARUC); and one State-appointed utility consumer advocate nominated by the National Association of State Utility Commissioners.<sup>266</sup> Section 410(c) also specifies that "the Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board."<sup>267</sup>

133. In accordance with these provisions, the three Commissioners from this Commission are the Honorable Reed E. Hundt, the Honorable Andrew C. Barrett, and the Honorable Susan Ness. The four Commissioner nominated by NARUC are the Honorable the Honorable Julia L. Johnson of the Florida Public Service Commission, the Honorable Kenneth McClure of the Missouri Public Service Commission, the Honorable Sharon L. Nelson of the Washington Utilities and Transportation Commission, and the Honorable Laska Schoenfelder of the South Dakota Public Utilities Commission.<sup>268</sup> The utility consumer advocate nominated by NASUCA is Martha S. Hogerty, Public Counsel for the State of Missouri.<sup>269</sup> The Honorable Reed E. Hundt shall serve as Chairman of the Joint Board.

#### IX. Procedural Matters

##### A. *Ex Parte*

134. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.<sup>270</sup>

<sup>266</sup> Id. § 254(a).

<sup>267</sup> 47 U.S.C. § 410(c).

<sup>268</sup> The National Association of Regulatory Utility Commissioners (NARUC) nominated Ms. Johnson, Mr. McClure, Ms. Nelson, and Ms. Schoenfelder to serve on the Federal-State Joint Board. Letter from James Bradford Ramsay, Deputy Assistant General Counsel, NARUC, to Mr. William F. Caton, Secretary, Federal Communications Commission, February 28, 1996.

<sup>269</sup> Nominated pursuant to 1996 Act sec. 101, § 254(a)(1), by the National Association of State Utility Consumer Advocates (NASUCA). Letter from Debra Berlyn, Executive Director, NASUCA, to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, February 26, 1996.

<sup>270</sup> See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

##### B. *Regulatory Flexibility Analysis*

135. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

136. *Reason for Action.* The Telecommunications Act of 1996 requires the Commission to initiate a rulemaking to define the services generally supported by Federal universal service support mechanisms. This Notice addresses issues of the services that should receive universal service support with respect to elementary and secondary schools and classrooms, libraries, health care providers, as well as universal support service mechanisms. Issues raised in this Notice will be referred to a Federal-State Joint Board.

137. *Objectives.* To propose rules to implement Sections 101 and 102 of the Telecommunications Act of 1996. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

138. *Legal Basis.* Action as proposed for this rulemaking is contained in Sections 101 and 102 of the Telecommunications Act of 1996 (to be codified at 47 U.S.C. 254 and 214(e), respectively).

139. *Description, potential impact and number of small entities affected.* Until we receive more data, we are unable to estimate the number of small telecommunications service providers that would be affected by any of the proposals discussed in the Notice. We have, however, attempted to reduce the administrative burdens and cost of compliance for small telecommunications service providers.

140. *Reporting, record keeping and other compliance requirements.* The proposals under consideration in this Notice do not include the reporting and record keeping requirements of telecommunications service providers.

141. *Federal rules which overlap, duplicate, or conflict with this rule.* None.

142. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives.* Wherever possible, the Notice proposes general rules, or alternative rules to reduce the administrative burden and cost of compliance for small telecommunications service providers. In addition, the Notice invites comment on exemptions from the proposed rules for small telecommunications companies. Finally, the Notice seeks comment on measures to avoid significant economic impact on small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.

##### C. *Comment Dates*

143. We invite comment on the issues and questions set forth above. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules,<sup>271</sup> interested parties may file comments on or before April 8, 1996, and reply comments on or before May 3, 1996. Comments and Reply Comments will be limited to 25 pages apiece, not including appendices of factual material. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. Interested parties should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Parties must also serve comments on the Federal-State Joint Board in accordance with the service list. Parties should send one copy of any documents filed in this docket to the Commission's copy contractor, International Transcription Service, Room 640, 1990 M Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

144. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Ernestine Creech, Common Carrier Bureau, Accounting and Audits Division, 2000 L Street, N.W., Suite 257, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for

<sup>271</sup> 47 CFR 1.415, 1.419.

Windows software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comment) and date of submission. The diskette should be accompanied by a cover letter.

#### X. Ordering Clauses

145. Accordingly, it is ordered That, pursuant to Sections 1, 4(i), 4(j), and 403, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 403, and Sections 101 and 102 of the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 254 and 47 U.S.C. 214(e), respectively), that notice is hereby given of proposed amendments to Parts 36 and 69 of the Commission's Rules, 47 CFR Parts 36 and 69, as described in this Notice of Proposed Rulemaking.

146. It is further ordered That, pursuant to Section 410(c) of the Communications Act of 1934, 47 U.S.C. 410(c), and Sections 101 of the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 254), that the Federal-State Joint Board on Universal Service be convened.

147. It is further ordered That, pursuant to Section 410(c) of the Communications Act of 1934, 47 U.S.C. 410(c), and Sections 101 and 102 of the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 254 and 47 U.S.C. 214(e), respectively), the proposals set forth in the Notice of Proposed Rulemaking are hereby referred to the Federal-State Joint Board established in this proceeding for the preparation of a recommended decision within nine months from enactment of the Telecommunications Act of 1996.

148. It is further ordered, pursuant to Section 410(c) of the Communications Act of 1934, 47 U.S.C. 410(c), and Sections 101 and 102 of the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 254 and 47 U.S.C. 214(e), respectively), that the Honorable Reed E. Hundt, the Honorable Andrew C. Barrett, the Honorable Susan Ness, the Honorable Julia L. Johnson of the Florida Public Service Commission, the Honorable Kenneth McClure of the Missouri Public Service Commission, the Honorable Sharon L. Nelson of the Washington Utilities and Transportation Commission, and the Honorable Laska Schoenfelder of the South Dakota Public

Utilities Commission,<sup>272</sup> and Martha S. Hogerty,<sup>273</sup> Public Counsel for the State of Missouri are appointed to, and the Honorable Reed E. Hundt shall serve as Chairman of, the Federal-State Joint Board.

149. It is further ordered, That a copy of all filings in this proceeding shall be served on each of the appointees and staff personnel on the attached service list.

150. It is further ordered That, pursuant to Sections 410(c), 154(i) and 154(j) of the Communications Act of 1934, 47 U.S.C. 410(c), 154(i) and 154(j), and Sections 101 and 102 of the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 254 and 47 U.S.C. 214(e), respectively), the material described in part III.B. of this Notice of Proposed Rulemaking and Order Establishing a Joint Board is incorporated into the record in this proceeding.

151. It is further ordered That, the Secretary shall send a copy of this notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

#### List of Subjects

##### 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

##### 47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

##### Attachment: Service List

The Honorable Reed E. Hundt,  
Chairman, Federal Communications  
Commission, 1919 M Street NW.—  
Room 814, Washington, D.C. 20554

<sup>272</sup>The National Association of Regulatory Utility Commissioners (NARUC) nominated Ms. Johnson, Mr. McClure, Ms. Nelson, and Ms. Schoenfelder to serve on the Federal-State Joint Board. Letter from James Bradford Ramsay, Deputy Assistant General Counsel, NARUC, to Mr. William F. Caton, Secretary, Federal Communications Commission, February 28, 1996.

<sup>273</sup>Nominated pursuant to 1996 Act sec. 101, § 254(a)(1), by the National Association of State Utility Consumer Advocates (NASUCA). Letter from Debra Berlyn, Executive Director, NASUCA, to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, February 26, 1996.

The Honorable Andrew C. Barrett,  
Commissioner, Federal  
Communications Commission, 1919  
M Street NW.—Room 826,  
Washington, D.C. 20554

The Honorable Susan Ness,  
Commissioner, Federal  
Communications Commission, 1919  
M Street NW.—Room 832,  
Washington, D.C. 20554

The Honorable Julia Johnson,  
Commissioner, Florida Public Service  
Commission, Capital Circle Office  
Center, 2540 Shumard Oak Blvd.,  
Tallahassee, FL 32399-0850

The Honorable Kenneth McClure, Vice  
Chairman, Missouri Public Service  
Commission, 301 W. High Street,  
Suite 530, Jefferson City, MO 65102

The Honorable Sharon L. Nelson,  
Chairman, Washington Utilities and  
Transportation Commission, P.O. Box  
47250, Olympia, WA 98504-7250

The Honorable Laska Schoenfelder,  
Commissioner, South Dakota Public  
Utilities Commission, 500 E. Capital  
Avenue, Pierre, SD 57501

Martha S. Hogerty, Public Counsel for  
the State of Missouri, P.O. Box 7800,  
Harry S. Truman Building, Room 250,  
Jefferson City, MO 65102

Deborah Dupont, Federal Staff Chair,  
Federal Communications  
Commission, 2000 L Street NW., Suite  
257, Washington, D.C. 20036

Paul E. Pederson, State Staff Chair,  
Missouri Public Service Commission,  
P.O. Box 360, Truman State Office  
Building, Jefferson City, MO 65102

Eileen Benner, Idaho Public Utilities  
Commission, P.O. Box 83720, Boise,  
ID 83720-0074

Charles Bolle, South Dakota Public  
Utilities Commission, State Capital,  
500 E. Capital Avenue, Pierre, SD  
57501-5070

William Howden, Federal  
Communications Commission, 2000 L  
Street NW., Suite 812, Washington,  
D.C. 20036

Lorraine Kenyon, Alaska Public Utilities  
Commission, 1016 West Sixth  
Avenue, Suite 400, Anchorage, AK  
99501

Debra M. Kriete, Pennsylvania Public  
Utilities Commission, P.O. Box 3265,  
Harrisburg, PA 17105-3265

Clara Kuehn, Federal Communications  
Commission, 2000 L Street NW., Suite  
257, Washington, D.C. 20036

Mark Long, Florida Public Service  
Commission, 2540 Shumard Oak  
Blvd., Gerald Gunter Building,  
Tallahassee, FL 32399-0850

Samuel Loudenslager, Arkansas Public  
Service Commission, P.O. Box 400,  
Little Rock, AR 72203-0400

Sandra Makeeff, Iowa Utilities Board,  
Lucas State Office Building, Des  
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## 47 CFR Parts 43, 63, 64, and 65

[CC Docket No. 96-23, FCC 96-64]

### Revision of Filing Requirements

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this Notice of Proposed Rulemaking, the Commission proposes to eliminate thirteen reporting requirements and to reduce the frequency of six other reporting requirements. These reporting requirements are variously applicable to interexchange carriers, Bell Operating Companies, other local telephone companies, and record carriers. These proposed actions will improve the quality of information available to the Commission, while at the same time reducing the reporting burdens imposed on carriers.

**DATES:** Comments must be submitted on or before April 8, 1996. Reply Comments must be filed on or before April 23, 1996. Written comments by the public on the proposed and/or modified information collections are due on or before April 8, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 13, 1996.

**ADDRESSES:** Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Nasir Khilji of the Common Carrier Bureau, 2033 M Street, N.W., Room 500F, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov), and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, DC 20503 or via the Internet to [t@al.eop.gov](mailto:t@al.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Nasir Khilji (202) 418-0958, Common Carrier Bureau, Industry Analysis

Division. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202-418-0217, or via the Internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

### SUPPLEMENTARY INFORMATION:

Synopsis of Notice of Proposed Rulemaking

This is a synopsis of the Commission's Notice of Proposed Rulemaking in CC Docket No. 96-23, adopted February 20, 1996, and released February 27, 1996. The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 1400, Washington, D.C. 20037 (telephone (202) 857-3800).

*Paperwork Reduction Act:* This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* None.

*Title:* Revision of Filing requirements.

*Form No.:* FCC Report 43.05, FCC 492.

*Type of Review:* New Collection.

*Respondents:* Business or other for profit.