FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54, and 69

[CC Docket Nos. 96–45, 96–262, 94–1, 91–213, 95–72; FCC 97–420]

Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Fourth Order on Reconsideration and Report and Order addresses issues that were raised in petitions for reconsideration of the Universal Service Report and Order. The Fourth Reconsideration Order also makes several technical corrections to the Commission's universal service rules. In addition, the order clarifies or makes further findings regarding: the rules governing the eligibility of carriers and other providers of supported services; methods for determining levels of universal service support for carriers in rural, insular and high cost areas; support for low-income consumers; the rules governing the receipt of universal service support under the schools and libraries and rural health care programs; the determinations of who must contribute to the new universal service support mechanisms; and administration of the support mechanisms. The intended effect of these rules is to implement the universal service provisions of the Telecommunications Act of 1996.

DATES: Effective February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Sheryl Todd, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Order on Reconsideration in CC Docket No. 96–45 and Report and Order in CC Docket Nos. 96–45, 96–262, 94–1, 91–213, 95–72 (Fourth Order on Reconsideration), adopted and released December 30, 1997. In addition, the amendments to the Commission's rules reflect the changes included in errata released December 3, 1997. The full text of the Fourth Order on Reconsideration and the errata are available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW, Washington, DC.

Pursuant to the Telecommunications Act of 1996, the Commission released a Notice of Proposed Rulemaking and Order Establishing Joint Board, Federal-State Joint Board on Universal Service, CC Docket No. 96–45 on March 8, 1996 (61 FR 10499, Mar. 14, 1996), a Recommended Decision on November 8, 1996 (61 FR 63778, Dec. 2, 1996), a Public Notice on November 18, 1996 (61 FR 63778, Dec. 2, 1996), and a Report and Order that was adopted on May 7, 1997 and released on May 8, 1997 (62 FR 32862, June 17, 1997) implementing sections 254 and 214(e) of the Act relating to universal service. The Commission released an Order on Reconsideration on July 10, 1997 (62 FR 40742, July 30, 1997) and a related Report and Order on July 18, 1997 (62 FR 41294, Aug. 1, 1997) making certain modifications and additions to the Commission's universal service rules. As required by the Regulatory Flexibility Act (RFA) the Fourth Order on Reconsideration contains a Final Regulatory Flexibility Analysis. Pursuant to section 604 of the RFA, the Commission performed a comprehensive analysis of the Fourth Order on Reconsideration with regard to small entities and small incumbent local exchange carriers. The Fourth Order on Reconsideration also contains new information collection requirements subject to the Paperwork Reduction Act (PRA).

Summary of the Fourth Order on Reconsideration

I. Introduction

1. In the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (the 1996 Act), Congress amended the Communications Act of 1934, 47 U.S.C. §§ 151, *et seq.* (the Act), by, among other things, adding a new section 254 to the Act. In section 254, Congress directed the Commission and states to take the steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including low-income consumers, eligible schools and libraries, and rural health care providers. Specifically, Congress directed the Commission and the states to devise methods to ensure that ''[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas * * * have access to telecommunications and information services * * * at rates that are reasonably comparable to rates charged for similar services in urban areas,'' 47 U.S.C. § 254(b)(3), and 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 non-profit elementary and secondary school classrooms, health care providers, and libraries,'' 47 U.S.C. § 254(h)(2)(A). On May 8, 1997, the Commission released the *Universal Service Report and Order*, implementing section 254 of the Act and establishing a universal service support system that becomes effective on January 1, 1998 and that will be sustainable in an increasingly competitive marketplace. *See* Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96–45, FCC 97–157, 12 FCC Rcd 8776 (rel. May 8, 1997) (62 FR 32862, June 17, 1997) (*Order*).

2. In the *Order*, the Commission adopted rules that reflect virtually all of the recommendations of the Federal-State Joint Board on Universal Service and meet the four critical goals set forth for the new universal service program: (1) that all of the universal service objectives established by the Act, including those for low-income individuals, for consumers in rural, insular, and high cost areas, and for schools, libraries, and rural health care providers, be implemented; (2) that rates for basic residential service be maintained at affordable levels; (3) that universal service funding mechanisms be explicit; and (4) that the benefits of competition be brought to as many consumers as possible. Recognizing that, as circumstances change, further Commission action may be needed to ensure that we create sustainable and harmonious federal and state methods of continuously fulfilling universal service goals, the Commission also committed itself to work in close partnership with the states to create complimentary federal and state universal service support mechanisms. These efforts are ongoing.

3. Through the *Order* and the accompanying orders reforming the Commission's access charge rules, the Commission established the definition of services to be supported by federal universal service support mechanisms and the specific timetable for implementation. The Commission set in place rules that will identify and convert existing federal universal service support in the interstate high cost fund, the dial equipment minutes (DEM) weighting program, Long Term Support (LTS), Lifeline, Link Up, and interstate access charges to explicit competitively neutral federal universal service support mechanisms. The Commission also modified the funding methods for the existing federal universal service support mechanisms so that such support is not generated, as at present, entirely through charges imposed on long distance carriers. Instead, as the statute requires, equitable

and non-discriminatory contributions will be required from all providers of interstate telecommunications service. The Commission took other steps to make federal universal service support mechanisms consistent with the development of local service competition, and established a program to provide schools and libraries with discounts on all commercially available telecommunications services, Internet access, and internal connections. The Commission also established mechanisms to provide support for telecommunications services for all public and not-for-profit health care providers located in rural areas.

4. The Commission also named the National Exchange Carrier Association (NECA) the temporary Administrator of the universal service support mechanisms on the condition that NECA agree to make changes to its governance that would render it more representative of non-incumbent local exchange carrier (LEC) interests. As a condition of its appointment as temporary Administrator, the Commission subsequently directed NECA to establish the Universal Service Administrative Company (USAC), an independently functioning subsidiary corporation that will perform the billing, collection, and disbursement functions for all of the universal service support mechanisms. *See* Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Board on Universal Service, *Report and Order and Second Order on Reconsideration*, CC Docket Nos. 97–21 and 96–45, FCC 97–253 (rel. July 18, 1997) (62 FR 41294, Aug. 1, 1997) (*NECA Report and Order*). The Commission further directed NECA to create the Schools and Libraries Corporation and Rural Health Care Corporation to perform all functions associated with administering the schools and libraries and rural health care programs, respectively, except those directly related to billing and collecting universal service contributions and disbursing support.

5. On July 10, 1997, the Commission released a reconsideration order on its own motion in this proceeding. *See* Federal-State Joint Board on Universal Service, *Order on Reconsideration*, CC Docket No. 96–45, FCC 97–246 (rel. July 19, 1997) (62 FR 40742, July 30, 1997) (*July 10 Order*). Among other things, the *July 10 Order* (1) clarified certain issues relating to contracts for services to schools and libraries; (2) modified the formula for recovery of corporate operations expense from high loop cost support mechanisms; and (3) clarified issues concerning coordination between the Commission staff and the state staff of the Joint Board in CC Docket No. 96–45 in implementing the new monitoring program.

6. Sixty-one parties have filed petitions for reconsideration and/or clarification of the *Order* and the *July 10 Order*. In this Fourth Order on Reconsideration, we address issues raised by petitioners that either must or should be addressed before the new universal service program begins. We will address the remaining issues in one or more subsequent reconsideration orders in this docket.

7. In this order, we clarify or make further findings regarding: (1) the rules governing the eligibility of carriers and other providers of supported services; (2) methods for determining levels of universal service support for carriers in rural, insular and high cost areas; (3) support for low-income consumers; (4) the rules governing the receipt of universal service support under the schools and libraries and rural health care programs; (5) the determinations of who must contribute to the new universal service support mechanisms; and (6) administration of the support mechanisms.

II. Definition of Universal Service: Services That Are Eligible for Support

A. Local Calling Provided by Satellite Companies

8. We grant AMSC's request and conclude that calls to and from a satellite company's fixed-site subscribers, for which such subscribers pay a non-distance and non-usage sensitive rate, constitute local calling for purposes of determining whether a carrier is eligible for federal universal service support. We find that, consistent with the principles of competitive and technological neutrality established in the *Order*, non-landline telecommunications providers should be eligible to receive universal service support even though their local calls are completed via satellite. We conclude that any call for which a satellite company's subscribers are not charged on a distance- or usage-sensitive basis constitutes a local call.

B. Provision of E911 by MSS Providers

9. In response to AMSC's petition, we clarify that MSS providers, like other wireless providers in localities that have implemented E911 service, may petition their state commission for permission to receive universal service support for the designated period during which they are completing the network upgrades required to offer access to E911. To receive federal universal service support, however, MSS providers must satisfy the eligibility requirements we previously established. We rely on state commissions to ensure that providers that are not currently able to provide access to E911 service are making the network upgrades necessary to provide access to E911 service as quickly as possible.

C. Voice Grade Access to the Public Switched Network

10. We reconsider, on our own motion, the Commission's specification of a bandwidth for voice grade access to the PSTN and conclude that bandwidth for voice grade access should be, at a minimum, 300 Hertz to 3,000 Hertz. In the *Order*, the Commission determined that voice grade access bandwidth be approximately 500 Hertz to 4,000 Hertz. We reconsider that determination based on our recognition that the 500 Hertz to 4,000 Hertz bandwidth established in the *Order* would require eligible carriers to comply with a voice grade access standard that is more exacting than current industry standards, a result that we did not intend. We note that AT&T operating principles recommend that voice grade access bandwidth be 200 Hertz to 3,500 Hertz, while Bellcore recommends a range of 200 Hertz to 3,200 or 3,400 Hertz. American National Standards Institute (ANSI) defines voice grade access bandwidth as 300 Hertz to 3,000 Hertz. We did not intend to impose a more onerous definition of voice grade access than those generally established under existing industry standards, and conclude that our decision here will ensure that consumers receive voice grade access at levels that are consistent with Commission rules and that are not incompatible with current industry guidelines. We do not adopt the broader voice grade access bandwidth specified in the AT&T and Bellcore operating principles. To the extent that the bandwidth recommended in the AT&T and Bellcore operating principles exceeds the bandwidth established in the ANSI definition of voice grade access, we are concerned that a substantial number of otherwise eligible carriers may be unable to qualify for universal service support if we were to require all carriers to meet this standard as a condition of eligibility. Moreover, networks utilizing loading coils may experience difficulty operating properly at bandwidths exceeding 3,400 Hertz. Carriers that meet current AT&T and Bellcore guidelines, however, will be able to satisfy our definition of voice grade access.

III. Carriers Eligible for Universal Service Support

A. Designation of Eligible Carriers

11. We read Sandwich Isles' petition to contend that the DHHL, rather than the Hawaii Public Utilities Commission (PUC), should have authority to designate eligible telecommunications carriers on the Hawaiian Home Lands. Section 153(41) defines ''[s]tate commission'' as ''the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.'' 47 U.S.C. § 153(41). Based on the record before us, it is unclear whether the DHHL meets the Act's definition of ''state commission.'' Based on further information provided by the parties, it now appears that the issue here is not whether there is a state commission with jurisdiction to designate eligible carriers, but which of the state agencies should be considered to be the ''state commission'' for purposes of designating Sandwich Isles. Before undertaking to develop the record further and to interpret the term ''state commission,'' we encourage Sandwich Isles and the relevant state agencies to resolve this dispute. If they are unable to do so, we encourage Sandwich Isles and the relevant state agencies to bring that fact to our attention so that we may complete action on the pending petitions.

B. Eligibility Designation Date

12. In light of section 254's directive that only carriers designated as eligible pursuant to section 214(e) shall be eligible to receive universal service support, we affirm our previous conclusion that, as of January 1, 1998, the temporary Administrator may not disburse support to carriers that have not been designated as eligible under section 214(e). Thus, if a carrier has not been designated as eligible by January 1, 1998, it may not receive support until such time as it is designated an eligible telecommunications carrier. This applies to all carriers, including those that currently receive universal service support under the existing support mechanisms. We agree with USTA, however, that a state commission that is unable to designate as an eligible telecommunications carrier, by January 1, 1998, a carrier that sought such designation before January 1, 1998, should be permitted, once it has designated such carrier, to file with the Commission a petition for waiver requesting that the carrier receive universal service support retroactive to January 1, 1998. A state commission filing such a petition must explain why it did not designate such carrier as eligible by January 1, 1998 and provide a justification for why providing support retroactive to January 1, 1998 serves the public interest. We encourage relevant carriers to file information demonstrating that they took reasonable steps to be designated as eligible telecommunications carriers by January 1, 1998. We find that it is in the public interest to permit telecommunications carriers that were eligible to receive universal service support on January 1, 1998, but that were not designated as eligible by their state commission by that date, to be permitted to seek retroactive support. Allowing retroactive support will permit consumers served by those carriers to benefit from the support to which those carriers would have been entitled, but for circumstances that prevented the state commission from designating the carriers as eligible for receipt of universal service support prior to January 1, 1998. Regarding NECA's concern that the *Order* does not specify a date by which state commissions must make their eligible carrier determinations, we note that the Bureau's August 14 and September 29 Public Notices notified state commissions to submit their eligible carrier designations to the temporary Administrator no later than December 31, 1997.

IV. High Cost Support

A. Indexed Cap on High Cost Loop Fund

13. We affirm the Commission's decision to retain the indexed cap on high cost loop support until all carriers receive support based on a forward-looking economic cost mechanism. Much of petitioners' concern about the sufficiency of the modified existing system of universal service support appears to be based on their misapprehension that the indexed cap will operate after January 1, 1998 not merely to limit the growth of the high cost loop fund, but also to limit the growth of the modified DEM weighting and LTS programs. In light of this apparent confusion, we clarify here that the indexed cap on the high cost loop fund will not operate to cap support under the modified DEM weighting or LTS programs. Rather, local switching support and LTS will be calculated and permitted to increase based on the formulas provided in sections 54.301 and 54.303, respectively.

14. Section 36.601(c) of our rules sets forth the method for calculating the indexed cap and clearly provides that this limitation applies only to loop-related costs, not local switching support or long term support. In addition, section 36.601(a) states that:

> [t]he term Universal Service Fund in subpart F refers only to the support for *loop-related costs* included in § 36.621. The term Universal Service in part 54 refers to the comprehensive discussion of the Commission's rules implementing section 254 of the Communications Act of 1934, as amended * * *.''

This clarification should alleviate any concern that the cap may result in insufficient support to the extent that these concerns are based on the erroneous premise that the indexed cap's limitation on growth of the high cost loop fund will limit the growth of the modified support programs adopted pursuant to part 54 of our rules. Absent specific evidence that the cap as modified in response to implementation of section 254 will likely result in insufficient support, which petitioners have not offered, we conclude that the cap is consistent with our obligation to ensure that support is sufficient.

15. Contrary to RTC's assertion that the indexed cap does not take account of cost increases due to the addition of new high cost loops or new eligible carriers, we note that our rules provide for annual adjustments that will reflect such growth. Specifically, section 36.601(c) provides:

> Beginning January 1, 1999, the total loop cost expense adjustment shall not exceed the total amount of the loop cost expense adjustment provided to rural carriers for the immediately preceding calendar year, *adjusted to reflect the rate of change in the total number of working loops of rural carriers* during the [preceding] calendar year * * *.

Thus, both new high cost loops that eligible rural carriers add during the previous calendar year as well as high cost loops of newly eligible carriers that did not qualify as rural carriers in the previous calendar year will be factored into the calculation of the rate of change in the total number of working loops of rural carriers, pursuant to section 36.601(c). Accordingly, we find no basis for making additional adjustments to the indexed cap, beyond those already required by section 36.601(c).

16. We agree with Bell Atlantic that petitioners' claims of harm by operation of the cap under the new system of support are speculative. As noted by AT&T, a waiver process has been and remains available to carriers that may experience a significant adverse impact by operation of the cap. We note again that the fact that no carrier has applied for relief under the Commission's waiver process or otherwise sought relief from the cap since it was first

implemented in 1994 suggests that carriers have not experienced undue hardship because of the cap.

17. We therefore affirm the Commission's previous finding that the cap is a reasonable means of limiting the overall growth of the high cost loop fund, and thus protecting contributors from excessive universal service contribution requirements, while allowing the high cost loop fund to grow to support the growth in lines served by carriers in high cost areas.

B. DEM Weighting Assistance (Local Switching Support)

1. Calculation of Local Switching Support Based on Projections of Costs

18. Although the Commission removed the DEM weighting assistance program from the access charge system and transferred it to the new universal service system of support, the Commission did not alter significantly the level of support received by carriers under this program. Indeed, in adopting the modifications to the existing support mechanisms, the Commission was persuaded that it should act more cautiously with respect to small rural carriers. Therefore, the DEM weighting assistance program will continue to be administered and calculated separately from the existing high cost loop fund. Specifically, support payments for these local switching costs will be based on projections of annual costs, and, therefore, payments will not be lagged in the manner prescribed by our rules governing the existing high cost loop fund.

19. Under the modified DEM weighting assistance program, a carrier will be eligible to receive local switching support based on the carrier's projected annual unseparated local switching revenue requirement for the upcoming calendar year, beginning January 1, 1998, and each year thereafter that DEM weighting assistance continues. We amend section 54.301 by adding the word ''projected'' to the first sentence of that rule to clarify that support for local switching costs will be based on projections of costs and not historical cost data. As reflected in the rule changes, section 54.301 is amended to read in relevant part:

> Beginning January 1, 1998, an incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall receive support for local switching costs using the following formula: the carrier's *projected* annual unseparated local switching revenue requirement shall be multiplied by the local switching support factor.

Thus, the Commission's determination to remove the DEM weighting assistance program from the access charge system and transfer it to the new universal service system of support will not create a two-year lag in the recovery of local switching investment, as argued by petitioners.

20. We also, on our own motion, amend section 54.301 to clarify that, to receive local switching support, an incumbent LEC must satisfy the requirements of an eligible telecommunications carrier.

2. Calculating the Annual Unseparated Local Switching Revenue Requirement

21. We adopt the method of calculating the annual unseparated local switching revenue requirement proposed in NECA's *ex parte* letters because it provides the most accurate calculation of the local switching revenue requirement. Under this method, a carrier's annual unseparated local switching revenue requirement will be calculated pursuant to a formula that relies upon specified account and cost data that carriers maintain pursuant to the Commission's part 32 rules. Thus, as reflected in our amendments to part 54 in the rule changes, we direct the Administrator to use the part 32 account data as specified in NECA's October 30th, 1997 and December 4, 1997 letters to determine the unseparated local switching revenue requirement. Consistent with our adoption of a methodology that relies upon part 32 account data, we authorize the Administrator to issue a data request annually to the carriers that serve study areas with 50,000 or fewer access lines but that are not members of the NECA traffic sensitive pool in order to obtain the relevant part 32 data from these carriers. Because the Administrator requires data to calculate local switching support in 1998 from carriers that do not participate in the NECA common line pool, we direct the Administrator to issue a data request to those carriers as soon as practicable after the release of this Order. We note that, as with all high cost support, a competitive local exchange carrier will receive the same amount of local switching support formerly received by an incumbent LEC if the competitive local exchange carrier begins to serve a customer formerly served by an incumbent LEC receiving local switching support for that customer.

22. We conclude that the approach suggested by NECA, because it allocates local switching expenses and related investment in a manner that is consistent with the allocation methods prescribed under parts 36 and 69 of our rules, provides a more accurate method for calculating the unseparated local switching revenue requirement. Because all carriers, including small carriers, already maintain the information necessary to calculate the local switching revenue requirement and because carriers must already submit similar information to the Administrator for high cost loop support, we conclude that any additional burden placed on carriers will be small, and that the benefits of using a more accurate method will outweigh any additional burden placed on carriers.

23. In its October 31, 1997 report containing projections of demand for the modified DEM weighting assistance program, USAC reported that NECA had devised a formula for calculating the unseparated local switching revenue requirement for average schedule companies. For average schedule companies, local switching support will be calculated in accordance with a formula that the Administrator will submit annually to the Commission for review and approval. The formula submitted by the Administrator will be designed to produce disbursements to an average schedule company to simulate the disbursements that would be received pursuant to section 54.301 by a company that is representative of average schedule companies. We delegate to the Chief, Common Carrier Bureau the authority to review, modify, and approve the formula submitted by the Administrator.

3. True-up Mechanism for Adjusting Local Switching Revenue Requirement

24. We agree with NECA that the Administrator should adjust DEM weighting support levels to correct errors that may result from the use of projected local switching costs. Accordingly, we direct the Administrator to adjust annually the levels of local switching support projected for each study period to reflect the historical support requirements determined from the data filed by the carrier for that study period. As a result, a carrier's local switching support will not be delayed until historical data are available, but, after the adjustment, such support will accurately reflect a carrier's historical costs. As proposed by NECA, we conclude that all such adjustments must be made within 15 months of the conclusion of the relevant study period. We emphasize that, unlike the current high cost loop data submissions, all carriers must submit accurate, historical data when they become available and that the Administrator must increase or decrease a carrier's subsequent

payments by the amount that the cost projection for that carrier differs from the costs which are in fact incurred.

25. We note that local switching support also may be affected by changes in the weighting factor resulting from the number of lines served by a carrier. As provided in section 54.301 of the Commission's rules, ''[i]f the number of a study area's access lines increases such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor . . . would be reduced, that lower weighted interstate DEM factor shall be applied to the carrier's 1996 unweighted interstate DEM factor to derive a new local switching support factor.''

C. Long Term Support (LTS)

1. Technical Amendments to Section 54.303 Governing Calculation of LTS

26. In response to GVNW's petition, we amend section 54.303 of our rules, as set forth below, to specify how LTS will be calculated for 1998. First, we clarify that currently, and until January 1, 1998, LTS support is based on the difference between the NECA common line pool revenue requirement and the sum of the revenues obtained from charging a nationwide CCL rate calculated pursuant to section 69.105(b)(2) and the revenues obtained through SLCs. This clarification is necessary because the *Order* and section 54.303 failed to account for the portion of the common line revenue requirement that is recovered through end user common line charges, or SLCs. We therefore amend section 54.303 to include ''end user common line charges.'' We also clarify the procedure by which LTS support will be calculated after January 1, 1998. Prior to the modifications adopted in the *Order,* NECA calculated LTS using revenue requirement projections calculated pursuant to section 69.105(b)(2) of our rules. After January 1, 1998 we will no longer use these annual projections. Instead, we will index 1997 levels of support to reflect annual changes in loop costs. Specifically, in 1998 and 1999 LTS support will be calculated by adjusting previous support levels by the annual percentage change in the actual nationwide average cost per loop, and beginning January 1, 2000, LTS will be adjusted to reflect the annual percentage change in the Department of Commerce's GDP–CPI. Thus, under the modified LTS program adopted in the *Order,* the Administrator will make an initial, one-time calculation of projected 1997 LTS revenue requirements of eligible carriers in service areas served by incumbent LECs that currently participate in the NECA common line pool. These projected 1997 LTS revenue requirements will be adjusted according to a rate of change that will reflect annual changes in loop costs as prescribed by section 54.303.

27. Because LTS levels for 1998 and beyond will be based on 1997 projections, we conclude that the methodology for calculating the NECA CCL charge contained in section 69.105(b)(2) should be used only for the 1997 projections. Therefore, section 54.303 now directs the Administrator to calculate only the base-level of LTS using the projected revenue recovered by the CCL charge in 1997 as calculated pursuant to section 69.105(b)(2) of our rules. Consistent with these clarifications, we amend section 54.303 to specify that the Administrator will calculate the unadjusted base-level of LTS for 1998 by calculating the difference between the projected Common Line revenue requirement of NECA Common Line tariff participants projected to be recovered in 1997 and the sum of end user common line charges and the 1997 projected revenue recovered by the CCL charge as calculated pursuant to section 69.105(b)(2) of our rules. As reflected in the rule changes, section 54.303 is amended to read in relevant part:

To calculate the unadjusted base-level of Long Term Support *for 1998* the Administrator shall calculate the difference between the projected Common Line revenue requirement of association Common Line tariff participants *projected to be recovered in 1997* and the sum of *end user common line charges and* the *1997* projected revenue recovered by the association Carrier Common Line charge as calculated pursuant to § 69.105(b)(2) of this chapter.

28. In the Order, the Commission stated that an eligible carrier's LTS will be based on the LTS received for the preceding calendar year, adjusted in 1998 and 1999 to reflect the percentage increase in the nationwide ''average loop cost.'' We are persuaded by NECA's comments that the phrase ''average loop cost'' in section 54.303 could be misinterpreted and that it would be preferable to use the terminology used elsewhere in our rules, i.e., ''average unseparated loop cost per working loop.'' Accordingly, we also amend section 54.303 by striking the phrase ''average loop cost'' and replacing it with ''average unseparated loop cost per working loop.'' As reflected in the rule changes, section 54.303 is amended to instruct the Administrator to adjust the levels of LTS for 1998 and 1999 to ''reflect the annual percentage change in the actual nationwide *average unseparated loop cost per working loop*.''

29. On our own motion, we also amend section 54.303 to clarify that an incumbent LEC that participates in the NECA common line pool also must satisfy the requirements of an eligible telecommunications carrier in order to receive LTS. Accordingly, section 54.303 is amended to read in relevant part:

Beginning January 1, 1998, an *eligible telecommunications carrier* that participates in the association Common Line pool *shall* receive Long Term Support.

2. Calculation of LTS Levels Based on Projections of Costs

30. The Commission's determination to remove the LTS program from the access charge system and transfer it to the new support system will not create a two-year lag in the recovery of LTS supported costs, as argued by petitioners. In 1998, support payments provided to eligible carriers under the modified LTS program will be based not on historical cost data, which is the method of calculating support under the existing high cost loop fund, but, instead, will be based on 1997 projections. Section 54.303, as modified above, now explicitly states that LTS support in the first year will be calculated based on the difference between the 1997 *projected* common line revenue requirement of NECA pool participants and the projected revenue recovered by the 1997 NECA CCL charge and SLCs. Beginning January 1, 1998, LTS payments will be adjusted for all recipients based on average rates of change as provided in section 54.303. Because support will be based on projections using a rate of change, historical data will no longer be used and there will be no basis for delaying LTS payments.

3. True-up Mechanism to Adjust Base-Level of LTS

31. Pursuant to section 54.303, the unadjusted base-level of LTS initially will be calculated using 1997 projections. To ensure that the modified LTS program is funded at appropriate levels, however, we direct the Administrator to adjust the base-level of LTS to reflect historical 1997 costs once those data become available to the Administrator. As proposed by NECA, we conclude that this adjustment should be made within fifteen months of the conclusion of the 1997 calendar year. We emphasize that, unlike the current high cost loop data submissions, all carriers must submit historical cost data for 1997. We direct the Administrator to increase or decrease a carrier's LTS payment to reflect 1997 costs that in fact incurred no later than 15 months after the end of the 1997 calendar year. We note that, unlike the DEM weighting assistance program, which will require ongoing adjustments, the adjustment that we direct the Administrator to make to the LTS program will be needed only to adjust the base-level of LTS.

4. Membership in NECA Common Line Pool a Requirement for LTS

32. We reiterate that an incumbent LEC's continued membership in the NECA common line pool is required for the incumbent LEC or any competitive eligible telecommunications carrier serving that incumbent LEC's former customers to receive payment of support comparable to LTS in a given service area. As we stated in the *Order*, we ultimately intend to determine universal service support for all carriers using a forward-looking economic cost model because such a model will require carriers to operate efficiently and will facilitate the move to competition in all telecommunications markets. We decided, however, that we would ''retain many features of the current support mechanisms'' in order to provide rural LECs, generally the recipients of LTS, sufficient time to adjust to any changes in universal service support, particularly a move to a forward-looking economic cost model for determining universal service support. Although we made some adjustments to the calculation and distribution scheme of LTS in the *Order*, we specifically continued this support mechanism, finding that such payments would serve the public interest ''by reducing the amount of loop cost that high cost LECs must recover from IXCs through CCL charges and thereby facilitating interexchange service in high cost areas consistent with the express goals of section 254.'' Thus, we wish to maintain the current support structure, as modified, for recipients of LTS until we are able to devise a forward-looking economic cost model to determine universal service support appropriate for such carriers. We find that broadening the scope of the LTS mechanism at this time beyond the boundaries established in the *Order* would hinder the achievement of our goal to move toward competition in all telecommunications markets.

33. In addition, we note that a number of companies that have chosen to leave the NECA common line pool in the past generally have done so because their costs have decreased such that they can charge a lower CCL interstate access rate than the NECA CCL rate and recover their costs without LTS support. Thus, it is not clear how providing those carriers with modified LTS would further the goal of universal service. Although we recognize that other considerations may influence a carrier's decision to exit the pool, we can only presume that any carrier that has left did so after balancing all factors and determining that it could forego the receipt of LTS. Accordingly, we decline to reinstate LTS to such carriers and we deny ALLTEL's petition to the extent that it asks that rural incumbent LECs that have left the NECA pool be eligible to receive LTS under the new LTS program.

34. Moreover, as to the requests of current LTS recipients that they be allowed to continue to receive LTS upon exiting the NECA pool, we reiterate that we wish to maintain the current LTS program as modified until we move to the use of a forward-looking economic cost model for determining universal service support for such carriers. Further, providing such support to carriers that leave the NECA pool could undermine the pool's usefulness in permitting participants to share the risk of substantial cost increases related to the CCL charge by pooling their costs and, thereby, charging an averaged CCL rate close to that charged by other carriers. This operation of the pool, like LTS payments, serves section 254's goal of facilitating interexchange service in high cost areas. Accordingly, we decline to permit a carrier leaving the pool to continue to receive LTS in the future.

35. Pursuant to section 54.307 of the Commission's rules, a competitive eligible telecommunications carrier is eligible to receive universal service support to the extent that it captures an incumbent LEC's subscriber lines or serves new subscribers in the incumbent LEC's service area. Having determined that an incumbent LEC exiting the NECA common line pool will lose LTS, we also determine that a competitive eligible telecommunications carrier that receives LTS for serving subscribers in an incumbent LEC's service area similarly will lose LTS when the incumbent LEC exits the NECA common line pool.

D. Support for Competitive Eligible Telecommunications Carriers

36. We clarify the Commission's finding that, beginning January 1, 1998, high cost loop support, DEM weighting assistance, and LTS will be portable to any competitive local exchange carrier that has been designated as an eligible telecommunications carrier. Section 54.307(a)(1) of our rules, which encompasses all three types of support currently received by incumbent LECs, provides that ''[a] competitive eligible telecommunications carrier shall receive support for each line it serves based on the support the incumbent LEC receives for each line.'' Section 54.307(a)(2) sets forth the method for calculating per-line support that will be paid to a competitive eligible telecommunications carrier for each line that it serves in an incumbent LEC's service area. Section 54.307(a)(3) provides the method for calculating the level of support that a competitive eligible telecommunications carrier that uses switching functionalities or loops that are purchased as unbundled network elements will receive. AirTouch correctly notes that section 54.303, which establishes the method for calculating LTS, explicitly states that a competitive eligible telecommunications carrier will receive LTS. In order to eliminate the apparent ambiguity in our rules governing portability, we amend the first sentence of section 54.303 to eliminate any reference in that section to competitive carriers' eligibility to receive LTS. We adopt this amendment based on our conclusion that section 54.307, which sets forth the method for calculating the amount of high cost loop support, DEM weighting assistance, and LTS that a competitive carrier may receive, specifies the support that competitive eligible telecommunications carriers are entitled to receive and, therefore, the reference to competitive carriers in section 54.303 is not needed.

E. Impact on Incumbent LEC of Losing Access Lines to Competitive Eligible Telecommunications Carriers

37. We clarify here that, if an incumbent LEC loses a customer to a competitive eligible telecommunications carrier, the incumbent LEC will lose some or all of the per-line level of support that is associated with serving that customer. If the competitive eligible telecommunications carrier uses network elements purchased pursuant to section 51.307 to provide the supported services, the reduction in the amount of support received by the incumbent LEC is specified in section 54.307(a)(3) of the Commission's rules. That section provides that ''[t]he [incumbent] LEC * * * shall receive the difference between the level of universal service support provided to the competitive eligible telecommunications carrier and the per-customer level of support previously provided to the [incumbent] LEC.'' Section 54.307(a)(4) of our rules provides that a competitive eligible telecommunications carrier that provides the supported services using *neither* unbundled network elements nor wholesale service purchased pursuant to section 251(c)(4) will receive the full amount of universal service support previously provided to the incumbent LEC for that customer. That section, however, does not provide

a corresponding reduction in the amount of support received by the incumbent LEC. Accordingly, we amend section 54.307(a)(4) to clarify that, when a competitive eligible telecommunications carrier receives support for a customer pursuant to section 54.307(a)(4), the incumbent LEC will lose the support it previously received that was attributable to that customer.

F. Corporate Operations Expenses

1. Imposition of a Limitation

38. In light of these challenges to the Commission's decision to limit recovery of corporate operations expenses, we take this opportunity to explain more fully the bases for this decision. Expenditures for corporate operations in many instances may be discretionary, in contrast, for example, to expenditures to maintain existing plant and equipment. Corporate operations expenses include, for example, travel, lodging and other expenses associated with attending industry conventions and corporate meetings. Although participation in such activities may be prudent, the levels of these expenditures are subject to managerial discretion. Carriers currently have little incentive to minimize these expenses because the current mechanism for providing support in high cost areas allows carriers to recover a large percentage of their corporate operations expenses. For companies with fewer than 200,000 lines, for example, the expenses attributed to the high cost expense adjustment are covered in full for companies with costs in excess of 150 percent of the national average. Smaller carriers possess even fewer incentives to minimize corporate operations expenses because the Commission has a limited ability to ensure, through audits, that smaller companies properly assign corporate operations expenses to appropriate accounts and that these expenses do not exceed reasonable levels. The Commission, and frequently state commissions, cannot justify auditing smaller carriers because the Commission's audit staff is small, there are many hundreds of small telephone companies, and the costs of full-scale audits are in many instances likely to exceed any expenses found to be improper. We, therefore, conclude that imposing a cap that is relatively generous to small carriers, but still imposes a limitation, is a reasonable method of encouraging carriers to assign corporate operations expenses to the proper accounts and discouraging carriers from incurring excessive expenditures. Under this approach, we provide carriers with an incentive to control their corporate operations expenses without requiring carriers to incur the costs associated with a full Commission audit. As the Commission stated in its *Order* and as explained further below, carriers that contend that the limitation provides insufficient support may request a waiver from the Commission. Therefore, only carriers whose expenses exceed the cap and who contend that the capped amount is insufficient will be required to provide additional justification for their expenditures. We, therefore, conclude that a cap on federal support for corporate operations expenses is a reasonable method of preventing the recovery of improperly assigned or excessive expenses from federal funds while minimizing the administrative burden on the Commission and on all carriers, including smaller carriers.

39. We disagree with petitioners who assert that, because some corporate operations expenses are not discretionary, we should not impose any limit on the recovery of corporate operations expenses. We recognize that the expenses cited by petitioners and commenters may be necessary for the operation of a company, and that such expenditures are in some circumstances required by state or federal law or regulation. Most companies, however, fulfill all such state and federal requirements while incurring corporate operations expenses that are well below the limitation imposed by the Commission. No party has provided detailed data explaining the significant differences in corporate operations expenses for companies of similar sizes. Further, we are not excluding recovery of corporate operations expenses from universal service support, but instead are imposing a reasonable limit. We reject ITC's request to exclude all federal regulatory expenses from the limitation because, although some expenditures may be necessary to participate in the federal regulatory process, we see no reason to permit the unlimited recovery of such expenses. Moreover, individual companies that are required to incur unusually high corporate operations expenses, such as Alaskan or insular telephone companies, have the right to apply for a waiver with the Commission to demonstrate the necessity of these expenses for the provision of the supported services.

2. Adjustments to Limitation Formula

40. In the *July 10 Order*, the Commission specified a minimum allowable corporate operations cost in order to ensure that carriers with small numbers of working loops would receive sufficient support to recover initial or fixed corporate operations expenses. This monthly cost minimum was estimated from a regression of total corporate operations expenses on the number of working loops. After performing this analysis, the Commission adopted a minimum monthly recovery of $9,505, which results in a minimum recovery of $114,071 per year. USTA and GVNW urge the Commission to increase this minimum recovery from $114,071 per year to $300,000 per year. USTA additionally advocates adopting a limitation equal to the greater of either $300,000 per year or $34.82 per line per month.

41. We reconsider, to a limited extent, the limitation on recovery of corporate operations expenses and adopt a new minimum cap of $300,000 per year as advocated by USTA and GVNW. Although we are fully confident in the formula that calculates the cap, we adopt a minimum cap of $300,000 out of an abundance of caution for the smallest carriers. The increased minimum will reduce the need of the smallest carriers to seek a waiver of the cap. We intend to continue to monitor the effect of this limitation and the $300,000 minimum cap on smaller carriers. We note that, because the Commission has adopted an indexed cap for all high cost support, increases in the amount of support provided to some companies will reduce the amount of support provided to other companies. We find, however, that this change will result in a minimal increase in the total amount of universal service support provided to carriers. We will continue to monitor this issue closely and will take steps to ensure that only necessary and prudent expenditures are supported. We do not adopt USTA's alternative proposal to increase recovery to $34.82 per line per month for all carriers because we believe the minimum cap of $300,000 provides adequate protection for the smallest carriers while imposing the smallest corresponding decrease in high cost loop support for carriers overall.

42. Upon reconsideration, we make an additional change in the limitation formula to address a small discontinuity in the formula that causes the total allowable corporate operations expense to be slightly lower in the range from 17,988 and 17,997 lines than the amount computed at 17,987 lines. To eliminate the anomaly caused by this discontinuity, we alter the second threshold for access lines from 17,988 lines to 18,006 lines. Finally, to make our rules easier to apply, we

standardized general mathematical conventions in the formulas.

3. Methodology Used To Calculate the Limitation

43. Western Alliance questions the methodology the Commission used to create the formula for the corporate operations expense limitation. Western Alliance asserts that the *Order* contained no discussion or reasoned explanation of: ''(a) why a regression analysis using a spline function technique was accurate and appropriate; (b) how or why the 115 percent ceiling was selected; or (c) how or why the 1995 NECA data were representative.'' We address these arguments in turn. As detailed further in the *July 10 Order,* the Commission used a linear spline to estimate average corporate operations cost per loop, based on the number of loops served. To produce this formula, we used statistical regression techniques that focused on the relationship between expenses per loop, rather than total expense. We adopted this approach in order to establish a model under which the cap on corporate operations expense per line would decline as the number of loops increases for a range of smaller companies so that economies of scale, pursuant to which expenses per loop decline as carrier size increases, would be taken into account by the formula. Of the models studied, the linear spline was found to have the highest R^2, a measure indicating that this model provides the best fit with the data. The relationship between corporate operations expense and lines served may reasonably be expected to change as carriers' size increases. The linear spline method used allows a different slope to be fitted for smaller carriers than for larger carriers. The Commission adopted the ''knot,'' or the point at which the two line segments of the linear spline model meet, at 10,000 loops because that point allowed the best fitting overall spline.

44. Regarding the remaining issues raised by Western Alliance, the 115 percent ceiling that limits recovery of corporate operations expenses is consistent with other Commission rules regarding universal service support under part 36 of our rules. The Commission has consistently considered carriers whose loop costs exceed the national average loop cost by more than 15 percent worthy of special treatment. In the present context, out of an abundance of caution, we have concluded that companies will be allowed to recover costs up to 15 percent above average costs, rather than limiting recovery of such expenses to average costs. We also find that, before receiving corporate operations expenses in excess of 115 percent of the average, companies should undergo additional scrutiny by submitting a waiver request to the Commission. Finally, the data used in the estimation are the actual corporate operations expenses that companies filed with NECA for the calculation of universal service support. We used the most current NECA data available at the time we performed these calculations.

45. Western Alliance claims that the Commission's corporate operations expense formula affects smaller companies more significantly than larger companies. It states that Figure 1 in the *July 10 Order* demonstrates that the data for LECs with more than 15,000 loops cluster more closely around the Commission's fitted line than the data for those LECs with fewer than 15,000 lines. This observation, however, does not undermine the Commission's conclusion. Because corporate operations expense per line varies more for smaller companies than larger ones, any line that we might adopt would fit the data for larger companies more closely than it would fit the data for smaller ones. Moreover, as explained above, we have raised the minimum cap out of an abundance of caution to address concerns that, without modification, our formula may not afford sufficient recovery of corporate operations expenses for the smallest companies.

46. We reject GVNW's argument that it is not clear whether the corporate operations expense rule addresses amounts from Accounts 6710 and 6720 or whether it addresses ''that portion assigned to loop cost in NECA's USF Algorithm (AL19).'' According to the *Order,* however, ''[c]orporate operations expense are recorded in Account 6710 (Executive and planning) and Account 6720 (General and administrative).'' Hence, the limitation applies to accounts 6710 and 6720 and does not apply to NECA's USF algorithm.

47. RTC asserts that the Commission's formula is a proxy model and therefore should be subject to the criteria the Commission adopted for forward-looking cost proxy models in the *Order.* Although the formula we adopted to limit recovery of corporate operations expenses is a model, it is not a model intended to estimate forward-looking economic costs. Therefore, most of the criteria adopted by the Commission concerning forward-looking cost proxy models are inapplicable to the corporate operations expense formula. Further, RTC is incorrect to the extent that it is arguing that the underlying data and assumptions for the formula are unavailable to the public. The data used to create the line were filed publicly with the Commission by NECA for calendar year 1995. The assumptions and method we used to compute the formula can be found in greatest detail in the *July 10 Order.* The Commission has not, as TCA alleges, contradicted its decision to base universal service support for rural telephone companies on embedded costs until January 1, 2001. The formula we have adopted imposes a limit on the recovery of embedded costs and is not a proxy model designed to calculate forward-looking economic costs.

48. We find that our limitation on recovery of corporate operations expenses will not jeopardize the affordability of local services. Because, as discussed above, such expenditures and the level of such expenditures are in many cases discretionary, we believe that imposing some limits on corporate operations expenses serves the public interest. Moreover, if carriers have prudent corporate operations expenses that exceed the cap, they may seek a waiver of that cap.

49. Based on the changes described above, we modify the formula to limit the amount of corporation operations expenses per working loop that a carrier may recover as follows:

for study areas with 6,000 or fewer working loops the amount per working loop shall be $\$31.188 - (.0023 \times$ the number of working loops), or, ($\$25{,}000 \div$ the number of working loops), whichever is greater;

for study areas with more than 6,000 but fewer than 18,006 working loops, the amount per working loop shall be $\$3.588 + (82{,}827.60 \div$ the number of working loops); and

for study areas with 18,006 or more working loops, the amount per working loop shall be $8.188.

We conclude that this modified formula will better serve our goal of ensuring that carriers use universal service support only to offer the supported services to their customers through prudent facility investment and maintenance consistent with their obligations under section 254(k).

4. Procedural Matters

50. We conclude that the limitation on corporate operations expenses was adopted in compliance with the Administrative Procedure Act (APA). The Commission gave the public ample notice regarding the possibility of limiting or excluding recovery of corporate operations expenses. In a Notice of Inquiry released in 1994, the Commission sought comment on whether we should exclude all recovery of corporate operations expenses. In a Notice of Proposed Rulemaking released

in 1995, as the petitioners acknowledge, the Commission tentatively concluded that it should exclude recovery of all such expenses. In the *Universal Service Notice*, the Commission specifically sought comment on whether any proposals in Docket No. 80–286 were worthy of consideration in Docket No. 96–45 and specifically incorporated the record of that proceeding into the 96–45 docket. Moreover, in its Public Notice seeking further comment, the Common Carrier Bureau asked what modifications should be made to the high cost support mechanism if it were retained with respect to rural areas. In response to this Public Notice, several parties recommended that the Commission limit or exclude recovery of corporate operations expenses as it had previously proposed.

51. Not only did the Commission provide notice of a potential limit on or exclusion of the recovery of corporate operations expenses, the approach adopted by the Commission takes into consideration the comments filed in response to these notices. The Commission initially proposed disallowing all recovery for corporate operations expenses. After considering the comments, however, the Commission concluded in the *Order* that it should limit such expenses to a reasonable level rather than excluding them altogether. The approach taken is conceptually similar to the one NECA proposed in response to the *1995 Notice* and again in response to the Public Notice. NECA proposed that high cost support recipients should recover only expenses that fall below a line that is two standard deviations above a regression line. Our limitation is based on a regression line that takes into account the size of the company when calculating an acceptable range of recoverable corporate operations expenses and, rather than allowing all expenses within two standard deviations of the line as proposed by NECA, allows recovery of expenses that are up to 115 percent of the typical costs of companies of similar size. Thus, because the corporate operations expense cap was within the scope of the proposal to eliminate recovery of all corporate operations expenses and was supported by record evidence, the requirements of the APA were met.

52. We conclude that we are not barred from adopting this limitation because, although the Joint Board did not make a recommendation about limiting the recovery of corporate operations expenses, the Commission properly referred to the CC Docket No. 96–45 Joint Board the question of whether proposals originating with the CC Docket No. 80–286 Joint Board should be adopted. We also conclude that Western Alliance incorrectly implies that the legislative history to the 1996 Act prohibits the Commission from adopting any proposal that was submitted in the record of the CC Docket No. 80–286 proceeding. Although the Joint Explanatory Statement explained that Congress did not view the CC Docket No. 80–286 proceeding as an appropriate basis for implementing section 254(a), nothing in the legislative history suggests that Congress, in enacting section 254, intended to preclude us from considering specific proposals from that docket in the separate proceeding undertaken to implement section 254. Indeed, the Commission, in the *Universal Service Notice*, sought comment on whether any proposals from the 80–286 docket were consistent with the 1996 Act so as to avoid duplication of previous Commission efforts. As described above, several commenters proposed elimination or limitation of the recovery of corporate operations expenses in the 96–45 docket, and the Commission adopted this limitation as part of the 96–45 docket.

53. We also conclude that our adoption of a high standard for granting a waiver for corporate operations expense recovery is fully justified. Because corporate operations expenses are in many cases completely within a company's discretion, they are more likely to be susceptible to abuse than other types of expenditures such as plant maintenance expenditures. Accordingly, parties contending that they should recover unusually high amounts of such expenses should be required to meet a substantial burden. Additionally, because the limitation includes a buffer zone to accommodate companies that may have corporate operations expenses that are higher than average, but not extreme, we affirm our conclusion that the need for waivers should be limited to exceptional circumstances.

54. We also reject petitioners' suggestions that the limitation on recovery of corporate operations expenses should be phased in over a lengthy transition period. Unlike other situations cited by the commenters, a transition period is not warranted in this instance. We conclude that we should not phase in a measure designed to prevent misallocation, manipulation, and abuse. Companies believing that they have reasonably incurred expenses in excess of the limitation may petition for a waiver from the Commission. We find that the availability of a waiver will sufficiently protect any company that legitimately incurred expenses in excess of the limitation, whether caused by activity mandated by the 1996 Act or for any other reason.

55. Contrary to the position of some commenters, the Commission is fully authorized to adopt rules to implement section 254(k) in addition to codifying the statutory provision as it has already done. In fact, in the *Section 254(k) Order*, we concluded that we would ''from time to time, re-evaluate our rules to determine whether additional rule changes are necessary to meet the requirements of section 254(k).'' The Commission concluded in the *Order* and the *July 10 Order* that some recipients of federal universal service support may be receiving funds beyond those necessary to provide the supported services. Recovery of such expenditures may allow carriers to use these expenditures to subsidize competitive services in violation of section 254(k). In addition to limiting support for corporate operations expense in order to control spending that may be in excess of that allowed by the Act, the Commission correctly found that limiting corporate operations expenses would reduce the ability of incumbent LECs to subsidize competitive services with noncompetitive services by reducing the incumbent LECs' receipt of funds beyond those that may be necessary to provide the supported services. We therefore conclude that limiting recovery of corporate operations expenses is within the ambit of section 254(k).

V. Support for Low-Income Consumers

A. Obligation To Provide Toll-Limitation Services

56. We believe that low-income consumers eventually should have the choice of selecting either toll blocking or toll control to restrict their toll usage. We conclude, however, that giving consumers such an option is not viable at this time. Based on the record before us, we find that an overwhelming number of carriers are technically incapable of providing both toll-limitation services, particularly toll-control services, at this time. Under our current rules, carriers technically incapable of providing both types of toll-limitation services must seek from their state commissions a time-limited waiver of their obligation to provide both toll blocking and toll control. Given that a large number of carriers are technically incapable of providing both toll blocking and toll control at this time, we believe that requiring carriers

to provide both would result in an unnecessarily burdensome process for state commissions required to act on a large number of waiver proceedings.

57. In light of these concerns, we believe that requiring carriers to provide at least one type of toll-limitation service is sufficient to provide low-income consumers a means by which to control their toll usage and thereby maintain their ability to stay connected to the public switched telephone network. Weighing the burdens on the states and the need to have carriers designated in a short time frame against the goal of giving low-income consumers a full range of options for controlling toll usage, we define toll-limitation services as either toll blocking or toll control and require telecommunications carriers to offer only one, and not necessarily both, of those services at this time in order to be designated as eligible telecommunications carriers. We note, however, that if, for technical reasons, a carrier cannot provide any toll-limitation service at this time, the carrier must seek a time-limited waiver of this requirement to be designated as eligible for support during the period it takes to make the network changes needed to provide one of those toll-limitation services. In addition, if a carrier is capable of providing both toll blocking and toll control, it must offer qualifying low-income consumers a choice between toll blocking and toll control. Because we agree with Catholic Conference that all qualifying low income consumers ideally should be offered their choice of toll blocking or toll control, we plan to monitor and revisit this issue if we determine that technological impediments to carriers' ability to offer toll limitation have been reduced or eliminated. We also encourage carriers to develop and investigate cost-effective ways to provide toll-control services.

58. We further conclude that carriers offering Lifeline service will not be required to provide toll-limitation services other than those specifically identified in the *Order.* The Commission defined toll blocking as a service that allows customers to block outgoing toll calls, and defined toll control as a service that allows customers to limit in advance their toll usage per month or billing cycle. Therefore, carriers offering Lifeline service will not be required to offer, for example, international toll-call-blocking or toll blocking that allows callers with a Personal Identification Number (PIN) to make toll calls, as suggested by the Florida Commission. While we encourage carriers to offer Lifeline consumers, free of charge, toll-limitation services that include functions and capabilities beyond those described in the *Order,* we are persuaded by USTA that most carriers currently are technically incapable of providing these additional services. Furthermore, regarding the issue of whether toll control must limit collect calls, we conclude that, like toll blocking, toll control only must allow consumers to limit outgoing calls.

59. In response to the Texas Commission's request, we reiterate that toll-limitation services for qualifying low-income subscribers are included in the definition of the ''core'' or ''designated'' services that will receive universal service support. A carrier must provide these core services throughout its entire service area in order to be designated an eligible telecommunications carrier. We further clarify that, compliance with the no disconnect rule and the prohibition on deposit rule are not specific preconditions to being designated an eligible telecommunications carrier. Once designated as an eligible telecommunications carrier, however, that carrier must offer all Lifeline and LinkUp services to qualifying low-income subscribers.

B. Recovery of PICC

60. Consistent with our efforts to make toll-blocking service easily affordable to low-income consumers, we adopt our tentative conclusion in the *Second Further Notice* to waive the PICC for Lifeline customers who elect toll blocking. For the reasons discussed here and in succeeding paragraphs, we agree with SBC and AT&T and conclude that support for PICCs for Lifeline customers who have toll blocking, but nevertheless remain presubscribed to an IXC, will be provided by the universal service support mechanisms in addition to the support for Lifeline customers established in the *Order.* In the *Order,* the Commission noted that studies demonstrate that a primary reason subscribers terminate access to telecommunications services is failure to pay long-distance telephone bills. The Commission concluded that, because voluntary toll blocking allows customers to block toll calls, and toll-control service allows customers to ensure that they will not spend more than a predetermined amount on toll calls, these services assist Lifeline customers in avoiding involuntary termination of their access to telecommunications services. The Commission concluded that, in order to increase the use of toll-blocking and toll-control services by low income consumers, Lifeline customers should receive these services at no charge. It would make little sense, and would undermine the very basis for providing Lifeline customers free access to toll blocking, to assess the PICC on Lifeline customers who select toll blocking. In addition, in light of our decision herein to permit eligible carriers to offer either toll control or toll blocking, it would be particularly unfair to assess the PICC on Lifeline customers who do not have the option of selecting toll control, but that are limited to toll blocking. To do so would discriminate against Lifeline customers who may only select toll blocking, and thus would have no reason to presubscribe to an IXC. In contrast, a Lifeline subscriber who is able to select toll control likely will presubscribe to an IXC, because that subscriber's access to toll calling is limited, but not blocked entirely.

61. We thus conclude that, because toll blocking for low-income consumers is a supported service that carriers must provide to such customers and the PICC payment issue arises as a direct result of the toll blocking requirement, the PICC, in these instances, is sufficiently related to the provision of toll blocking that it should be supported for low-income consumers. Thus, such costs should be recovered in a competitively neutral manner that is consistent with section 254 of the Act. Therefore, all interstate telecommunications carriers, not just IXCs, should bear the costs of the waived PICCs.

62. Moreover, we agree with petitioners that the low-income program of the federal universal service support mechanisms should support PICCs attributable to all qualifying low-income consumers who have toll blocking. As stated above, we will support PICCs attributable to qualifying low-income consumers who have toll blocking but do not have a presubscribed IXC. We anticipate that most low-income consumers who receive toll blocking will do so voluntarily and that most will not have presubscribed IXCs. In the event, however, that a low-income consumer is required to elect toll blocking (*e.g.,* as a condition of receiving local service) or in the event that a low-income consumer remains presubscribed to an IXC even though the consumer receives toll blocking, the federal low-income program also will support the PICCs attributable to consumers in those circumstances. Low-income consumers who elect toll blocking, but who remain presubscribed to an IXC, would not receive toll blocking free-of-charge unless we waive the PICC for the consumers. If an IXC were required to pay the PICC

attributable to a low-income consumer who elects toll blocking, that IXC would not be able to recover the PICC through per-minute charges associated with toll usage. Thus, absent changes to our rules, the IXC may seek to recover the PICC from the consumer in the form of a flat-rate charge. As we have noted above, toll blocking helps consumers to control their toll usage and should be available free-of-charge to qualifying low-income consumers. Therefore, to ensure the availability of toll blocking to all qualifying low-income consumers free-of-charge, we conclude that the low-income program of the federal universal service support mechanisms should support PICC charges attributable to all low-income consumers who have toll blocking.

63. All competitive eligible carriers that provide Lifeline service to customers who elect toll blocking should be able to recover an amount equal to the PICC that would be recovered by the incumbent LEC in that area from the low-income program of the federal universal service support mechanisms even though such carriers are not required to charge PICCs. Competitive eligible carriers should be able to receive support amounts equal to the PICCs because, like incumbent LECs, they will be unable to recover any portion of their costs associated with a toll-blocked customer from IXCs originating interexchange traffic on that customer's line. To avoid creating incentives for carriers to pass additional costs to low-income consumers through increased rates, we conclude that competitors should receive this additional support for Lifeline customers who elect to receive toll blocking. In addition, in order to ensure competitive neutrality, a competing local carrier serving a Lifeline customer should be able to receive the same amount of universal service support that an incumbent LEC would receive for serving the same customer. Because an incumbent LEC serving a low-income customer who elected toll blocking would receive support for the PICC associated with that customer, in order to ensure that competing local carriers are not operating at an unfair advantage, competing local carriers should be eligible to receive the same amount of support that the incumbent LEC would receive.

C. Florida Commission's Petition Pertaining to State Lifeline Participation

64. Consistent with the Commission's earlier finding that we should not prescribe the methods that states use to generate intrastate Lifeline support in order to qualify for federal support, we conclude that, although all carriers are not required to contribute to Florida's Lifeline support mechanisms, Florida's Lifeline program nevertheless qualifies as providing intrastate matching funds. We, however, encourage states to develop Lifeline matching programs that are competitively neutral and emphasize that, as noted in the *Order,* states must meet the requirements of section 254(e) in providing equitable and non-discriminatory support for state universal service support mechanisms. Because we find that Florida's Lifeline program qualifies as state participation, we need not address the Florida Commission's request for a waiver of the federal default Lifeline qualification standard. For the same reason, we also decline to address the Florida Commission's request for a waiver allowing it to set eligibility requirements or implement a grandfather provision for certain Lifeline recipients.

VI. Schools, Libraries, and Rural Health Care Providers

A. Lowest Corresponding Price

65. Neither USTA nor any other party offers persuasive evidence that the three-year ''look back'' provision for determining the lowest corresponding price is either unnecessarily burdensome or will unfairly delay a service provider's participation in the bidding process. Commenters do not assert that the relevant records are not maintained or are not accessible. We note that the universe of records that the provider must review to determine the lowest corresponding price is limited to charges involving similarly situated, non-residential customers for similar services.

66. We do not agree with USTA that the three-year ''look back'' provision violates the principle of competitive neutrality by disadvantaging larger providers. We note that this requirement applies equally to all providers and that, although larger providers may have a greater number of records to review for purposes of determining the lowest corresponding price, these providers also likely have greater resources and more sophisticated methods of recordkeeping.

67. We agree with USTA, however, that we should modify our earlier holding to clarify the application of our lowest corresponding price requirement. We conclude that, for purposes of calculating the lowest corresponding price, a provider will not be required to match a price it offered to a customer under a special regulatory subsidy or that appeared in a contract negotiated under very different conditions. For example, we previously concluded that service providers will be permitted to charge schools and libraries prices higher than those charged to other similarly situated customers if the services sought by a school or library include significantly different traffic volumes or the provision of such services is significantly different from that of another customer with respect to any other factor that the state public service commission has recognized as being a significant cost factor. Under our modified rules, a service provider will not be required to demonstrate further that matching such a price would force the provider to offer service at a rate below the compensatory rate for that service. The use of a rate below the compensatory rate would not be practical, given the limited resources of schools and libraries to participate in lengthy negotiations, arbitration, or litigation. Regarding Bell Atlantic's concern that special regulatory rates established by states for schools and libraries should not be treated as the pre-discount prices, we reiterate that special regulatory subsidies need not be considered in determining the lowest corresponding price. Consistent with our findings above, we conclude that each such situation should be examined on a case-by-case basis to determine whether the rate is a special regulatory subsidy or is generally available to the public. We also note that the universal service discount mechanism is not funding the difference between generally available rates and special school rates, as suggested by Bell Atlantic, but is applied to the price at which the service provider agrees to provide the service to eligible schools and libraries.

68. We disagree with USTA that earlier versions of tariffs that have been modified by regulators should be excluded from the comparable rates upon which the lowest corresponding price is determined. Unless a regulatory agency has found that the tariffed rate should be changed, and affirmatively ordered such change, or absent a showing that the rate is not compensatory, we find no reason to conclude that former tariffed rates do not represent a fair and reasonable basis for establishing the lowest comparable rate.

69. We decline to adopt GTE's proposal to exclude all promotional offerings from the comparable rates upon which a provider must determine the lowest corresponding price. Instead, we conclude that only promotions offered for a period not exceeding 90 days may be excluded from the

comparable rates upon which the lowest corresponding price must be determined. This conclusion is consistent with the decision of the U.S. Court of Appeals for the 8th Circuit upholding the portion of the Commission's interconnection decision finding that discounted and promotional offerings are telecommunications services that are subject to the resale requirement of section 251(c)(4), and that promotional prices lasting more than 90 days qualify as retail rates subject to wholesale discount. Excluding shorter term promotional rates from consideration here balances the need to provide compensatory rates to providers while ensuring that eligible schools and libraries receive competitive, cost-based rates that are comparable to rates paid by similarly situated non-residential customers for similar services. Consistent with the Commission's rationale in the *Implementation of Section 254(g) Order*, we agree that a 90-day period in which customers may receive discounted rates as part of a promotion is sufficient time for a targeted promotional offering to attract interest in new or revised services, but not so long as to undermine the requirement that the price offered to schools and libraries be no greater than the lowest corresponding price the carrier has charged in the last three years or is currently charging in the market.

70. As previously noted, providers and eligible schools and libraries will have the opportunity to seek recourse from the Commission, regarding interstate rates, and from state commissions, regarding intrastate rates if they believe that the lowest corresponding price is unreasonably low or unreasonably high. We decline to adopt the suggestion of USTA that we impose limits on a customer's ability to challenge the pre-discount price it has been offered. We have no basis in this record for assuming that the possibility of such abuse by schools and libraries is greater than the potential for service providers to assert frivolously that the rates are too low. We will monitor parties' use of the dispute process and, if we find a pattern of frivolous challenges by schools, libraries, or service providers, we will take steps to remedy any such abuse at that time.

B. Reporting Requirements for Schools and Libraries

71. We conclude that the reporting requirements established in the *Order* for eligible schools and libraries are not unreasonably burdensome, and that they represent a reasonable means of ensuring that schools and libraries are capable of utilizing the requested services effectively. Section 254(h)(1)(B) provides for discounts on services that are used for educational purposes and that are provided in response to a bona fide request. In the *Order*, the Commission agreed with the Joint Board that Congress intended to require accountability on the part of schools and libraries and therefore, consistent with section 254(h)(1)(B), required eligible schools and libraries to conduct an internal assessment of the components necessary to use effectively the discounted services they order. We note that the application requirements established in the *Order* were recommended by the Joint Board and supported by a majority of commenters on this issue. We affirm our decision, because we find that it is in the public interest to ensure that funds are distributed only to support eligible services that serve the needs to the school or library requesting support. We find that the mere submission of a bona fide request is not an adequate substitute to ensure that these public interest goals are met.

72. The Commission determined in the *Order* that it would not be unduly burdensome to require eligible schools and libraries to conduct a technology assessment, prepare a plan for using these technologies, and receive independent approval of such plans. Moreover, the Commission took steps to eliminate unnecessary burdens, and prevent the need for duplicative review of technology plans. The Commission noted that many states have already undertaken state technology initiatives and that plans that have been approved for other purposes, e.g., for participation in federal or state programs, such as ''Goals 2000,'' will be accepted without need for further independent approval. We also note that the reporting requirements have been reviewed and approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Because we conclude that the reporting requirements are not unduly burdensome, help ensure that funds are allocated in a manner that serves the policy goals set forth in section 254(b)(6) and section 254(h), and do not violate section 254(h)(1)(B), we deny Global's petition for reconsideration of those requirements.

73. We also deny Florida Department of Management Services' request to apply, during the first year of the federal support mechanisms, for universal service discounts using a form created by the state of Florida. We find that requiring all applicants to use the same forms serves several important purposes. First, the forms were designed to ensure accountability, and protect against fraud and abuse. For example, the forms require applicants to provide information designed to ensure that each school or library receives the discount to which it is entitled under the Commission's rules. The forms also are designed to ensure that support is provided only with respect to eligible entities, and only for services eligible for support, and that applicants are otherwise in compliance with all applicable Commission requirements. Second, the forms were designed to facilitate the use of competitive bidding. In addition, the forms were designed to be competitively neutral, so that no potential provider is precluded from offering service to a school or library. Third, the use of a single set of forms will substantially ease burdens of administering the support mechanism, and thereby minimize the costs of administration. Moreover, if funds are allocated pursuant to a single set of forms, it may be easier to audit the administrative processes of the Schools and Libraries Corporation. Fourth, the use of a single set of forms will facilitate tracking of the schools and libraries support mechanism over time. For example, it will make it easier to determine what types of services schools and libraries need, and how those needs change over time. Such information is useful for deciding what if any adjustments should be made with respect to the schools and libraries mechanism. Congress expressly provided for such adjustments.

74. We note that the Commission invited, and received, substantial input on the application forms as they were developed. The Commission, in conjunction with the Schools and Libraries Corporation, held a public workshop, and draft application forms were posted on the Commission's website. The application forms reflect comments and suggestions from schools and library representatives, service providers, the Department of Education and the Schools and Libraries Corporation. We anticipate that, as parties begin to use the application forms, they will discover ways to improve them, and we encourage suggestions for modifying and improving the application forms. For the reasons set forth above, however, we conclude that requiring all applicants to use the same application forms will serve the public interest. We find that it is particularly important, in the first year of implementation, to take all reasonable steps to make sure the

Schools and Libraries Corporation is able to administer the support mechanism as efficiently and effectively as possible. We therefore deny Florida Department of Management Services' request to use its own application form.

C. Non-Public Schools and Libraries

75. It is our expectation that states will approve technology plans in a reasonably timely manner. As noted above, however, the Schools and Libraries Corporation has authority to review and certify the technology plans of schools and libraries if the applicant provides evidence that a state agency is unwilling or unable to do so in a reasonably timely fashion. We here conclude that a school or library may apply directly to the Schools and Libraries Corporation for technology plan approval if the school or library is not required by state or local law to obtain approval for technology plans and telecommunications expenditures. The Schools and Libraries Corporation has stated its intent to create a process for reviewing technology plans of private schools and other eligible entities whose states are unable to review their plans. The Schools and Libraries Corporation may structure the review process in any manner it deems necessary to complete review in a timely fashion, consistent with the purposes of the review. We emphasize, however, that schools and libraries that are subject to a state review process by state or local law may not circumvent the state process by submitting plans directly to the Schools and Libraries Corporation for review. Eligible schools and libraries that are required by state or local law to obtain approval for technology plans and telecommunications expenditures will be allowed to submit technology plans to the Schools and Libraries Corporation for review only when the state is unwilling or unable to review such plans in a reasonably timely fashion. In addition, if a technology plan is rejected at the state level, a school or library may not then submit the plan to the Schools and Libraries Corporation in an attempt to circumvent the state review process.

76. In addition, FCC Forms 470 and 471 will allow applicants to indicate that their technology plans either have been approved or will be approved by a state, Schools and Libraries Corporation, or by another authorized body. This provision will allow schools and libraries that are required to obtain technology plan approval from an entity other than a state agency to submit both FCC Forms 470 and 471 without any delay due to a lack of technology plan approval. Schools and libraries will not be able to receive actual discounts, however, until their technology plans are approved.

77. Given the Schools and Libraries Corporation plan to institute an approval process that ''will occur in sufficient time to meet the needs of those schools that choose to apply under the 75 day window,'' we see no need to adopt the suggestion of the National Association of Independent Schools that we waive the technology plan approval requirement for all schools and libraries for the first six to twelve months of the schools and libraries program in order to provide sufficient time to develop alternative approval mechanisms. We understand that the Schools and Libraries Corporation is moving forward with due diligence to ensure that their technology plan review process is put into place as quickly as possible. We reiterate that approval of an applicant's technology plan will assist in ensuring that technology plans are based on the reasonable needs and resources of the applicant and are consistent with the goals of the program.

D. Option to Post Requests for Proposals on Websites

78. In light of the concerns expressed by the Working Group and NECA, including significant costs and potential delays associated with requiring the administrative companies to post RFPs on the school and library and rural health care provider websites, we reconsider the Commission's requirement that the administrative companies post on the websites RFPs submitted by applicants. An RFP is a detailed request for the services and facilities that an entity is interested in procuring. RFPs may vary greatly in length, numbering over a hundred pages in some cases, including diagrams and specifications of the procurement of facilities. FCC Form 470, submitted by school and library applicants, and FCC Form 465, submitted by eligible health care applicants, will instruct applicants to describe the services they seek and to include information sufficient to enable service providers to identify potential customers. We conclude that this information is adequate to serve the purposes underlying the website posting requirement by allowing schools and libraries to take advantage of the competitive marketplace. We conclude that any additional information contained in an RFP that is not submitted for posting on the website under FCC Forms 470 and 465 can be made available to interested service providers at the election of the school, library, or rural health care provider applicant. We encourage eligible school, library, and rural health care provider applicants to make RFPs available upon request to interested service providers. We do not, however, require the Schools and Libraries Corporation or the Rural Health Care Corporation to post RFPs on the websites, but instead require the administrative companies to post FCC Forms 470 and 465, respectively.

E. State Telecommunications Networks and Wide Area Network

79. We conclude that state telecommunications networks that procure supported telecommunications and make them available to schools and libraries constitute consortia that will be permitted to secure discounts on such telecommunications on behalf of eligible schools and libraries. We further conclude that, with respect to Internet access and internal connections, state telecommunications networks may either secure discounts on such telecommunications on behalf of schools and libraries, or receive direct reimbursement from the universal service support mechanisms, pursuant to section 254(h)(2)(A), for providing such services. Finally, we conclude, on our own motion, that to the extent schools and libraries build and purchase wide area networks to provide telecommunications, such networks will not be eligible for universal service discounts.

a. State Telecommunications Networks

1. Procuring Telecommunications

80. We conclude that state telecommunications networks that procure supported telecommunications and make them available to eligible schools and libraries constitute consortia that will be permitted to secure discounts on such services on behalf of their eligible members. We recognize the significant benefits that state telecommunications networks provide to schools and libraries in terms of, among other things, purchasing services in bulk and passing on volume discounts to schools and libraries. In order for eligible schools and libraries to receive discounts pursuant to the universal service support mechanisms for schools and libraries and to continue to receive the benefits currently provided by state telecommunications networks, such networks, consistent with the universal service rules, may obtain discounts on telecommunications from the universal service support mechanisms on behalf of eligible schools and libraries and pass on such discounts to the eligible entities. We emphasize that, with respect to telecommunications, state

telecommunications networks only will be permitted to pass on discounts for such services to eligible schools and libraries, but will not, as discussed below, be able to receive direct reimbursement from the universal service support mechanisms for providing such services. We conclude that a state telecommunications network itself will not qualify for discounts on telecommunications. Because it does not meet the definition of an eligible school or library as set forth in the *Order*, a state telecommunications network only may secure such discounts on behalf of the schools and libraries it serves and pass through the discounts to those schools and libraries. Because schools and libraries will benefit from both the universal service discounts and the ability of state telecommunications networks to aggregate demand and secure prices based on volume discounts, the approach we adopt here will be advantageous to eligible schools and libraries. Furthermore, this approach will help maintain the integrity of the universal service support mechanisms, because eligible schools and libraries will be able to secure pre-discount prices for telecommunications that are lower than the prices for such telecommunications if they had not been purchased in bulk.

81. In order to receive and pass through discounts on supported telecommunications for eligible schools and libraries, state telecommunications networks must make a good faith effort to ensure that each eligible school or library receives a proportionate share of shared services. State telecommunications networks must take reasonable steps to ensure that service providers apply appropriate discount amounts on the portion of the supported telecommunications used by each eligible school or library. The service providers will submit to the state telecommunications network a bill that includes the appropriate discounts on eligible telecommunications rendered to eligible entities. The state telecommunications network then will direct the eligible consortium members to pay the discounted prices. Eligible consortium members may pay the discounted prices to their state telecommunications network, which will then remit the discounted amount to the service providers. Service providers will receive direct reimbursement from the support mechanisms in an amount equal to the difference between the pre-discount price of the eligible telecommunications and the discounted amount. We emphasize that state telecommunications networks purchasing services on behalf of schools and libraries are required to comply with the applicable competitive bid requirements established in the *Order*.

82. We note that, even where state telecommunications networks have procured telecommunications on behalf of schools and libraries through competitive bidding or are exempt from the competitive bid requirement, it may be advantageous for schools and libraries themselves to seek competitive bids on their requested services. In so doing, schools and libraries may be better able to ensure that they obtain the best price on the services that are most closely tailored to meet their needs. We have attempted to design the universal mechanisms so that schools, libraries, and rural health care providers utilize, and obtain the advantages of, competition, to the fullest extent possible. The competitive bidding process is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates. We recognize that schools, libraries, and health care providers may need to transition to the new universal service mechanisms, and we have made reasonable accommodation for eligible entities that have preexisting contracts for telecommunications, internal connections, or access to the Internet. We intend to continue to monitor our decision to exempt certain preexisting contracts from the competitive bidding requirement, to ensure that the exemption does not reduce the benefits that competitive bidding will provide. We thus encourage schools and libraries to seek competitive bids on their requests for services in order to obtain the best price for the desired services. We note that schools and libraries have an incentive to obtain the best price for services, because such schools and libraries will be responsible for paying a portion of the cost. We also note that, after seeking competitive bids, schools and libraries may nevertheless decide to obtain telecommunications that are procured by a state telecommunications network.

83. Because it appears that state telecommunications networks generally make telecommunications available to both eligible and ineligible entities, we emphasize that, pursuant to section 254(h)(4), such networks may obtain and pass through universal service discounts only with respect to schools and libraries that are eligible to receive such discounts. In order to protect the integrity of the schools and libraries program, we direct state telecommunications networks to develop and retain records listing eligible schools and libraries and showing the basis on which the eligibility determinations were made. Such networks also must keep careful records demonstrating the discount amount to which each eligible entity is entitled and the basis on which such a determination was made. Additionally, consistent with the *Order*, service providers must develop and retain detailed records showing how they have allocated the costs of facilities shared by eligible and ineligible entities in order to charge such entities the correct amounts.

84. We disagree with parties that argue that state telecommunications networks should be able to receive direct reimbursement from the support mechanisms for providing schools and libraries with services other than access to the Internet and internal connections. Because they do not meet the definition of ''telecommunications carrier,'' state telecommunications networks are not eligible to receive direct reimbursement from the support mechanisms pursuant to section 254(h)(1)(B). Section 254(h)(1)(B) provides that only telecommunications carriers may receive support for providing schools and libraries with the telecommunications supported under section 254(h)(1)(B). Based on the record before us, we agree with USTA that, because they do not offer telecommunications ''for a fee directly to the public, or to such classes of users as to be directly available to the public,'' state telecommunications networks do not meet the definition of ''telecommunications carrier.'' As the Commission determined in the *Order*, the definition of ''telecommunications service'' is intended to encompass only telecommunications provided on a common carrier basis. The Commission further noted that ''* * * precedent holds that a carrier may be a common carrier if it holds itself out 'to service indifferently all potential users' '' and that ''a carrier will not be a common carrier 'where its practice is to make individualized decisions in particular cases whether and on what terms to serve.' ''

85. We are not persuaded by the record before us that state telecommunications networks offer service ''indifferently [to] all potential users.'' Rather, the evidence indicates that state telecommunications networks offer services to specified classes of entities. Because the record does not contain any credible evidence that a

state telecommunications network offers or plans to offer service indifferently to any requesting party, we find that state telecommunications networks do not offer service ''directly to the public or to such classes of users as to be directly available to the public'' and thus will not be eligible for reimbursement from the support mechanisms pursuant to section 254(h)(1). We further find that prohibiting state telecommunications networks from receiving direct reimbursement from the support mechanisms pursuant to section 254(h)(1) is consistent with the Commission's determination in the *Order* that consortia of schools and libraries may receive discounts on eligible services, but that such consortia will not be permitted to receive direct reimbursement from the support mechanisms.

86. We recognize that it may be more administratively burdensome for state telecommunications networks to obtain and pass through discounts on behalf of schools and libraries, rather than to receive direct reimbursement from the support mechanisms for procuring telecommunications and making such telecommunications available to schools and libraries. As discussed above, however, state telecommunications networks do not meet the definition of ''telecommunications carrier'' and thus will not be permitted to receive direct reimbursement for the provision of telecommunications. Additionally, parties have not suggested any reason why state telecommunications networks should be treated differently from other consortia and thus be allowed to receive support directly from the universal service support mechanisms for providing telecommunications other than Internet access and internal connections. Furthermore, even if they were able to receive direct reimbursement from the support mechanisms for providing telecommunications, state telecommunications networks would still need to determine which entities are eligible for discounts and the discount rate to which each eligible entity is entitled. Therefore, any additional administrative burden created by requiring state telecommunications networks to pass through the discount amounts, rather than allowing them to receive direct reimbursement from the support mechanisms, may not be as significant as some parties suggest.

2. Internet Access and Internal Connections

87. With respect to Internet access and internal connections, we conclude that state telecommunications networks may either secure discounts on the purchase of such telecommunications purchased from other providers on behalf of schools and libraries in the manner discussed above with regard to telecommunications, or receive direct reimbursement from the support mechanisms for providing Internet access and internal connections to schools and libraries, pursuant to section 254(h)(2)(A). As the Commission concluded in the *Order*, section 254(h)(2)(A), in conjunction with section 4(i), authorizes the Commission to permit discounts and funding mechanisms to enhance access to advanced services provided by non-telecommunications carriers. On this basis, the Commission stated that it would permit discounts for Internet access and internal connections provided by non-telecommunications carriers. Thus, although we conclude that state telecommunications networks do not constitute telecommunications carriers that are eligible for reimbursement for making available telecommunications pursuant to section 254(h)(1)(B), we do find that networks that make Internet access and internal connections available to schools and libraries are eligible, under the *Order* and section 54.517 of our rules, as non-telecommunications carriers for direct reimbursement from the support mechanisms for providing these services.

88. NASTD suggests that the Commission's statement in the *Order* that it was ''constrained only by the concepts of competitive neutrality, technical feasibility, and economic reasonableness'' in implementing section 254(h)(2)(A) means that state telecommunications networks should be eligible for reimbursement from the support mechanisms for providing ''bundled service packages'' that include telecommunications and access to the Internet and internal connections. As explained above, however, the Act defines ''telecommunications carrier'' as any provider of ''telecommunications service'' and does not equate ''telecommunications'' (the term used in section 254(h)(2)(A)) with ''telecommunications service.'' Therefore, because state telecommunications networks do not provide ''telecommunications service,'' they do not meet the definition of ''telecommunications carrier'' and will not be permitted to receive direct reimbursement for the provision of services other than Internet access and internal connections. To the extent that they make available Internet access and internal connections, state telecommunications networks are non-telecommunications carriers. As non-telecommunications carriers, they are eligible, as we determined in the *Order*, pursuant to section 254(h)(2)(A), for direct reimbursement from the support mechanisms when they make available to eligible entities Internet access and internal connections.

89. Finally, we emphasize that, consistent with the *Order*, eligible schools and libraries will be required to seek competitive bids for all services eligible for section 254(h) discounts, including those services that state telecommunications networks provide using their own facilities. Thus, schools and libraries in Iowa may not obtain support from the universal service support mechanisms if they select ICN as their provider of access to the Internet and internal connections without first seeking competitive bids. Schools and libraries are not required to select the lowest bids offered, although the Commission stated that price should be the ''primary factor.'' If eligible schools and libraries in Iowa choose ICN as their provider of access to the Internet and internal connections, we conclude that ICN may receive reimbursement from the support mechanisms for providing such services.

b. Wide Area Networks

On our own motion, we further conclude that, to the extent that states, schools, or libraries build and purchase wide area networks to provide telecommunications, the cost of purchasing such networks will not be eligible for universal service discounts. We reach this conclusion because, from a legal perspective, wide area networks purchased by schools and libraries and designed to provide telecommunications do not meet the definition of services eligible for support under the universal service discount program. First, the building and purchasing of a wide area network is not a telecommunications service because the building and purchasing of equipment and facilities do not meet the statutory definition of ''telecommunications.'' Moreover, as the Commission determined in the *Order*, the definition of ''telecommunications service'' is intended to encompass only telecommunications provided on a common carrier basis. Second, wide area networks are not internal connections because they do not provide connections within a school or library. We herein establish a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way. Third, wide area networks built and purchased

by schools and libraries do not appear to fall within the narrow provision that allows support for access to the Internet because wide area networks provide broad-based telecommunications. For these reasons, therefore, we conclude that the purchase of wide area networks to provide telecommunications services will not be eligible for universal service discounts.

F. State Support

91. We conclude that, for services provided to eligible schools and libraries, federal universal service discounts should be based on the price of the service to regular commercial customers or, if lower than the price of the service to regular commercial customers, the competitively bid price offered by the service provider to the school or library that is purchasing eligible services, prior to the application of any state-provided support for schools or libraries. To find otherwise would penalize states that have implemented support programs for schools and libraries by reducing the level of federal support that those schools and libraries would receive. We anticipate that our conclusion will encourage states to implement or expand their own universal service support programs for schools and libraries.

92. Our determination to calculate discounts on the price of a service to eligible schools and libraries prior to the reduction of any state support will not require an adjustment in the $2.25 billion in annual support that the Commission estimated was necessary to fulfill the statutory obligation to create sufficient universal service support mechanisms for schools and libraries. In estimating the level of universal service support needed to serve schools and libraries, the Commission purposefully did not take into consideration state universal service support to schools and libraries. Thus, our determination to calculate federal universal service support levels on the price of service to schools and libraries prior to the application of any state-provided support should not threaten the sufficiency of the federal support mechanisms for schools and libraries.

93. Finally, we do not agree with USTA that allowing federal support levels to be based upon the price of service to schools and libraries prior to the application of any state-provided support for schools or libraries will force all telecommunications carriers to subsidize state-wide networks. Pursuant to section 254(h), universal service support for schools, libraries, and rural health care providers can be provided only to designated educational and health care providers. Moreover, USTA has not explained why applying the federal discount rate before applying any state discounts would reduce the overall amount that a carrier will receive for providing a supported service.

G. Aggregate Discount Rates

94. Our current rules require consortia to calculate the discount level by using a weighted average that is based on the share of the pre-discount price for which each school or library agrees to be ''financially liable.'' Our rules also provide that each ''eligible school, *school district,* library, or *library consortium* will be credited with the discount to which it is entitled.'' We hereby adopt a modified version of the Working Group's proposal regarding the application of discounts for schools and libraries that apply through consortia, including school districts, rather than on an individual basis. Because the discount is determined based on the weighted average of the amount for which each individual school or library agrees to be financially liable, we conclude that the amount of support likewise should be determined, where possible, on the discount rate to which each individual school or library is entitled. In other words, both the discount rate and the provision of support should be determined for each individual school or library if it is not unreasonably burdensome to do so. We therefore agree with the Working Group that, for services that will be used only by an individual institution, the applicable discount rate for the services should be determined based on the applicable discount rate for the individual school or library, not the consortium. Thus, for example, if a school applies for support as part of a consortium, but seeks support for internal connections that it alone will use, the amount of support for that internal connection should be calculated based on the specific discount rate applicable for that school. We find that this decision is consistent with our earlier decision that the level of support should be based on the economic level and geographic location of the institution seeking support.

95. We recognize, however, that we must balance the desire for equitable distribution of support against the need to keep the application process as simple and efficient as possible. Thus, while we require the state, school district, or library system to ''strive to ensure'' that each school and library in a consortium receives the full benefit of the discount on shared services to which it is entitled, we will not require school districts or library systems to compute their discount rate for shared services based on estimates of the actual usage that each of their schools or library branches will make and the respective discounts that these individual units are entitled to receive. Shared services are those that cannot, without substantial difficulty, be identified with particular users or be allocated directly to particular entities. We conclude that the administrative burden of such a requirement would not be justified by the benefit in light of existing rules in this area. We recognize that states already prohibit unreasonable discrimination against disadvantaged schools in the state, and that the courts have upheld such rules of equity, even against the state itself. Although we do not mandate consortia to adopt a particular methodology for distributing shared services, we seek to ensure that economically disadvantaged institutions receive the discounts to which they are entitled. Accordingly, we require that consortia certify that each individual institution listed as a member of a consortium and included in determining the discount rate will receive a proportionate share of the shared services within each year in which the institution is used to calculate the aggregate discount rate. Consortia may, for example, satisfy this obligation by keeping track of the usage level of shared services with respect to each institution that was included in calculating the discount rate, or they may adopt other methods to ensure that each institution receives a proportionate share of shared services. This requirement is appropriate because the discount rate for calculating support for shared services will be based on all entities listed in the request for services. By the same token, this requirement is not unduly burdensome because it does not require applicants to develop complex weighting methodologies or to calculate different discount rates for different entities that use shared services. Our determination that the state or district must ''strive to ensure'' that each school or library receives the full benefit of the discount to which it is entitled will help ensure that this goal is met. Moreover, the Schools and Libraries Corporation, pursuant to its obligation to review and approve schools' and libraries' applications and service providers' bills, is developing cost allocation procedures to further ensure that schools and libraries receive the discounts to which they are entitled.

96. Finally, we agree with the Working Group that an applicant that is

comprised of multiple eligible schools and libraries must keep adequate records showing how the distribution of funds was made, and the basis for distribution. Our rules currently require such records.

H. Limiting Internal Connections to Instructional Buildings

97. We take this opportunity to make clear, on our own motion, that the *Order* limits support for internal connections to those essential to providing connections within instructional buildings. Thus, discounts are not available for internal connections in non-instructional buildings of a school district or administrative buildings of a library unless those internal connections are essential for the effective transport of information to an instructional building or library. Hence, discounts would be available for routers and hubs in a school district office if individual schools in the school district were connected to the Internet through the district office. The *Order* stated that ''a given service is eligible for support as a component of the institution's internal connections only if it is necessary to transport information all the way to individual classrooms.'' This focus on access to classrooms followed from the Commission's conclusion that ''Congress intended that telecommunications and other services be provided directly to classrooms.'' The Commission reached this conclusion based on its analysis of the statute (where classrooms are explicitly mentioned) and of the legislative history (where Congress explicitly refers repeatedly to classrooms). Similarly, to the extent that a library system has separate administrative buildings, support is not available for internal connections in those buildings. Sections 254(h)(1)(B) and (h)(2) provide for universal service support for ''libraries.'' Imposing this restriction on support to non-administrative library facilities is consistent with the approach to support for internal connections to instructional school buildings discussed above.

98. Consistent with this clarification, we modify our rules to reflect that support is not available for internal connections in non-instructional buildings used by a school district unless those internal connections are essential for the effective transport of information within instructional buildings or buildings used by a library for strictly administrative functions.

Thus, discounts would be available for the internal connections installed in a school district office if that office were used as the hub of a local area network (LAN) and all schools in the district connect to the Internet through the internal connections in that office. We further hold that ''internal connections'' include connections between or among multiple instructional buildings that comprise a single school campus or multiple non-administrative buildings that comprise a single library branch, but do not include connections that extend beyond that single school campus or library branch. Thus, for example, connections between two instructional buildings on a single school campus would constitute internal connections eligible for universal service support, whereas connections between instructional buildings located on different campuses would not constitute internal connections eligible for such support.

I. Existing Contracts

99. We reconsider our earlier finding that contracts signed on or after November 8, 1996 are not eligible for universal service support after December 31, 1998. We conclude that a contract of any duration signed on or before July 10, 1997 will be considered an existing contract under our rules and therefore exempt from the competitive bid requirement for the life of the contract. Discounts will be provided for eligible services that are the subject of such contracts on a going-forward basis beginning on the first date that schools and libraries are eligible for discounts. We further conclude that contracts signed after July 10, 1997 and before the date on which the Schools and Libraries Corporation website is fully operational will be eligible for support and exempt from the competitive bid requirement for services provided through December 31, 1998. Contracts that are signed after July 10, 1997 are only eligible for support for services received between January 1 and December 31, 1998, regardless of the term or duration of the contract as a whole. In reconsidering our prior determination, we seek to avoid penalizing schools and libraries that were reasonably uncertain of their rights pursuant to the *Order* and to allow greater flexibility for schools and libraries to obtain the benefits of longer-term contracts, including potentially lower prices. The *Order* permitted schools and libraries to apply the relevant discounts to only those ''contracts that they negotiated prior to the Joint Board's Recommended Decision [November 8, 1996] for services that will be delivered and used after the effective date of our rules.'' We agree with commenters, however, that section 54.511(c) did not make clear that only contracts that were entered into prior to the date of the Joint Board's Recommended Decision would be eligible for discounts. The *July 10 Order,* by contrast, clearly established that discounts would be provided only for those contracts that either complied with the competitive bid requirement or qualified as ''existing'' contracts under our rules.

100. We also clarify on our own motion that, if parties take service under or pursuant to a master contract, the date of execution of that master contract represents the applicable date for purposes of determining whether and to what extent the contract is exempt from the competitive bid requirement. For example, if a state signed a master contract for service prior to July 10, 1997, such contract would qualify as an existing contract. If an eligible school subsequently elects to obtain services pursuant to that contract, that school will be exempt from the competitive bid requirement because it is receiving service pursuant to an existing contract. This clarification is consistent with our rules regarding competitive bidding for master contracts set forth in section VI.J, *infra.* Nevertheless, as discussed in sections VI.E. and VI.J. herein, we believe that schools and libraries may benefit from soliciting competitive bid even in cases where they are exempt from such competitive bidding requirements.

101. We further conclude that we should extend our rules regarding support for existing contracts to eligible rural health care providers. Members of the health care community have expressed concern that they will face the same difficulties as those faced by members of the school and library communities, including negotiating lower prices through longer term contracts and avoiding penalties in terminating existing contracts. For generally the same reasons noted above regarding schools and libraries, we also conclude that an eligible health care provider that entered into a contract prior to the date on which the websites are operational would be unfairly penalized by requiring that provider to comply with the competitive bid requirement. We thus extend the same treatment with regard to existing contracts to eligible rural health care providers as we have extended to eligible schools and libraries. An eligible rural health care provider will not be required to comply with the competitive bid requirement for any contract for eligible telecommunications services that it signed on or before July 10, 1997, regardless of the duration of the agreement. In addition, such providers will be eligible to receive reduced rates for services provided

through December 31, 1998 for any contract for telecommunications services signed after July 10, 1997 and before the website is operational. Although the *July 10 Order* addressed the issue of existing contracts for only schools and libraries, we believe that establishing July 10, 1997 as the date relevant to our existing contracts rule for rural health care providers is reasonable. We note that this determination is consistent with the request of rural health care providers to be treated in the same manner as schools and libraries. In addition, we anticipate that adopting the same existing contract rules for schools, libraries, and rural health care providers should be administratively simpler and reduce potential confusion on the part of program participants and providers regarding the existing contracts eligible for universal service support. We note that no existing contract exception from the competitive bid requirement previously had been adopted for rural health care providers and that this modification will serve to benefit rural health care providers.

102. We reject the suggestion of EdLiNC that we eliminate any limitation on the duration of discounts for contracts executed before the website for schools and libraries is fully operational. Although we agree with EdLiNC that schools and libraries have a strong incentive to negotiate contracts at the lowest possible pre-discount price in an effort to reduce their costs, we affirm our initial finding that competitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed about the choices available to them and receive the lowest prices. Allowing eligible schools, libraries, and rural health care providers to receive discounts indefinitely on contracts entered into after July 10, 1997 without requiring participation in the competitive bid process would hinder the competitive provision of services for the reasons discussed above.

103. Schools, libraries, and rural health care providers that qualify for the ''existing contract'' exemption from the competitive bid process described herein will continue to be required to file applications each year with the Schools and Libraries Corporation and Rural Health Care Corporation, respectively, in order to receive universal service discounts. We note that approval of discounts in one year should not be construed as a guarantee of future coverage or assurance that the same level of support will be available in subsequent years. We will continue to monitor the existing contract rule and will make further modifications if necessary.

J. Competitive Bid Requirements for Schools, Libraries, and Rural Health Care Providers

1. Minor Modifications to Contracts

104. We agree with USTA that requiring a competitive bid for every minor contract modification would place an undue burden upon eligible schools, libraries, and rural health care providers. Such eligible entities should not be required to undergo an additional competitive bid process for minor modifications such as adding a few additional lines to an existing contract. We, therefore, conclude that an eligible school, library, or rural health care provider will be entitled to make minor modifications to a contract that the Schools and Libraries Corporation or the Rural Health Care Corporation previously approved for funding without completing an additional competitive bid process. We note that any service provided pursuant to a minor contract modification also must be an eligible supported service as defined in the *Order* to receive support or discounts.

105. In the *Order*, the Commission explained that the universal service competitive bid process is not intended to be a substitute for state, local, or other procurement processes. Consistent with this observation, we conclude that eligible schools, libraries, and rural health care providers should look to state or local procurement laws to determine whether a proposed contract modification would be considered minor and therefore exempt from state or local competitive bid processes. If a proposed modification would be exempt from state or local competitive bid requirements, the applicant likewise would not be required to undertake an additional competitive bid process in connection with the applicant's request for discounted services under the federal universal service support mechanisms. Similarly, if a proposed modification would have to be rebid under state or local competitive bid requirements, then the applicant also would be required to comply with the Commission's universal service competitive bid requirements before entering into an agreement adopting the modification.

106. Where state and local procurement laws are silent or are otherwise inapplicable with respect to whether a proposed contract modification must be rebid under state or local competitive bid processes, we adopt the ''cardinal change'' doctrine as the standard for determining whether the contract modification requires rebidding. The cardinal change doctrine has been used by the Comptroller General and the Federal Circuit in construing the Competition in Contracting Act (CICA) as implemented by the Federal Acquisition Regulations. The CICA requires executive agencies procuring property or services to ''obtain full and open competition through the use of competitive procedures.''

107. Because CICA does not contain a standard for determining whether a modification falls within the scope of the original contract, the Federal Circuit has drawn an analogy to the cardinal change doctrine. The cardinal change doctrine is used in connection with contractors' claims that the Government has breached its contracts by ordering changes that were outside the scope of the changes clause. The cardinal change doctrine looks at whether the modified work is essentially the same as that for which the parties contracted. In determining whether the modified work is essentially the same as that called for under the original contract, factors considered are the extent of any changes in the type of work, performance period, and cost terms as a result of the modification. Ordinarily a modification falls within the scope of the original contract if potential offerors reasonably could have anticipated it under the changes clause of the contract.

108. The cardinal change doctrine recognizes that a modification that exceeds the scope of the original contract harms disappointed bidders because it prevents those bidders from competing for what is essentially a new contract. Because we believe this standard reasonably applies to contracts for supported services arrived at via competitive bidding, we adopt the cardinal change doctrine as the test for determining whether a proposed modification will require rebidding of the contract, absent direction on this question from state or local procurement rules. If a proposed modification is not a cardinal change, there is no requirement to undertake the competitive bid process again.

109. An eligible school, library, or rural health care provider seeking to modify a contract without undertaking a competitive bid process should file FCC Form 471 or 466, ''Services Ordered and Certification,'' with the School and Libraries Corporation or the Rural Health Care Corporation, respectively, indicating the value of the proposed contract modification so that the administrative companies can track contract performance. The school,

library, or rural health care provider also must demonstrate on FCC Form 471 or 466 that the modification is within the original contract's change clause or is otherwise a minor modification that is exempt from the competitive bid process. The school, library, or rural health care provider's justification for exemption from the competitive bid process will be subject to audit and will be used by the Schools and Libraries Corporation and Rural Health Care Corporation to determine whether the applicant's request is, in fact, a minor contract modification that is exempt from the competitive bid process. We emphasize that, even though minor modifications will be exempt from the competitive bidding requirement, parties are not guaranteed support with respect to such modified services. A commitment of funds pursuant to an initial FCC Form 471 or Form 466 does not ensure that additional funds will be available to support the modified services. We conclude that this approach is reasonable and is consistent with our effort to adopt the least burdensome application process possible while maintaining the ability of the administrative companies and the Commission to perform appropriate oversight.

2. Master Contracts

110. We find that eligible schools, libraries, and rural health care providers seeking discounted services or reduced rates should be allowed to purchase services from a master contract negotiated by a third party. In the *Order*, the Commission found that the competitive bid requirement would minimize the universal service support required by ensuring that schools, libraries, and rural health care providers are aware of cost-effective alternatives. The Commission concluded that, like the language of section 254(h)(1) that targets support to public and nonprofit rural health care providers, this approach ''ensures that the universal service fund is used wisely and efficiently.'' Insofar as an independent third party negotiating a master contract may be able to secure lower rates than an eligible entity negotiating on its own behalf, we conclude that allowing schools, libraries, and rural health care providers to order eligible telecommunications services from a master contract negotiated by a third party is consistent with our goal of minimizing universal service costs and therefore is also consistent with section 254(h)(1).

111. We wish to emphasize, however, that for eligible schools and libraries to receive discounted services, and for rural health care providers to receive reduced rates, the third party initiating a master contract either must have complied with the competitive bid requirement or qualify for the existing contract exemption before entering into a master contract. An eligible school, library, or rural health care provider shall not be required to satisfy the competitive bid requirement if the eligible entity takes service from a master contract that has been competitively bid under the Commission's competitive bid requirement. If a third party has negotiated a master contract without complying with the competitive bid requirement, then an eligible entity must comply with the competitive bid requirement before it may receive discounts or reduced rates for services purchased from that master contract.

112. As noted above, the date of execution of a master contract represents the applicable date for purposes of determining whether and to what extent the contract is exempt from the competitive bid requirement under the existing contract exemption. For example, if a state signed a master contract for service prior to July 10, 1997 that qualifies as an existing contract under our rules, and a school elects to take service pursuant to that contract at a date after the website is operational, that school will be exempt from the competitive bid requirement because it is receiving service pursuant to an existing contract. As we stated above, we strongly encourage schools and libraries to engage in competitive bidding even if they are exempt from such requirement pursuant to Commission rules. Schools and libraries may well be able to obtain more favorable terms if they issue new requests for bids designed to accommodate their specific needs, rather than obtain service under the terms of the master contract. For instance, a master contract that was put out for bid several years ago but has not yet expired might not reflect the cost reductions resulting from recent entry into the local exchange market, for example, by wireless carriers. Although we have provided for certain exemptions from competitive bidding requirements, to enable schools and libraries to transition to the Commission's procedures implementing the new universal service mechanisms, we believe that even institutions subject to the exemptions may obtain substantial benefit from soliciting competitive bids. Moreover, those institutions may ultimately obtain service pursuant to the master contract, if they determine that the master contract is the most cost effective provider. We intend to monitor the impact of the competitive bid exemptions on an ongoing basis.

113. Furthermore, even if eligible schools, libraries, and health care providers are obligated by the school district or a consortium, for example, to purchase from a master contract, the third party nevertheless must have complied with the competitive bid process in order for an eligible entity to receive discounts or reduced rates on services ordered from the master contract. If the third party has not complied with the competitive bid requirement before entering into a master contract, then an eligible school, library, or rural health care provider itself must undertake the competitive bid process before it may receive discounts or reduced rates on services purchased from the master contract. These requirements will ensure that the eligible entity is receiving the most cost-effective service.

K. Reimbursement for Telecommunications Carriers

114. We do not anticipate that the cost of funding eligible services will exceed the cap on universal service funding for schools, libraries, and rural health care providers. An applicant's ''place in line,'' or seniority for the purposes of allocating funding will be determined by the date on which an applicant submits FCC Form 471 or 466 to the applicable administrative corporation. Because eligible entities will enter into contracts with service providers prior to the submission of requests for commitment of funds (FCC Form 466 or 471, ''Services Ordered and Certification''), such a request could be denied in the unlikely event that funds prove to be insufficient. In light of this possibility, and because charges incurred for eligible telecommunications services remain the responsibility of the eligible entity, we agree with USTA and again urge schools, libraries, and rural health care providers to include clauses in their contracts that make implementation of the agreements contingent on the commitment of universal service funding.

115. USTA asks for clarification regarding the types of charges associated with the purchase or termination of an eligible telecommunications service that will be covered by the federal support mechanisms. We conclude that the universal service support mechanisms will cover all reasonable charges, including federal and state taxes, that are incurred by obtaining an eligible

telecommunications service. Charges for termination liability, penalty surcharges, and other charges not included in the cost of obtaining the eligible service will not be covered by the universal service support mechanisms. We do not include among the costs supported by the support mechanisms charges associated with terminating a service because we conclude that such charges are avoidable. The imposition of such charges typically results from a party's failure to discharge its duty of performance under a contract and supporting such charges does not advance program goals.

L. Universal Service Support for Intrastate Telecommunications Services Provided to Rural Health Care Providers

116. The Commission clarifies that the federal universal service support mechanisms will support reduced rates on intrastate services provided to eligible rural health care providers. As set forth in section 54.601(c)(1) of the Commission's rules, any telecommunications service of a bandwidth up to and including 1.544 Mbps that is the subject of a properly completed bona fide request by an eligible health care provider is eligible for universal service support, subject to distance limitations. These eligible telecommunications services may be intrastate or interstate in nature. In addition, limited toll free access to an Internet service provider is eligible for universal service support under section 54.621 of the Commission's rules for health care providers that are unable to obtain such access.

M. Support for Services Beyond the Maximum Supported Distance for Rural Health Care Providers

117. Although the Commission limited universal service support to an amount that would cover an eligible telecommunications service provided over a maximum allowable distance, nothing in the *Order* precludes a health care provider from purchasing an eligible telecommunications service carried over a distance that exceeds this limitation. We clarify that we do not intend to restrict a rural health care provider from purchasing an eligible telecommunications service that is provided over a distance that is longer than the maximum supported distance, that is, from the health care provider to the farthest point on the boundary of the nearest large city. Rural health care providers, however, must pay the applicable price for the distance that such service is carried beyond the maximum supported distance. This approach is consistent with Congress's intent to make rural and urban rates comparable while affording the eligible rural health care provider that chooses to connect to a city that is farther than the nearest large city in that state the flexibility to make such a decision without jeopardizing the provider's entitlement to receive a discount on services carried within the maximum supported distance.

N. Establishing the Standard Urban Distance and Maximum Supported Distance for Rural Health Care Providers

118. We amend section 54.605(d) of our rules to provide that the Rural Health Care Corporation will be responsible for calculating the standard urban distance (and, by definition, the maximum supported distance) applicable to eligible rural health care providers. Section 54.605(d) of the Commission's rules currently requires the ''Administrator'' to establish the standard urban distance. Specifically, the *NECA Report and Order* assigned to USAC and to the entity ultimately selected to serve as the permanent Administrator, responsibility for performing the billing, collection and disbursement functions associated with all of the universal service support mechanisms, including the support mechanisms for rural health care providers. The *NECA Report and Order* assigned to the Rural Health Care Corporation the remaining administrative functions associated with administering the rural health care program. Consistent with this division of administrative responsibilities set forth in the *NECA Report and Order,* we conclude that the Rural Health Care Corporation rather than USAC or the permanent Administrator should perform the calculations necessary to establish the standard urban distance pursuant to section 54.605(d).

119. We also grant USTA's request that the calculation of the standard urban distance for each state be posted on a website. Accordingly, we direct the Rural Health Care Corporation to post such information to the Rural Health Care Corporation's website.

VII. Administration of Support Mechanisms

120. Universal service contribution requirements pursuant to section 254 of the Act will take effect on January 1, 1998. In the *Order,* the Commission found that requiring a broad range of providers to contribute to universal service was consistent with the statute. Numerous parties have asked us to reconsider, prior to January 1, 1998, our decisions requiring certain providers to contribute to universal service pursuant to section 254. We herein reconsider those decisions. We note, however, that we will conduct a thorough reevaluation of who is required to contribute to universal service, pursuant to Congress' direction to issue a report on this issue by April 10, 1998. That report to Congress may serve as the basis for subsequent Commission action on this issue.

A. Paging Carriers

121. We affirm our conclusion in the *Order* that all telecommunications carriers, including paging carriers, are required by section 254(d) to contribute to universal service. Petitioners offer no compelling arguments to alter the Commission's earlier decision. We find that universal service contributions do not constitute a tax. As noted in the *Order,* the U.S. Court of Appeals for the D.C. Circuit has held that ''a regulation is a tax only when its primary purpose judged in legal context is raising revenue.'' The fact that section 254 permits discounts to be provided to schools and libraries for certain services provided by non-telecommunications carriers also does not convert universal service contributions into a revenue-raising ''tax'' because the primary purpose of the contributions is not to raise general revenues. Rather, the primary purpose of the universal service contribution requirements is the preservation and advancement of universal service in furtherance of the principles set forth in section 254(b). Universal service contributions are not commingled with government revenues raised through taxes. Furthermore, contrary to ProNet's assertions, requiring contributions to universal service confers a benefit on paging carriers because such contributions help preserve the universal availability of service over the public switched telephone network. Without the public switched telephone network, subscribers of paging carriers would not be able to receive pages, retrieve pages, or respond to messages. We find that the benefits of universal service accrue to all paging carriers, regardless of whether they serve high-income or low-income customers.

122. Section 254(d) requires ''[e]very telecommunications carrier'' to contribute to universal service. It does not limit contributions to carriers eligible for universal service support. In fact, as RTC notes, IXCs, payphone service providers, private service providers, and CMRS providers are required to contribute to universal service, even though they might not

receive support from the high cost mechanisms. The petitioning paging companies have not advanced any credible evidence that would justify exempting them from the Congressional requirement that we create a broad base of support for universal service programs. The fact that the Commission may treat paging carriers differently than other CMRS providers in the context of regulatory fees is not relevant to the treatment of paging carriers under section 254(d).

123. Although some two-way carriers that compete with paging carriers may be eligible to receive universal service support, such telecommunications carriers will receive support only for those services included within the core definition of universal service (*e.g.*, voice-grade access, single-party service, and access to emergency services). Eligible telecommunications carriers that provide paging services will not receive support for their paging services. Thus, eligible telecommunications carriers that provide paging services will not have an unfair advantage over paging carriers.

124. As we found in the *Order*, basing contributions from all telecommunications carriers on their gross end-user telecommunications revenues best satisfies our goals of competitive neutrality and ease of administration, as well as the statutory requirement that support be explicit. Payments received from the universal service support mechanisms are not counted as end-user telecommunications revenues in the assessment base, because such funds are derived from the federal support mechanisms, not end users of telecommunications. Furthermore, high-cost support does not ''offset'' eligible telecommunications carriers' contributions. Support is provided to offset in part the cost of serving high cost areas. Moreover, it would be counter-productive to universal service goals to require carriers eligible for support to make a contribution based on support amounts. That approach would increase the level of contributions needed to provide adequate support to carriers that serve high cost areas.

125. It is well established that access to the interstate interexchange network is an interstate service that brings paging carriers within the coverage of section 254(c). An interstate telecommunication is defined as a communication or transmission that originates in one state and terminates in another. A page that originates in one state and terminates in another meets the statutory definition of ''interstate telecommunication.'' Therefore, even if a paging carrier's service area does not cross state boundaries, if a paging carrier enables paging customers to receive out-of-state pages, i.e., be paged by someone located in another state, then that paging carrier provides an interstate service and must contribute to universal service.

B. Other Providers of Interstate Telecommunications

126. We affirm our decision that private service providers that provide interstate telecommunications on a non-common carrier basis must contribute to universal service, pursuant to our permissive authority over ''providers of interstate telecommunications.'' In the *Order,* we found that the public interest requires private service providers that furnish interstate telecommunications to others for a fee to contribute to universal service on the same basis as common carriers. We concluded that this approach (1) was consistent with the principle of competitive neutrality because it will reduce the possibility that carriers with universal service obligations will be placed at an unfair competitive disadvantage in relation to carriers that do not have such obligations; (2) will avoid creating a disincentive for carriers to offer services on a common carrier basis; and (3) will broaden the funding base, thereby lessening contribution requirements of any particular class of telecommunications providers. We affirm each of these findings.

127. We conclude that the Commission was not required to find that private networks constitute a significant means of bypassing the public switched telephone network before exercising our permissive authority to apply the universal service contribution requirements to non-common carriers. Section 254(d) grants the Commission explicit and unambiguous authority to require ''other providers of interstate telecommunications'' to contribute to universal service if the public interest so requires. On this issue, the Joint Explanatory Statement merely states that this section ''preserves the Commission's authority to require all providers of interstate telecommunications to contribute, if the public interest requires it to preserve and advance universal service.'' There is no mention of a network bypass requirement in either the Act or the Joint Explanatory Statement. Thus, we find that the plain language of section 254(d) allows the Commission to require non-common carriers to contribute if the Commission concludes that doing so serves the public interest and furthers the goals of universal service. We conclude, however, for the reasons discussed below that we should not exercise our permissive authority to require systems integrators, broadcasters, and non-profit schools, universities, libraries, and rural health care providers to contribute to universal service.

128. *Systems Integrators.* We are persuaded by systems integrators' arguments that the public interest would not be served if we were to exercise our permissive authority to require entities that do not provide services over their own facilities and are non-common carriers that obtain a *de minimis* amount of their revenues from the resale of telecommunications to contribute to universal service. Systems integrators provide integrated packages of services and products that may include, for example, the provision of computer capabilities, data processing, and telecommunications. Systems integrators purchase telecommunications from telecommunications carriers and resell those services to their customers. They do not purchase unbundled network elements from telecommunications carriers and do not own any physical components of the telecommunications networks that are used to transmit systems integration customers' information. In other words, systems integrators provide telecommunications solely through reselling another carrier's service. We conclude that systems integrators that satisfy these criteria, as discussed below, should not be required to contribute to the federal universal service support mechanisms.

129. In our view, systems integrators that obtain a *de minimis* amount of their revenues from the resale of telecommunications do not significantly compete with common carriers that are required to contribute to universal service. Systems integrators are in the business of integrating customers' computer and other informational systems, not providing telecommunications. Occasionally, systems integrators may provide interstate telecommunications along with their traditional integration services, but the provision of telecommunications is incidental to their core business. Systems integration customers who receive telecommunications from systems integrators choose systems integrators for their systems integration expertise, not for their competitive provision of telecommunications.

130. In determining what constitutes a *de minimis* amount of revenues, we could compare the amount of revenues

derived from telecommunications to overall business revenues, revenues derived from systems integration, or revenues derived from systems integration contracts that also contain telecommunications. We conclude that the second approach, telecommunications revenues relative to systems integration revenues, is the best method to determine whether systems integrators derive a *de minimis* amount of revenues from telecommunications. Overall business revenues are irrelevant to the determination of whether telecommunications revenues constitute a small part of the systems integration business. Similarly, evaluating only systems integration contracts that contain telecommunications will not provide an accurate account of the systems integration business as a whole. IBM and EDS suggest that *de minimis* should be defined as revenues that are less than five percent of systems integration revenues. Based on this record, we conclude that systems integrators' telecommunications revenues will be considered *de minimis* if they constitute less than five percent of revenues derived from providing systems integration services. A systems integrator would not be required to file a Universal Service Worksheet if, over the requisite reporting period, its total revenues derived from telecommunications represent less than five percent of its total revenues derived from systems integration. Systems integrators that derive more than a *de minimis* amount of revenues from telecommunications will be required to contribute to the federal universal service support mechanisms and comply with universal service reporting requirements. We conclude that the limited nature of this exclusion from the obligation to contribute will ensure that systems integrators that are significantly engaged in the provision of telecommunications do not receive an unfair competitive advantage over common carriers or other carriers that are required to contribute to universal service.

131. To maintain the sufficiency of the support mechanisms, we find that systems integrators that are excluded from contribution requirements constitute end users for universal service contribution purposes. In addition, systems integrators that obtain a *de minimis* amount of their revenues from the resale of telecommunications must notify the underlying facilities-based carriers from which they purchase telecommunications that they are excluded from the universal service contribution requirements. We conclude that excluding systems integrators that obtain a *de minimis* amount of their revenues from the resale of telecommunications from the obligation to contribute will not significantly reduce the universal service contribution base because revenues received by common carriers for minimal amounts of telecommunications provided to systems integrators will be included in the contribution bases of underlying common carriers. We anticipate that, by providing this exclusion from the obligation to contribute, the total contribution base will be reduced only by systems integrators' mark-up on telecommunications.

132. We disagree with ITAA's contention that, because systems integrators provide both basic telecommunications services as well as enhanced services for a single price, systems integrators are engaged exclusively in the provision of enhanced or information services. Traditionally, the Commission has not regulated value-added networks (VANs) because VANs provide enhanced services. VAN offerings are treated as enhanced services because the enhanced component of the offering, i.e., the protocol conversions, ''contaminates'' the basic component of the offering, thus rendering the entire offering enhanced. Citing the Commission's position that all enhanced services are information services, ITAA argues that, because systems integrators offer information and telecommunications services for a single price, the information services ''taint'' the telecommunications services, thereby rendering the entire package an information service for purposes of applying the universal service contribution requirements. The Commission's treatment of VANs, however, does not imply that combining an enhanced service with a basic service for a single price constitutes a single enhanced offering. The issue is whether, functionally, the consumer is receiving two separate and distinct services. A contrary interpretation would create incentives for carriers to offer telecommunications and non-telecommunications for a single price solely for the purpose of avoiding universal service contributions. Thus, a private service provider that provides information services along with a basic interstate voice-grade telecommunications service is not relieved of its statutory obligation to contribute to universal service. To the extent that a provider is offering basic voice-grade interstate telephone service and is not otherwise exempt, it is required to contribute to universal service.

133. *Broadcasters.* The deadline for filing petitions for reconsideration in a notice and comment rulemaking proceeding are prescribed in section 405 of the Communications Act of 1934, as amended. The Commission lacks discretion to waive this statutory requirement. The filing deadline for petitions for reconsideration of the *Order* was July 17, 1997. Therefore, to the extent that AAPTS' petition, filed September 2, 1997, seeks reconsideration of the *Order*, we will treat it as an informal comment. We agree with AAPTS and reconsider, on our own motion, our determination that all providers of interstate telecommunications must contribute to universal service. For the reasons described below, we find that the public interest would not be served if we were to exercise our permissive authority to require broadcasters, including ITFS licensees, that engage in non-common carrier interstate telecommunications to contribute to universal service. In the *Order,* we found that, in order to ensure that our contribution rules do not confer a competitive advantage to non-common carriers, non-common carriers should contribute to universal service pursuant to our permissive authority over ''other providers of interstate telecommunications.'' On further reconsideration, however, we agree with AAPTS that broadcasters do not compete to any meaningful degree with common carriers that are required to contribute to universal service because broadcasters primarily transmit video programming, a service that is not generally provided by common carriers. Moreover, we conclude that broadcasters' primary competitors for programming distribution are cable, OVS, and DBS providers. Because cable, OVS, and DBS providers are not required to contribute to universal service, the exclusion from the obligation to contribute for broadcasters will ensure that broadcasters are not competitively disadvantaged in the video distribution industry by our contribution requirements. As broadcasters begin to offer digital television, however, they may choose to provide interstate telecommunications that are not used to distribute video programming. We will, therefore, monitor broadcasters' provision of interstate telecommunications on a non-common carrier basis. If we determine that broadcasters compete with common carriers that are required to contribute to universal service, we will revisit our

exclusion of broadcasters from the contribution requirements.

134. *Non-profit Schools, Colleges, Universities, Libraries, and Health Care Providers.* We also find, on our own motion, that non-profit schools, colleges, universities, libraries, and health care providers should not be made subject to universal service contribution requirements. To the extent these non-profit entities provide interstate telecommunications on a non-common carrier basis, our rules require them to contribute to universal service, pursuant to our permissive authority over ''other providers of interstate telecommunications.'' We conclude, however, that the public interest would not be served if we were to exercise our permissive authority to require these entities to contribute to universal service. Many of these entities will be eligible to receive support pursuant to sections 54.501(b), (c), and (d) and 54.601(a) and (b). We conclude that it would be counter-productive to the goals of universal service to require non-common carrier program recipients of support to contribute to universal service support because such action effectively would reduce the amount of universal service support they receive. In addition, we find that it would be inconsistent with the educational goals of the universal service support mechanisms to require universities to contribute to universal service. To maintain the sufficiency of the federal support mechanisms, we have determined to treat non-profit schools, colleges, universities, libraries, and health care providers as telecommunications end users for universal service contribution purposes.

C. Providers of Bare Transponder Capacity

135. We affirm the Commission's finding that satellite providers that provide interstate telecommunications services or interstate telecommunications to others for a fee must contribute to universal service. We conclude that GE Americom's assertion that the Commission found that satellite and video service providers need only contribute to universal service if they are operating as common carriers misconstrues that passage of the *Order*. As discussed in the *Order*, the sentence in section 254(d) that requires all telecommunications carriers to contribute to universal service applies only to common carriers. Thus, the Commission concluded that only common carriers fall within the category of mandatory contributors. Accordingly, satellite operators that provide transmission services on a common carrier basis are mandatory contributors to the universal service support mechanisms. Pursuant to section 254(d), the Commission also exercised its permissive authority to impose contribution obligations on other providers of interstate telecommunications. The Commission's statement that satellite providers must contribute to universal service only to the extent that they are providing interstate telecommunications services described satellite providers' mandatory contribution obligation as set forth in section 254(d). The Commission further concluded that satellite providers that provide interstate telecommunications on a non-common carrier basis must contribute to universal service as ''other providers of interstate telecommunications'' under section 254(d). The obligation of satellite providers to contribute to universal service as mandatory contributors does not relieve them of their obligation to contribute as other providers of interstate telecommunications. Therefore, if a satellite provider offers interstate telecommunications on a common carrier or non-common carrier basis, it must contribute to universal service, unless otherwise excluded.

136. We are not persuaded by petitioners' assertions that satellite providers that are ineligible to receive universal service support should not be required to contribute to universal service. As discussed in the *Order*, section 254 does not limit contributions to eligible telecommunications carriers. Section 254(b)(4) provides that the Commission should be guided by the principle that ''all providers of telecommunications services'' should contribute to universal service. Because not all providers of telecommunications services may be eligible to receive universal service support, we believe that the plain text of the statute contemplates that the universe of contributors will not necessarily be identical to the universe of potential recipients.

137. Several parties ask us to clarify that satellite providers do not transmit information to the extent that they merely lease bare transponder capacity to others. According to PanAmSat,

> [w]hen a satellite operator enters into a bare transponder agreement with a customer, the satellite operator is merely providing its customer with the exclusive right to transmit to a *specified piece of hardware on the satellite*. That, essentially, is the extent of the operator's obligation.

Based on the descriptions by PanAmSat and other commenters of the very limited activity that satellite providers engage in when they lease bare transponder capacity, it appears that, for purposes of the contribution requirements under section 254 of the Act, satellite providers do not transmit information when they lease bare transponder capacity. Satellite providers, therefore, are not required to contribute to universal service on the basis of revenues derived from the lease of bare transponder capacity. We emphasize that this conclusion is premised on the accuracy of the uncontested representations by satellite providers of what is involved in the lease of bare transponder capacity. We might reconsider our determination if presented with different factual evidence. Satellite providers must, however, contribute to universal service to the extent they provide interstate telecommunications services and interstate telecommunications.

138. We are not persuaded by AT&T's assertion that, because the lease of bare transponder capacity may be provided pursuant to tariff, it necessarily constitutes the provision of telecommunications. Because the definition of ''telecommunications'' was added to the Act in 1996, the fact that bare transponder capacity may be provided or was provided pursuant to tariff is not dispositive.

D. Universal Service Report to Congress

139. Congress has instructed the Commission to review our decisions regarding who is required to contribute to the federal universal service support mechanisms and to submit our findings to Congress. Consistent with the statutory deadline, the Commission will submit such a report to Congress by April 10, 1998.

E. De Minimis Exemption

140. Based on petitioners' arguments, we reconsider our previous determination and conclude that the *de minimis* exemption should be based on the Administrator's costs of *collecting* contributions and contributors' costs of complying with the reporting requirements. In reaching its finding that the *de minimis* exemption should only exempt contributors whose contributions would be less than the Administrator's administrative costs of collection, the Commission looked to the Joint Explanatory Statement for guidance. Specifically, the Joint Explanatory Statement observes that ''this [*de minimis*] authority would only be used 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.'' In the *Order*, the Commission found that this statement indicated that the Commission should look only to the Administrator's costs of *collecting* contributions and not the carrier's cost of determining contribution obligations. We find, however, that ''the administrative cost of collecting contributions'' can include both the Administrator's as well as contributors' administrative costs. We agree with Ad Hoc that the public interest would not be served if compliance costs associated with contributing to universal service were to exceed actual contribution amounts. We decline to exclude from the contribution requirement all entities that claim compliance costs in excess of their contribution amounts, however, based on our concern that such a rule may encourage contributors to report artificially high administrative compliance costs in order to avoid their contribution obligation. Rather, we adopt a substantially increased *de minimis* threshold that takes into account contributors' compliance costs in addition to the Administrators' administrative costs of collection based on our view that this increased threshold will accommodate a reasonable level of reporting compliance costs for all contributors.

141. We also agree with ITAA that the contribution collection costs incurred by the Administrator in many cases will exceed $100 per contributor. We find that in determining the Administrator's administrative costs, we should include the costs associated with identifying contributors, processing and collecting contributions, and providing guidance on how to complete the Universal Service Worksheet.

142. Therefore, we conclude that the *de minimis* contribution threshold should be raised to $10,000. If a contributor's annual contribution would be less than $10,000, it will not be required to contribute to universal service. We find that this exclusion will reduce significantly the Administrator's collection costs. Based on Universal Service Worksheets, we estimate that approximately 1,600 entities will qualify for the *de minimis* exemption. Therefore, the Administrator will have to collect and process 1,600 fewer Worksheets and will have to identify and collect contributions from 1,600 fewer entities. Additionally, by exempting entities whose annual contributions would be less than $10,000 from contribution and Worksheet reporting requirements, we anticipate that we will reduce reporting burdens on many small entities.

143. To maintain the sufficiency of the universal service support mechanisms, we conclude that entities that qualify for the *de minimis* exemption should be considered end users for Universal Service Worksheet reporting purposes. Entities that resell telecommunications and qualify for the *de minimis* exemption must notify the underlying facilities-based carriers from which they purchase telecommunications that they are exempt from contribution requirements and must be considered end users for universal service contribution purposes. Thus, underlying carriers should include revenues derived from providing telecommunications to entities qualifying for the *de minimis* exemption in lines 34–47, where appropriate, of their Universal Service Worksheets.

F. Requirement that CMRS Providers Contribute to State Universal Service Support Mechanisms

144. The Commission recently addressed, in *Pittencrieff Communications, Inc., Memorandum Opinion and Order,* File No. WTB/POL 96–2, FCC 97–343 (rel. October 2, 1997) (*recon. pending*), the issue of whether section 332(c)(3)(A) limits the ability of states to require CMRS providers to contribute to state universal service support mechanisms. The issues raised on reconsideration in this proceeding were resolved in *Pittencrieff*. In *Pittencrieff*, the Commission explicitly affirmed the finding made in the *Order* that section 332(c)(3)(A) does not preclude states from requiring CMRS providers to contribute to state support mechanisms. The Commission concluded that a state's requirement that CMRS providers contribute on an equitable and nondiscriminatory basis to its universal service support mechanisms is neither rate nor entry regulation but instead is a permissible regulation on ''other terms and conditions'' under section 332(c)(3)(A). The Commission also stated:

> We believe [the second sentence of section 332(c)(3)(A)] applies only to a state's authority to impose requirements that would otherwise constitute regulation of rates or entry. In that situation, a state would have to comply with section 332(c)(3) by showing that CMRS is ''a substitute for land line telephone exchange service for a substantial portion of the communications within such State.'' The state is not required to demonstrate that CMRS is a substitute for land line service, however, when it requires a CMRS provider to contribute to the state's universal service mechanisms on an equitable and nondiscriminatory basis, in compliance with section 254(f).

Finally, the Commission noted that, if section 332(c)(3) were interpreted to conflict with section 254(f), section 254(f) would take precedence over section 332(c)(3). Section 254(f), which requires all telecommunications carriers that provide intrastate telecommunications services, including CMRS providers, to contribute to state universal service programs, was enacted later in time and speaks directly to the contribution issue. Reconsideration petitions to this proceeding do not raise issues that were not addressed in *Pittencrieff*. We find that our order in *Pittencrieff* resolves the issues that have been raised by the reconsideration petitions in this proceeding and we find no basis in this record for reaching a different determination.

145. We do not anticipate that state contribution requirements will violate section 253. Section 253(a) prohibits state and local governments from enacting any statute, regulation or legal requirement that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. Section 253(b), among other things, protects state authority to impose universal service requirements, as long as they are done ''on a competitively neutral basis and consistent with section 254 * * *.'' Section 254(f) of the Act allows states to adopt universal service regulations ''not inconsistent with the Commission's rules * * *.'' To demonstrate that state universal service contribution requirements for CMRS providers violate section 253, there must be a showing that the state universal service programs act as a barrier to entry for CMRS providers and are not competitively neutral.

146. We reject the argument that state universal service mechanisms should not apply to CMRS providers because CMRS services should be considered jurisdictionally ''interstate.'' Data submitted to the Commission by CMRS carriers in connection with their TRS reporting for the year 1995 reveal that interstate revenues amounted to only 5.6 percent of total revenues for cellular and personal communications service carriers, and 24 percent of total revenues for paging and other mobile service carriers. Thus, we find that it would be inappropriate to classify *all* CMRS services as ''interstate.'' CMRS providers that offer intrastate CMRS services cannot shield themselves from state universal service contributions.

147. We also reject ProNet's argument that the Commission's consideration of this issue in the *Order* violates the notice provisions of the APA. The general requirement of notice contained

in section 553(b) of the APA does not apply ''to interpretive rules, general statements of policy, or rules of agency organization, procedure or practice * * *.'' Although the courts have recognized that the distinction between those agency rules that are subject to the notice requirement and those that are exempt is not always easy to discern, the relevant law here is clear. As the U.S. Court of Appeals for the D.C. Circuit stated:

> Ultimately, an interpretive statement simply indicates an agency's reading of a statute or a rule. It does not intend to create new rights or duties, but only ''reminds'' affected parties of existing duties.'' A statement seeking to interpret a statutory or regulatory term is, therefore, the quintessential example of an interpretive rule.

At issue here is the correct interpretation of the second sentence of section 332(c)(3)(A) of the Act. The Commission's statement on this issue, as expressed in the *Order,* created neither new rights nor new obligations that did not exist before. Therefore, the Commission did not violate the notice provisions of the APA by addressing this issue.

148. ProNet argues that, because the Commission's interpretation of the statute ''has immediate, direct impact on universal service contributions at the state level,'' it cannot be exempt from the APA's notice requirement, and that notice was required because ''the Commission's interpretation of Sections 332(c)(3) and 254(f) of the Act operates as an instruction to the states regarding their ability to fund universal services, and creates immediate burdens on CMRS carriers. * * *'' We disagree. No burdens on CMRS carriers are created as a result of the Commission's statement on this issue in the *Order.* Individual states must determine whether to exercise their authority under section 254(f) to require universal service contributions from CMRS carriers. Even if our interpretation had a substantial impact, the mere fact that a rule may have a substantial impact, however, ''does not transform it into a legislative rule.'' If not, the exemption for interpretative rules from the APA's notice requirement would have little practical application. We therefore reaffirm our conclusion that the Commission's interpretation of sections 332(c)(3)(A) and 254(f) in the *Order* is exempt from the notice requirement of the APA.

G. Recovery of Universal Service Contributions by CMRS Providers

149. The Commission permitted contributors to recover contributions to the federal universal service support mechanisms through rates on interstate services, in order to ensure the continued affordability of residential dialtone service and to promote comity between the federal and state governments. We agree with petitioners that these considerations do not apply to CMRS providers. Because section 332(c)(3) of the Act alters the ''traditional'' federal-state relationship with respect to CMRS by prohibiting states from regulating rates for intrastate commercial mobile services, allowing recovery through rates on intrastate as well as interstate CMRS services would not encroach on state prerogatives. Further, allowing recovery of universal service contributions through rates on all CMRS services will avoid conferring a competitive advantage on CMRS providers that offer more interstate than intrastate services. If CMRS carriers were permitted to recover contributions through their interstate services only, carriers that offer mostly intrastate services would be required to recover a higher percentage of interstate revenues from their customers than carriers that offer mostly interstate services. We therefore will permit CMRS providers to recover their contributions through rates charged for all their services.

H. Technical Corrections Regarding Calculation of Contribution Factors

150. Consistent with the Commission's findings in the *NECA Report and Order,* we issue a technical clarification to section 54.709(a) of our rules. We clarify that the Commission, not USAC, shall be responsible for calculating the quarterly universal service contribution factors. We also clarify that, based on Universal Service Worksheets, USAC must submit the total contribution bases, interstate and international and interstate, intrastate, and international end-user telecommunications revenues, to the Commission at least sixty days before the start of each quarter.

I. NECA/USAC Affiliate Transactions Rules

151. NECA is not a local exchange carrier subject to part 32 and USAC is not a nonregulated affiliate engaged in a competitive business. NECA and USAC, however, must file annual cost accounting manuals with the Commission identifying their administrative costs. We find that it is not practical to require NECA to follow the affiliate transactions rules as they are applied to local exchange carriers subject to part 32. Because NECA does not provide services pursuant to tariff and does not provide more than 50 percent of its services to third parties, if NECA were subject to the affiliate transactions rules, it would be required to determine the fair market value of the services provided to USAC. We find that the burden of making such a determination outweighs the benefit of imposing this requirement. On our own motion, we clarify that NECA is subject to the affiliate transactions rules only to the extent necessary to ensure that transactions between NECA and USAC are recorded fairly. We conclude that NECA would satisfy this requirement by valuing and recording transactions with USAC at fully distributed cost in accordance with its Cost Accounting and Procedures Manual on file with the Commission. Consistent with this finding, we conclude that section 32.27 of the Commission's rules, to the extent that it requires regulated carriers to record transactions with affiliates at the tariffed rate, if a tariffed rate exists, at the prevailing market rate, if a prevailing market rate exists, or at the higher of estimated fair market value or cost, is not applicable to transactions between NECA and USAC.

Final Regulatory Flexibility Analysis

152. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking and Order Establishing Joint Board. In addition, the Commission prepared an IRFA in connection with the Recommended Decision, seeking written public comment on the proposals in the *NPRM* and *Recommended Decision.* A Final Regulatory Flexibility Analysis (FRFA) was included in the previous *Order.* The Commission's Final Regulatory Flexibility Analysis (FRFA) in this order conforms to the RFA, as amended.

153. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this order, the rules and statements set forth in those preceding sections shall be controlling.

A. Need for and Objectives of this Report and Order and the Rules Adopted Herein

154. The Commission is required by section 254 of the Act, as amended by the 1996 Act, to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principle goal is to reform our system of universal service support so that universal service is preserved and advanced as markets move toward

competition. In this order, we clarify and reconsider those rules.

B. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA

155. *Summary of the Initial Regulatory Flexibility Analysis.* The Commission performed an IRFA in the *NPRM* and an IRFA in connection with the *Recommended Decision*. In the IRFAs, the Commission sought comment on possible exemptions from the proposed rules for small telecommunications companies and measures to avoid significant economic impact on small entities, as defined by the RFA. The Commission also sought comment on the type and number of small entities, such as schools, libraries, and health care providers, potentially affected by the recommendations set forth in the *Recommended Decision*.

156. No comments in response to the IRFAs, other than those described in the *Order*, were filed. In response to the FRFA, RTC argues that the Commission did not satisfy the requirements of the RFA by considering alternatives to the cap on recovery of corporate operations expenses. We note that the majority of commenters in the *Order* generally supported limiting the amount of corporate operations expense that can be recovered through the universal service support mechanisms. Some commenters suggested that universal service support should not be allowed at all for corporate operating expenses; however, the Commission found that the amount of corporate operating expense per line that is supported through the universal service support mechanisms should fall within a range of reasonableness. The Commission weighed all alternatives relating to corporate operating expenses in the *Order* and the previous FRFA in reaching its conclusion.

C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order Will Apply

157. In the FRFA to the *Order*, we described and estimated the number of small entities that would be affected by the new universal service rules. The rules adopted here will apply to the same telecommunications carriers and entities affected by the universal service rules. We therefore incorporate by reference paragraphs 890–925 of the *Order*, which describe and estimate the number of affected telecommunications carriers and other entities affected by the universal service rules. We summarize that analysis as follows:

1. Telephone Companies (SIC 4813)

158. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by the SBA. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.

159. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) communications companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated.

2. Cable System Operators (SIC 4841)

160. The SBA has developed a definition of small entities for cable and other pay television services that includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We note that cable system operators are included in our analysis due to their ability to provide telephony.

3. Municipalities

161. The term ''small government jurisdiction'' is defined as ''government of * * * districts with populations of less than 50,000.'' The most recent figures indicate that there are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts, and school districts. Of the 85,006 governmental entities, 38,978 are counties, cities, and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities, and towns, 37,566 or 96%, have populations of fewer than 50,000. Consequently, we estimate that there are 37,566 ''small government jurisdictions'' that will be affected by our rules.

4. Rural Health Care Providers

162. Neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term ''health care provider'' and sets forth the seven categories of health care providers eligible to receive universal service support. We estimate that there are: (1) 625 ''post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools,'' including 403 rural community colleges, 124 medical schools with rural programs, and 98 rural teaching hospitals; (2) 1,200 ''community health centers or health centers providing health care to migrant;'' (3) 3,093 ''local health departments or agencies'' including 1,271 local health departments and 1,822 local boards of health; (4) 2,000 ''community mental health centers;'' (5) 2,049 ''not-for-profit hospitals;'' and (6) 3,329 ''rural health clinics.'' We do not have sufficient information to make an estimate of the number of consortia of health care providers at this time. The total of these categorical numbers is 12,296. Consequently, we estimate that there are fewer than 12,296 health care providers potentially affected by the rules in this order.

5. Schools (SIC 8211) and Libraries (SIC 8231)

163. The SBA has established a definition of small elementary and secondary schools and small libraries as those with under $5 million in annual revenues. The most reliable source of information regarding the total number of kindergarten through 12th grade (K–12) schools and libraries nationwide of which we are aware appears to be data collected by the United States Department of Education and the National Center for Educational Statistics. Based on that information, it appears that there are approximately 86,221 public and 26,093 private K–12 schools in the United States (SIC 8211). It further appears that there are approximately 15,904 libraries, including branches, in the United States (SIC 8231). Consequently, we estimate that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in this order.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Significant Alternatives and Steps Taken To Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives

164. *Structure of the Analysis.* In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs as a result of this order. As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected. Section numbers correspond to the sections of the order.

Summary Analysis: Section II, Definition of Universal Service

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

165. We conclude that Mobile Satellite Service (MSS) providers in localities that have implemented E911 service, like other wireless providers, may petition their state commission for permission to receive universal service support for the designated period during which they are completing the network upgrades required to offer access to E911. We also affirm that MSS providers in localities that have implemented E911 service must demonstrate that ''exceptional circumstances'' prevent them from offering access to E911. We note that we are not imposing any new reporting requirements beyond those established in the May 8, 1997 *Order.*

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

166. We recognize that exceptional circumstances may prevent some carriers, such as MSS providers, from offering access to E911. To promote competitive and technological neutrality, however, we permit MSS providers that are incapable of providing access to E911 service, but that wish to receive universal service support, to demonstrate to their state commissions that ''exceptional circumstances'' prevent them from offering such access.

Summary Analysis: Section III, Carriers Eligible for Universal Service Support

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. 167. As of January 1, 1998, the temporary Administrator may not disburse support to carriers that have not been designated as eligible under section 214(e). Thus, if a carrier has not been designated as eligible by its state commission by January 1, 1998, it may not receive support until such time as it is designated an eligible telecommunications carrier. Additionally, we encourage Sandwich Isles and the relevant Hawaiian state agencies to resolve their dispute over which entity should designate eligible telecommunications carriers to serve the Hawaiian Home Lands. If they are unable to do so, we encourage them to bring this fact to our attention so that we may complete action on the pending petitions on this matter. Neither of these determinations impose any new reporting, recordkeeping, or other compliance requirements on small entities.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives. 168. In the *Order* and subsequent public notices, we have emphasized to state commissions that they must designate eligible telecommunications carriers by January 1, 1998, so that carriers that are eligible for universal service support may receive such support beginning January 1, 1998. State commissions that are unable to designate any eligible telecommunications carrier in a service area by January 1, 1998 may, upon completion of the designation, file with the Commission a petition for a waiver requesting that the designated carrier receive universal service support retroactive to January 1, 1998.

Summary Analysis: Section IV, High Cost, Rural, and Insular Support

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. 169. Section 54.303 of the Commission's rules provides the method by which the Administrator will calculate and distribute DEM weighting assistance (or local switching support). Although that section sets forth the method for calculating the local switching support factor, it does not specify the method for calculating the annual unseparated local switching revenue requirement. Accordingly, we amend the Commission's part 54 rules to provide the method by which the Administrator will calculate the unseparated local switching revenue requirement. Specifically, we direct the Administrator to use part 32 account data as suggested by NECA to determine the unseparated local switching revenue requirement. Consistent with our adoption of a methodology that relies upon part 32 account data, we authorize the Administrator to issue a data request annually to the carriers that serve study areas with 50,000 or fewer access lines. We anticipate that of the approximately 1,288 carriers that will be required to file part 32 account data with the Administrator in order to receive DEM weighting assistance, all but approximately 192 already provide this information to NECA.

170. We adopt no additional reporting, recordkeeping, or other compliance requirements with respect to the remaining high cost, DEM weighting and LTS issues addressed in this order.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives. 171. We considered an alternative method of calculating the unseparated local switching revenue requirement that would not have imposed an additional reporting requirement on those carriers that currently do not file part 32 account data with NECA. We concluded, however, that GVNW's proposal to calculate the local switching revenue requirement by dividing the interstate local switching revenue requirement by the interstate DEM weighting factor that is used to assign the local switching investment to the interstate jurisdiction under part 36 of our rules would not provide an accurate measure of the unseparated local switching revenue requirement. If all local switching expenses and investment used to determine the revenue requirement for the local switching rate element were allocated between the interstate and intrastate jurisdictions on the basis of weighted DEM, the formula suggested by GVNW would result in an accurate calculation of the unseparated local switching revenue requirement. Weighted DEM, however, is only one of several mechanisms used to allocate local switching expenses and investment between the interstate and intrastate jurisdictions for purposes of determining local switching access charges. The Commission's rules prescribe different allocators for other local switching expenses and related investment, such as those associated with general support facilities. We conclude that the approach adopted in this order, to the extent that it allocates

local switching expenses and related investment in a manner that is consistent with the allocation methods prescribed under parts 36 and 69 of our rules, provides a more accurate method for calculating the unseparated local switching revenue requirement.

172. Although we adopt no additional reporting, recordkeeping, or other compliance requirements with respect to the cap on recovery of corporate operations expenses, we note that several petitioners challenged the Commission's decision to limit recovery of corporate operations expenses. These petitioners argue that the Commission's decision in the *Order* to limit such expenses ignores Congress's intent to limit or reduce burdens on small, rural, and insular carriers and, in fact, disproportionately burdens smaller incumbent LECs. ITC argues that federal regulatory expenses should not be included within the limitation to ensure that small companies will be able to participate in the federal regulatory process.

173. In general, the Commission's decision to limit recovery of corporate operations expenses carefully considers the needs of smaller carriers. The Commission concludes that all carriers currently have little incentive to minimize these expenses because the current mechanism allows carriers to recover a large percentage of their corporate operations expenses. Smaller carriers possess even fewer incentives to minimize corporate operations expenses because the Commission has a limited ability to ensure, through audits, that smaller companies properly assign corporate operations expenses to appropriate accounts and that carriers do not spend at excessive levels. The Commission, and frequently state commissions, cannot justify auditing smaller carriers because the cost of a full-scale audit is likely to exceed any expenses found to be improper by that audit. We therefore conclude that imposing a cap that is relatively generous to small carriers but still imposes a limitation is a prudent way to encourage correct allocation of expenditures and to discourage excessive expenditures. Under this approach, we are providing carriers with an incentive to control their corporate operations expenses without requiring all carriers, including small carriers, to incur the costs associated with a full Commission audit. As the Commission indicated in its *Order* and as explained above, carriers that contend that the limitation provides insufficient support may request a waiver from the Commission. Therefore, only carriers whose expenses are significantly above the average and who contend that the capped amount is insufficient will be required to provide additional justification for their expenditures. We therefore conclude that this limitation deters improper recovery of universal service funds while minimizing the administrative burden on the Commission and on all carriers, including smaller carriers. Moreover, individual companies that are required to incur unusually high corporate operations expenses, such as small companies, Alaskan companies, or insular companies, are able to apply for a waiver with the Commission to demonstrate that these expenses are necessary to the provision of the supported services.

174. In adopting the limitation on corporate operations expenses, the Commission considered whether to exclude recovery of all corporate operations expenses, as it had originally proposed in 1995. The Commission concluded, however, that it should limit recovery of such expenses, in part to protect smaller recipients of high cost universal service support. When developing the formula that will calculate the limit on recovery of corporate operations expense, the Commission took into account the lesser economies of scale of smaller carriers and adopted a limit that is more generous to smaller carriers. Additionally, the Commission adopted an industry proposal to add a minimum annual cap of $300,000 that is favored, among others, by petitioners representing smaller, rural carriers. This minimum cap will assist the smallest carriers—those with fewer than approximately 600 lines. Further, when developing the formula to limit recovery of corporate operations expenses, the Commission chose not to limit recovery to the average corporate operations expenses, but instead added a 15 percent ''buffer'' to protect all carriers, including smaller carriers, with expenses that are slightly higher than average. We reject ITC's request to exclude all federal regulatory expenses from the limitation because, while some expenditures may be necessary to participate in the federal regulatory process, the need for such expenditures are not without limit and many carriers, including smaller carriers, fulfill legal and regulatory requirements and participate in the federal regulatory process while incurring costs below the Commission's limit.

Summary Analysis: Section V, Support for Low-income Consumers

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. 175. There are no new reporting, recordkeeping, or compliance requirements required by this section.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

176. We reconsider the Commission's decision that eligible telecommunications carriers must provide both toll blocking and toll control to qualifying low-income consumers. We find that eligible telecommunications carriers that cannot provide both toll blocking and toll control may provide either toll blocking or toll control to qualifying low-income consumers. Small carriers that are not capable of providing both toll blocking and toll control will benefit from this decision by remaining eligible for universal service when providing one but not both of these services to qualifying low-income consumers.

Summary Analysis: Section VI, Schools and Libraries and Rural Health Care Providers

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. 177. In the order, we affirm the Commission's previous decision to require service providers to ''look back'' three years to determine the lowest corresponding price charged for similarly situated non-residential customers. We also affirm the Commission's previous decision to require schools and libraries to conduct an internal assessment of the components necessary to use effectively the discounted services they order, submit a complete description of the services they seek, and certify to certain criteria under penalty of perjury. We also affirm the Commission's previous decision to require schools and libraries to obtain independent approval of their technology plans. We note that we are not imposing any new reporting requirements beyond those established in the May 8, 1997 *Order.*

178. We do not require that the Schools and Libraries Corporation and the Rural Health Care Corporation post RFPs submitted by schools, libraries, and rural health care providers on the websites. Instead, schools and libraries will submit FCC Form 470 and rural health care providers will submit FCC Form 465, containing a description of services requested, and the Schools and Libraries Corporation and Rural Health Care Corporation will post only the information contained in these forms on the websites. We affirm the Commission's prior decision that the Schools and Libraries Corporation may

review technology plans when a state agency is unable or unwilling to do so within a reasonable time. In an effort to ensure that eligible schools and libraries are not penalized by this requirement, we will allow such entities to indicate on FCC Form 470 that their technology plan has either been approved, will be approved by a state or other authorized body, or will be submitted to the Schools and Libraries Corporation for approval. Applicants will be required to certify on FCC Form 471 that they will strive to ensure that the most disadvantaged schools and libraries will receive the full benefit of the discounts to which they are entitled. These reporting requirements were set forth in either the *Order* or the *July 10 Order.* These tasks may require some administrative, accounting, clerical, and legal skills.

179. We conclude that state telecommunications networks that procure telecommunications from service providers and make such services available to consortia of schools and libraries will be permitted to secure discounts on eligible telecommunications from service providers on behalf of eligible schools and libraries. In addition, we conclude that state telecommunications networks that provide access to the Internet and internal connections may either secure discounts on such telecommunications and pass on such discounts to eligible schools and libraries, or receive direct reimbursement from universal service support mechanisms for providing Internet access and internal connections. In order to receive universal service discounts that will be passed through to eligible schools and libraries, state telecommunications networks will request that service providers apply appropriate discount amounts on eligible telecommunications. The service providers will submit to the state telecommunications network a bill that includes the appropriate discounts on the portion of eligible telecommunications rendered to eligible entities. The state telecommunications network then will direct the eligible consortia members to pay the discounted price. Eligible consortia members may pay the discounted price to their state telecommunications network, which will then pay the discounted amount to the service providers. State telecommunications networks should retain records listing eligible schools and libraries and showing the basis on which the eligibility determinations were made. Such networks also must keep careful records demonstrating the discount amount to which each eligible entity is entitled and the basis for such a determination. We note that this is not a new reporting requirement. In addition, we require consortia to certify that each individual institution listed as a member of the consortia and included in determining the discount rate will receive an appropriate share of the shared services within five years of the filing of the consortium application. We further conclude that, to the extent schools and libraries build and purchase wide area networks to provide telecommunications, the cost of purchasing such networks will not be eligible for universal service discounts.

Significant Alternatives and Steps Taken To Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives.

180. We affirm the Commission's decision to require service providers to ''look back'' three years to determine the lowest corresponding price charged for similarly situated non-residential customers. In doing so, we do not adopt the proposal of GTE to reduce this requirement to one year. We note that we do not consider this provision to be unduly burdensome on providers, some of whom may qualify as small entities, as the records to be reviewed are limited to those relating to similarly situated non-residential customers for similar services. Moreover, we expect that providers would voluntarily perform such a review in most cases to determine the rate to charge in a competitive environment.

181. We affirm the Commission's decision to require schools and libraries to comply with certain reporting requirements including conducting an internal assessment of the components necessary to use effectively the discounted services they order, submit a complete description of the services they seek, and certify to certain criteria under penalty of perjury. We do not find these requirements to be unduly burdensome on schools and libraries and believe that they will assist schools and libraries in obtaining and utilizing supported services in an efficient and effective manner. We also affirm the Commission's decision to require schools and libraries to submit and receive approval of technology plans. We do not adopt the suggestion of a few petitioners that we postpone or eliminate this requirement in an effort to equalize the ability of non-public schools and libraries to obtain independent approval. We do, however, adopt measures to assist non-public entities, many of whom may qualify as small entities, from being disadvantaged by this requirement. For example, we authorize the Schools and Libraries Corporation to review technology plans when the state is unwilling or unable to do so in a reasonable time. Eligible entities that are not required by state or local law to obtain state approval for technology plans and telecommunications expenditures may apply directly to the Schools and Libraries Corporation for review of their technology plan. In addition, FCC Form 470 will allow applicants to indicate that their technology plans either have been approved, will be approved by a state or other entity, or will be submitted to the Schools and Libraries Corporation for approval. This will allow non-public schools and libraries to proceed with the application process in a timely manner while obtaining approval of their technology plans. Support will not, however, be provided prior to approval of the technology plan.

182. We reconsider the definition of existing contracts established in the *July 10 Order* that are exempt from the competitive bid requirement. We conclude that any contract signed on or before July 10, 1997 will be considered an existing contract. Contracts signed after July 10, 1997 but before the websites are fully operational will be considered existing contracts for those services provided through December 31, 1998. We extend the existing contract exemption that we establish in this Order to rural health care providers, many of whom identify themselves as small entities. We believe that this determination will assist many small entities by allowing them to negotiate lower rates through long-term contracts and avoid penalties associated with breaking contracts that they entered into prior to the date that the website is fully operational. We do not adopt the suggestion that we eliminate all restrictions on contracts signed prior to the date that the schools and libraries websites become fully operational. Although schools and libraries have a strong incentive to negotiate contracts at the lowest possible pre-discount prices in an effort to reduce their costs, we affirm our initial finding that competitive bidding is the most efficient means of ensuring that eligible schools and libraries are informed about the choices available to them and receive the lowest prices.

183. Requiring state telecommunications networks to retain records listing eligible schools and libraries should be minimally burdensome because we require such networks to gather and retain basic

information, such as the names of consortia members, addresses, and telephone numbers. Requiring state networks to keep records demonstrating the discount amount to which each eligible entity is entitled and the basis on which such a determination was made should be minimally burdensome, because such information should be readily available from the eligible entities. Additionally, consistent with the *Order*, service providers must keep and retain careful records showing how they have allocated the costs of facilities shared by eligible and ineligible entities in *Order* to charge such entities the correct amounts. As we determined in the *Order*, this should be minimally burdensome, because state networks will be required to inform the service provider of what portion of shared facilities purchased by the consortia should be charged to eligible schools and libraries (and discounted by the appropriate amounts). We find that these recordkeeping and reporting requirements described above are necessary to provide the level of accountability that is in the public interest.

Summary Analysis: Section VII, Administration

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. 184. Section 254(d) states ''that all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions'' toward the preservation and advancement of universal service. We shall continue to require all telecommunications carriers that provide interstate telecommunications services and some providers of interstate telecommunications to contribute to the universal service support mechanisms. Contributions for support for programs for high cost areas and low-income consumers will be assessed on the basis of interstate and international end-user telecommunications revenues. Contributions for support for programs for schools, libraries, and rural health care providers will be assessed on the basis of interstate, intrastate, and international end-user telecommunications revenues. As provided in the *Order*, contributors will be required to submit information regarding their end-user telecommunications revenues. Approximately 4,500 telecommunications carriers and providers will be required to submit contributions. We note that we do not impose any new reporting requirements beyond those established in the *Order*. These tasks may require some administrative, accounting, and legal skills.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives. 185. In accordance with section 254(d), we affirm the Commission's decision that all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions toward universal service. We reject the contention of various telecommunications carriers that they should not be required to contribute or should be allowed to contribute at a reduced rate. For example, we reject the suggestion of some petitioners that CMRS providers, many of whom may qualify as small businesses, should not be required to contribute, or should be allowed to contribute at a reduced rate, due to their contention that they may not be eligible to receive universal service support. We note that section 254(d) provides no such exemption for CMRS providers or other carriers regardless of whether they receive universal service support. We affirm the Commission's decision, however, that entities that provide only international telecommunications services are not required to contribute to universal service support because they are not telecommunications carriers that provide interstate telecommunications services. We also clarify that the lease of space segment capacity by satellite providers does not constitute the provision of telecommunications and therefore does not trigger universal service contribution requirements.

186. We exempt from the contribution requirement systems integrators that obtain a *de minimis* amount of their revenues from the resale of telecommunications. We exempt from the contribution requirement schools, libraries, and rural health care providers that are eligible to receive universal service support. We also agree with petitioners' suggestions that the *de minimis* exemption take into account the Administrator's collection costs and contributor's reporting compliance costs. We find that if a contributor's contribution to universal service in any given year is less than $10,000, that contributor will not be required to submit a contribution for that year. We believe that small entities will benefit under the *de minimis* exemption as interpreted in the *Order*. We also believe that small payphone aggregators, such as grocery store owners, will be exempt from contribution requirements pursuant to our *de minimis* exemption.

E. Report to Congress

187. The Commission shall send a copy of this FRFA, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy or summary of the Report and Order and this FRFA will also be published in the **Federal Register**, *see* 5 U.S.C. § 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 214, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151–154, 201–205, 218–220, 214, 254, 303(r), 403, and 410, the FOURTH ORDER ON RECONSIDERATION IS ADOPTED, effective 30 days after publication of the text in the **Federal Register**. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

It is further ordered that parts 36, 54, and 69 of the Commission's rules, 47 CFR 36, 54, and 69, are amended as set forth in the rule changes, effective 30 days after publication of the text thereof in the **Federal Register**.

It is further ordered that, pursuant to section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(1), authority is delegated to the Chief, Common Carrier Bureau, to review, modify, and approve the formula submitted by the Administrator pursuant to section 54.303(f) of the Commission's rules, 47 CFR 54.303(f).

It is further ordered that United States Telephone Association's Petition for Clarification is DISMISSED AS MOOT.

It is further ordered that Florida Public Service Commission's Petition for Declaratory Statement is GRANTED. *It is further determined* that the Florida Commission's state Lifeline program qualifies as a program that provides intrastate matching funds and, therefore, the Florida Commission may set its own consumer qualification standards. *It is further ordered* that Florida Public Service Commission's Petitions for Waiver are DISMISSED AS MOOT, and that its Request for Expedited Ruling and Petition for Clarification are GRANTED.

It is further ordered that if any portion of this Order or any regulation implementing this Order is held invalid, either generally or as applied to

particular persons or circumstances, the remainder of the Order or regulations, or their application to other persons or circumstances, shall not be affected.

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

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

47 CFR 54

Health facilities, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 36, 54 and 69 of title 47 of the Code of Federal Regulations are amended as follows:

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

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

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

2. Amend § 36.125 by revising paragraph (a)(5) to read as follows:

§ 36.125 Local switching equipment—Category 3.

(a) * * *

(5) The interstate DEM factor is the ratio of the interstate DEM to the total DEM. A weighted interstate DEM factor is the product of multiplying a weighting factor, as defined in paragraph (f) of this section, to the interstate DEM factor. The state DEM factor is the ratio of the state DEM to the total DEM.

* * * * *

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

§ 36.601 General.

* * * * *

(c) The annual amount of the total nationwide loop cost expense adjustment calculated pursuant to this subpart F shall not exceed the amount of the total loop cost expense adjustment for the immediately preceding calendar year, increased by a rate equal to the rate of increase in the total number of working loops during the calendar year preceding the July 31st filing. The total loop cost expense adjustment shall consist of the loop cost expense adjustments, including amounts calculated pursuant to §§ 36.612(a) and 36.631. The rate of increase in total working loops shall be based upon the difference between the number of total working loops on December 31 of the calendar year preceding the July 31st filing and the number of total working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submission pursuant to § 36.611. Beginning January 1, 1999, non-rural carriers shall no longer receive support pursuant to this subpart F. Beginning January 1, 1999, the total loop cost expense adjustment shall not exceed the total amount of the loop cost expense adjustment provided to rural carriers for the immediately preceding calendar year, adjusted to reflect the rate of change in the total number of working loops of rural carriers during the calendar year preceding the July filing. In addition, effective on January 1 of each year, beginning January 1, 1999, the maximum annual amount of the total loop cost expense adjustment for rural carriers must be further increased or decreased to reflect:

(1) The addition of lines served by carriers that were classified as non-rural in the prior year but which, in the current year, meet the definition of ''rural telephone company;'' and

(2) The deletion of lines served by carriers that were classified as rural in the prior year but which, in the current year, no longer meet the definition of ''rural telephone company.'' A rural carrier is defined as a carrier that meets the definition of a ''rural telephone company'' in § 51.5 of this chapter. Limitations imposed by this paragraph shall apply only to amounts calculated pursuant to this subpart F.

4. Amend § 36.612 by revising paragraph (a) introductory text to read as follows:

§ 36.612 Updating information submitted to the National Exchange Carrier Association.

(a) Any telecommunications company may update the information submitted to the National Exchange Carrier Association pursuant to § 36.611 (a) through (h) one or more times annually on a rolling year basis. Carriers wishing to update the preceding calendar year data filed July 31st may:

* * * * *

5. Amend § 36.613 by revising the first sentence of the introductory text of paragraph (a) to read as follows:

§ 36.613 Submission of information by the National Exchange Carrier Association.

(a) On October 1 of each year, the National Exchange Carrier Association shall file with the Commission and Administrator the information listed below. * * *

* * * * *

6. Amend § 36.621 by revising the second sentence of paragraph (a)(1), paragraph (a)(2) and (a)(3), the first and second sentences of paragraph (a)(4) introductory text and paragraphs (a)(4)(ii)(A) through (a)(4)(ii)(C) to read as follows:

§ 36.621 Study area total unseparated loop cost.

(a) * * *

(1) * * * This amount is calculated by deducting the accumulated depreciation and noncurrent deferred Federal income taxes attributable to C&WF subcategory 1.3 investment and Exchange Line Category 4.13 circuit investment reported pursuant to § 36.611(b) from the gross investment in Exchange Line C&WF subcategory 1.3 and CO Category 4.13 reported pursuant to § 36.611(a) to obtain the net unseparated C&WF subcategory 1.3 investment, and CO Category 4.13 investment. * * *

(2) Depreciation expense attributable to C&WF subcategory 1.3 investment, and CO Category 4.13 investment as reported in § 36.611(c).

(3) Maintenance expense attributable to C&WF subcategory 1.3 investment, and CO Category 4.13 investment as reported in § 36.611(d).

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in § 36.611(e) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in § 36.611(a), to the unseparated gross telecommunications

plant investment, as reported in § 36.611(f). * * *

* * * * *

(ii) * * *

(A) For study areas with 6,000 or fewer working loops the amount per working loop shall be $31.188 − (.0023 × the number of working loops), or, $25,000÷the number of working loops, whichever is greater;

(B) for study areas with more than 6,000 but fewer than 18,006 working loops, the amount per working loop shall be $3.588 + (82,827.60÷the number of working loops); and

(C) for study areas with 18,006 or more working loops, the amount per working loop shall be $8.188.

7. Amend § 36.622 by revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 36.622 National and study area average unseparated loop costs.

(a) National Average Unseparated Loop Cost per Working Loop. Except as provided in paragraph (c) of this section, this is equal to the sum of the Loop Costs for each study area in the country as calculated pursuant to § 36.621(a) divided by the sum of the working loops reported in § 36.611(h) for each study area in the country. The national average unseparated loop cost per working loop shall be calculated by the National Exchange Carrier Association.

* * * * *

(b) Study Area Average Unseparated Loop Cost per Working Loop. This is equal to the unseparated loop costs for the study area as calculated pursuant to § 36.621(a) divided by the number of working loops reported in § 36.611(h) for the study area.

* * * * *

8. Amend § 36.631 by revising paragraphs (a) through (d) to read as follows:

§ 36.631 Expense adjustment.

(a) Until December 31, 1997, for study areas reporting 50,000 or fewer working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of the following:

(1) Fifty percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area; and

(2) Seventy-five percent of the study area unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 150 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area.

(b) Until December 31, 1987, for study areas reporting more than 50,000 working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of the following:

(1) Twenty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area; and

(2) The amount calculated pursuant to § 36.631(a)(2).

(c) Beginning January 1, 1988, for study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of the following:

(1) Sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area; and

(2) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 150 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area.

(d) Beginning January 1, 1988, for study areas reporting more than 200,000 working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of the following:

(1) Ten percent of the study area average unseparated loop cost per working loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 115 percent of the national average for this cost but not greater than 160 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area;

(2) Thirty percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 160 percent of the national average for this cost but not greater than 200 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area;

(3) Sixty percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 200 percent of the national average for this cost but not greater than 250 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area; and

(4) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 250 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area.

* * * * *

PART 54—UNIVERSAL SERVICE

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

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214 and 254.

10. Amend § 54.101 by revising paragraph (a) introductory text, the last sentence of paragraph (a)(1) and paragraph (b) to read as follows:

§ 54.101 Supported services for rural, insular, and high cost areas.

(a) *Services designated for support.* The following services or functionalities shall be supported by federal universal service support mechanisms:

(1) * * * For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz.

* * * * *

(b) *Requirement to offer all designated services.* An eligible telecommunications carrier must offer each of the services set forth in paragraph (a) of this section in order to receive federal universal service support.

* * * * *

11. Amend § 54.201 by revising the section heading, redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4) and adding new paragraph (a)(2) to read as follows:

§ 54.201 Definition of eligible telecommunications carriers, generally.

(a) * * *

(2) A state commission that is unable to designate as an eligible

telecommunications carrier, by January 1, 1998, a carrier that sought such designation before January 1, 1998, may, once it has designated such carrier, file with the Commission a petition for waiver of paragraph (a)(1) of this section requesting that the carrier receive universal service support retroactive to January 1, 1998. The state commission must explain why it did not designate such carrier as eligible by January 1, 1998, and provide a justification for why providing support retroactive to January 1, 1998, serves the public interest.

* * * * *

12. Revise § 54.301 to read as follows:

§ 54.301 Local switching support.

(a) Calculation of local switching support.

(1) Beginning January 1, 1998, an incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall receive support for local switching costs using the following formula: the carrier's projected annual unseparated local switching revenue requirement, calculated pursuant to paragraph (d) of this section, shall be multiplied by the local switching support factor. For purposes of this section, local switching costs shall be defined as Category 3 local switching costs under part 36 of this chapter.

(2) Local switching support factor.

(i) The local switching support factor shall be defined as the difference between the 1996 weighted interstate DEM factor, calculated pursuant to § 36.125(f) of this chapter, and the 1996 unweighted interstate DEM factor.

(ii) If the number of a study area's access lines increases such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lower weighted interstate DEM factor shall be applied to the carrier's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

(3) Beginning January 1, 1998, the sum of the unweighted interstate DEM factor, as defined in § 36.125(a)(5) of this chapter, and the local switching support factor shall not exceed 0.85. If the sum of those two factors would exceed 0.85, the local switching support factor shall be reduced to a level that would reduce the sum of the factors to 0.85.

(b) *Submission of data to the Administrator.* Each incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account listed below for the calendar year following each filing. This information must be provided to the Administrator no later than October 1 of each year. The Administrator shall use this information to calculate the projected annual unseparated local switching revenue requirement pursuant to paragraph (d) of this section.

I

Telecommunications Plant in Service (TPIS)	Account 2001
Telecommunications Plant—Other	Accounts 2002, 2003, 2005
General Support Assets	Account 2110
Central Office Assets	Accounts 2210, 2220, 2230
Central Office—switching, Category 3 (local switching)	Account 2210, Category 3
Information Origination/Termination Assets	Account 2310
Cable and Wire Facilities Assets	Account 2410
Amortizable Tangible Assets	Account 2680
Intangibles	Account 2690

II

Rural Telephone Bank (RTB) Stock	Included in Account 1402
Materials and Supplies	Account 1220.1
Cash Working Capital	Defined in 47 CFR 65.820(d)

III

Accumulated Depreciation	Account 3100
Accumulated Amortization	Accounts 3400, 3500, 3600
Net Deferred Operating Income Taxes	Accounts 4100, 4340
Network Support Expenses	Account 6110
General Support Expenses	Account 6120
Central Office Switching, Operator Systems, and Central Office Transmission Expenses	Accounts 6210, 6220, 6230
Information Origination/Termination Expenses	Account 6310
Cable and Wire Facilities Expenses	Account 6410
Other Property, Plant and Equipment Expenses	Account 6510
Network Operations Expenses	Account 6530
Access Expense	Account 6540
Depreciation and Amortization Expense	Account 6560
Marketing Expense	Account 6610
Services Expense	Account 6620
Corporate Operations Expense	Accounts 6710, 6720
Operating Taxes	Accounts 7230, 7240
Federal Investment Tax Credits	Accounts 7210
Provision for Deferred Operating Income Taxes—Net	Account 7250
Allowance for Funds Used During Construction	Account 7340
Charitable Contributions	Included in Account 7370
Interest and Related Items	Account 7500

IV

Other Non-Current Assets	Account 1410
Deferred Maintenance and Retirements	Account 1438
Deferred Charges	Account 1439
Other Jurisdictional Assets and Liabilities	Accounts 1500, 4370

Customer Deposits	Account 4040
Other Long-Term Liabilities	Account 4310

(c) *Allocation of accounts to switching.* The Administrator shall allocate to local switching, the accounts reported pursuant to paragraph (b) of this section as prescribed in this paragraph.

(1) General Support Assets (Account 2110); Amortizable Tangible Assets (Account 2680); Intangibles (Account 2690); and General Support Expenses (Account 6120) shall be allocated according to the following factor:

Account 2210 Category÷3 (Account 2210 + Account 2220 + Account 2230 + Account 2310 + Account 2410).

(2) Telecommunications Plant—Other (Accounts 2002, 2003, 2005); Rural Telephone Bank (RTB) Stock (included in Account 1402); Materials and Supplies (Account 1220.1); Cash Working Capital (§ 65.820(d) of this chapter); Accumulated Amortization (Accounts 3400, 3500, 3600); Net Deferred Operating Income Taxes (Accounts 4100, 4340); Network Support Expenses (Account 6110); Other Property, Plant and Equipment Expenses (Account 6510); Network Operations Expenses (Account 6530); Marketing Expense (Account 6610); Services Expense (Account 6620); Operating Taxes (Accounts 7230, 7240); Federal Investment Tax Credits (Accounts 7210); Provision for Deferred Operating Income Taxes—Net (Account 7250); Interest and Related Items (Account 7500); Allowance for Funds Used During Construction (Account 7340); Charitable Contributions (included in Account 7370); Other Non-current Assets (Account 1410); Other Jurisdictional Assets and Liabilities (Accounts 1500, 4370); Customer Deposits (Account 4040); Other Long-term Liabilities (Account 4310); and Deferred Maintenance and Retirements (Account 1438) shall be allocated according to the following factor:

Account 2210 Category 3÷Account 2001.

(3) Accumulated Depreciation for Central Office—switching (Account 3100 associated with Account 2210) and Depreciation and Amortization Expense for Central Office—switching (Account 6560 associated with Account 2210) shall be allocated according to the following factor:

Account 2210 Category 3÷Account 2210.

(4) Accumulated Depreciation for General Support Assets (Account 3100 associated with Account 2110) and Depreciation and Amortization Expense for General Support Assets (Account 6560 associated with Account 2110) shall be allocated according to the following factor:

Account 2210 Category 3 ÷ Account 2001.

(5) Corporate Operations Expenses (Accounts 6710, 6720) shall be allocated according to the following factor:

{[Account 2210 Category 3 ÷ (Account 2210 + Account 2220 + Account 2230)] × (Account 6210 + Account 6220 + 6230)} ÷ (Account 6210 + Account 6220 + Account 6230 + Account 6310 + Account 6410 + Account 6530 + Account 6610 + Account 6620).

(6) Central Office Switching, Operator Systems, and Central Office Transmission Expenses (Accounts 6210, 6220, 6230) shall be allocated according to the following factor:

Account 2210 Category 3 ÷ (2210 + 2220 + 2230).

(d) *Calculation of the local switching revenue requirement.* The Administrator shall calculate the local switching revenue requirement summing the components listed in this paragraph.

(1) The return component for COE Category 3 shall be obtained by multiplying the projected unseparated local switching average net investment by the authorized interstate rate of return. Unseparated local switching net investment shall be calculated as of each December 31 by deducting the accumulated reserves, deferrals and customer deposits attributable to the COE Category 3 investment from the gross investment attributable to COE Category 3. The projected unseparated local switching average net investment shall be calculated by summing the projected unseparated local switching net investment as of December 31 of the calendar year following the filing and the projected unseparated local switching net investment as of December 31 of the filing year and dividing by 2.

(2) Depreciation expense attributable to COE Category 3 investment, allocated pursuant to paragraph (c) of this section.

(3) All expenses collected in paragraph (b) of this section, allocated pursuant to paragraph (c) of this section.

(4) Federal income tax shall be calculated using the following formula:

[Return on Investment − Account 7340 − Account 7500—Account 7210)] × [Federal Income Tax Rate ÷ (1 − Federal Income Tax Rate)].

(e) *True-up adjustment.*

(1) *Submission of true-up data.* Each incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the historical total unseparated dollar amount assigned to each account listed in paragraph (b) of this section for each calendar year no later than 12 months after the end of such calendar year.

(2) *Calculation of true-up adjustment.*

(i) The Administrator shall calculate the historical annual unseparated local switching revenue requirement for each carrier when historical data for each calendar year are submitted.

(ii) The Administrator shall calculate each carrier's local switching support payment, calculated pursuant to 54.301(a), using its historical annual unseparated local switching revenue requirement.

(iii) For each carrier receiving local switching support, the Administrator shall calculate the difference between the support payment calculated pursuant to paragraph (e)(2)(ii) of this section and its support payment calculated using its projected annual unseparated local switching revenue requirement.

(iv) The Administrator shall adjust each carrier's local switching support payment by the difference calculated in paragraph (e)(2)(iii) of this section no later than 15 months after the end of the calendar year for which historical data are submitted.

(f) *Calculation of the local switching revenue requirement for average schedule companies.*

(1) The local switching revenue requirement for average schedule companies, as defined in § 69.605(c) of this chapter, shall be calculated in accordance with a formula approved or modified by the Commission. The Administrator shall submit to the Commission and the Common Carrier Bureau for review and approval a formula that simulates the disbursements that would be received pursuant to this section by a company that is representative of average schedule companies. For each annual period, the Administrator shall submit the formula, any proposed revisions of such formula, or a certification that no revisions to the formula are warranted on or before December 31 of each year.

(2) The Commission delegates its authority to review, modify, and

approve the formula submitted by the Administrator pursuant to this paragraph to the Chief, Common Carrier Bureau.

13. Revise § 54.303 to read as follows:

§ 54.303 Long term support.

(a) Beginning January 1, 1998, an eligible telecommunications carrier that participates in the association Common Line pool shall receive Long Term Support.

(b) Long Term Support shall be calculated as prescribed in this paragraph.

(1) To calculate the unadjusted base-level of Long Term Support for 1998, the Administrator shall calculate the difference between the projected Common Line revenue requirement of association Common Line pool participants projected to be recovered in 1997 and the sum of end-user common line charges and the 1997 projected revenue recovered by the association Carrier Common Line charge as calculated pursuant to § 69.105(b)(2) of this chapter.

(2) To calculate Long Term Support for calendar year 1998, the Administrator shall adjust the base-level of Long Term Support calculated in paragraph (b)(1) of this section to reflect the annual percentage change in the actual nationwide average unseparated loop cost per working loop as filed by the Administrator in the previous calendar year, pursuant to § 36.622 of this chapter.

(3) To calculate Long Term Support for calendar year 1999, the Administrator shall adjust the level of support calculated in paragraph (b)(2) of this section to reflect the annual percentage change in the actual nationwide average unseparated loop cost per working loop as filed by the Administrator in the previous calendar year, pursuant to § 36.622 of this chapter.

(4) Beginning January 1, 2000, the Administrator shall calculate Long Term Support annually by adjusting the previous year's level of support to reflect the annual percentage change in the Department of Commerce's Gross Domestic Product-Consumer Price Index (GDP-CPI).

14. Revise § 54.307(a)(4) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) * * *

(4) A competitive eligible telecommunications carrier that provides the supported services using neither unbundled network elements purchased pursuant to § 51.307 of this chapter nor wholesale service purchased pursuant to section 251(c)(4) of the Act will receive the full amount of universal service support previously provided to the incumbent local exchange carrier for that customer. The amount of universal service support provided to such incumbent local exchange carrier shall be reduced by an amount equal to the amount provided to such competitive eligible telecommunications carrier.

* * * * *

15. Amend § 54.400 by revising paragraphs (a) and (d) to read as follows:

§ 54.400 Terms and definitions.

(a) *Qualifying low-income consumer.* A ''qualifying low-income consumer'' is a consumer who meets the low-income eligibility criteria established by the state commission, or, in states that do not provide state Lifeline support, a consumer who participates in one of the following programs: Medicaid; food stamps; supplemental security income; federal public housing assistance; or Low-Income Home Energy Assistance Program.

* * * * *

(d) *Toll limitation.* ''Toll limitation'' denotes either toll blocking or toll control for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, ''toll limitation'' denotes both toll blocking and toll control.

16. Amend § 54.401 by revising the last sentence of paragraph (d) to read as follows:

§ 54.401 Lifeline defined.

* * * * *

(d) * * * Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier's Lifeline plan satisfies the criteria set out in this subpart.

17. Amend § 54.403 by adding a new paragraph (d) to read as follows:

§ 54.403 Lifeline support amount.

* * * * *

(d) In addition to the $7.00 per qualifying low-income consumer described in paragraph (a) of this section, eligible incumbent local exchange carriers that serve qualifying low-income consumers who have toll blocking shall receive federal Lifeline support in amounts equal to the presubscribed interexchange carrier charge that incumbent local exchange carriers would be permitted to recover from such low-income consumers pursuant to § 69.153(b) of this chapter. Eligible incumbent local exchange carriers that serve qualifying low-income consumers who have toll blocking shall apply this support to waive qualifying low-income consumers' presubscribed interexchange carrier charges. A competitive eligible telecommunications carrier that serves qualifying low-income consumers who have toll blocking shall receive federal Lifeline support in an amount equal to the presubscribed interexchange carrier charge that the incumbent local exchange carrier in that area would be permitted to recover, if it served those consumers.

18. Revise § 54.500 to read as follows:

§ 54.500 Terms and definitions.

(a) *Billed entity.* A ''billed entity'' is the entity that remits payment to service providers for services rendered to eligible schools and libraries.

(b) *Elementary school.* An ''elementary school'' is a non-profit institutional day or residential school that provides elementary education, as determined under state law.

(c) *Library.* A ''library'' includes:

(1) A public library;

(2) A public elementary school or secondary school library;

(3) An academic library;

(4) A research library, which for the purpose of this section means a library that:

(i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(ii) Is not an integral part of an institution of higher education; and

(5) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.

(d) *Library consortium.* A ''library consortium'' is any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries. For the purposes of these rules, references to library will also refer to library consortium.

(e) *Lowest corresponding price.* ''Lowest corresponding price'' is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services.

(f) *Master contract.* A ''master contract'' is a contract negotiated with a service provider by a third party, the

terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider.

(g) *Minor contract modification.* A ''minor contract modification'' is a change to a universal service contract that is within the scope of the original contract and has no effect or merely a negligible effect on price, quantity, quality, or delivery under the original contract.

(h) *National school lunch program.* The ''national school lunch program'' is a program administered by the U.S. Department of Agriculture and state agencies that provides free or reduced price lunches to economically disadvantaged children. A child whose family income is between 130 percent and 185 percent of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced price lunch. A child whose family income is 130 percent or less of applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

(i) *Pre-discount price.* The ''pre-discount price'' means, in this subpart, the price the service provider agrees to accept as total payment for its telecommunications or information services. This amount is the sum of the amount the service provider expects to receive from the eligible school or library and the amount it expects to receive as reimbursement from the universal service support mechanisms for the discounts provided under this subpart.

(j) *Secondary school.* A ''secondary school'' is a non-profit institutional day or residential school that provides secondary education, as determined under state law. A secondary school does not offer education beyond grade 12.

(k) *State telecommunications network.* A ''state telecommunications network'' is a state government entity that procures, among other things, telecommunications offerings from multiple service providers and bundles such offerings into packages available to schools, libraries, or rural health care providers that are eligible for universal service support, or a state government entity that provides, using its own facilities, such telecommunications offerings to such schools, libraries, and rural health care providers.

(l) *Wide area network.* For purposes of this subpart, a ''wide area network'' is a voice or data network that provides connections from one or more computers within an eligible school or library to one or more computers or networks that are external to such eligible school or library. Excluded from this definition is a voice or data network that provides connections between or among instructional buildings of a single school campus or between or among non-administrative buildings of a single library branch.

19. Amend § 54.501 by revising the section heading and paragraphs (b)(1), (c)(1), and (d) to read as follows:

§ 54.501 Eligibility for services provided by telecommunications carriers.

* * * * *

(b) * * *

(1) Only schools meeting the statutory definitions of ''elementary school,'' as defined in 20 U.S.C. 8801(14), or ''secondary school,'' as defined in 20 U.S.C. 8801(25), and not excluded under paragraphs (b)(2) or (b)(3) of this section shall be eligible for discounts on telecommunications and other supported services under this subpart.

* * * * *

(c) * * *

(1) Only libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (Public Law 104–208) and not excluded under paragraphs (c)(2) or (c)(3) of this section shall be eligible for discounts under this subpart.

* * * * *

(d) Consortia.

(1) For purposes of seeking competitive bids for telecommunications services, schools and libraries eligible for support under this subpart may form consortia with other eligible schools and libraries, with health care providers eligible under subpart G, and with public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, when ordering telecommunications and other supported services under this subpart. With one exception, eligible schools and libraries participating in consortia with ineligible private sector members shall not be eligible for discounts for interstate services under this subpart. A consortium may include ineligible private sector entities if the pre-discount prices of any services that such consortium receives from ILECs are generally tariffed rates.

(2) For consortia, discounts under this subpart shall apply only to the portion of eligible telecommunications and other supported services used by eligible schools and libraries.

(3) Service providers shall keep and retain records of rates charged to and discounts allowed for eligible schools and libraries—on their own or as part of a consortium. Such records shall be available for public inspection.

20. Revise § 54.502 to read as follows:

§ 54.502 Supported telecommunications services.

For purposes of this subpart, supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms.

21. Revise § 54.503 to read as follows:

§ 54.503 Other supported special services.

For the purposes of this subpart, other supported special services provided by telecommunications carriers include Internet access and installation and maintenance of internal connections in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such services shall not be covered by the universal service support mechanisms.

22. Amend § 54.504 by revising the section heading, paragraph (a), the heading of paragraph (b), paragraphs (b)(1), (b)(2) introductory text and (b)(2)(v), redesignating paragraph (b)(3) as paragraph (b)(4) and revising the first sentence, adding new paragraph (b)(3), redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) to read as follows:

§ 54.504 Requests for services.

(a) *Competitive bid requirements.* Except as provided in § 54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under §§ 54.502 and 54.503. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

(b) *Posting of FCC Form 470.*

(1) An eligible school, library, or consortium that includes an eligible

school or library seeking to receive discounts for eligible services under this subpart, shall submit a completed FCC Form 470 to the Schools and Libraries Corporation. FCC Form 470 shall include, at a minimum, the following information, to the extent applicable with respect to the services requested:

* * * * *

(2) FCC Form 470 shall be signed by the person authorized to order telecommunications and other supported services for the eligible school, library, or consortium and shall include that person's certification under oath that:

* * * * *

(v) All of the necessary funding in the current funding year has been budgeted and approved to pay for the ''non-discount'' portion of requested connections and services as well as any necessary hardware or software, and to undertake the necessary staff training required to use the services effectively;

* * * * *

(3) The Schools and Libraries Corporation shall post each FCC Form 470 that it receives from an eligible school, library, or consortium that includes an eligible school or library on its website designated for this purpose.

(4) After posting on the schools and libraries website an eligible school's, library's, or consortium's FCC Form 470, the Schools and Libraries Corporation shall send confirmation of the posting to the entity requesting service. * * *

(c) *Filing of FCC Form 471.* An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Schools and Libraries Corporation. A commitment of support is contingent upon the filing of FCC Form 471.

* * * * *

23. Amend § 54.505 by adding paragraphs (b)(4) and (f) and removing and reserving paragraph (d) to read as follows:

§ 54.505 Discounts.

* * * * *

(b) * * *

(4) School districts, library systems, or other billed entities shall calculate discounts on supported services described in § 54.502 or other supported special services described in § 54.503 that are shared by two or more of their schools, libraries, or consortia members by calculating an average based on the applicable discounts of all member schools and libraries. School districts, library systems, or other billed entities shall ensure that, for each year in which an eligible school or library is included for purposes of calculating the aggregate discount rate, that eligible school or library shall receive a proportionate share of the shared services for which support is sought. For schools, the average discount shall be a weighted average of the applicable discount of all schools sharing a portion of the shared services, with the weighting based on the number of students in each school. For libraries, the average discount shall be a simple average of the applicable discounts to which the libraries sharing a portion of the shared services are entitled.

* * * * *

(d) [Reserved]

* * * * *

(f) *State support.* Federal universal service discounts shall be based on the price of a service prior to the application of any state provided support for schools or libraries.

24. Add § 54.506 to subpart F to read as follows:

§ 54.506 Internal connections.

A service is eligible for support as a component of an institution's internal connections if such service is necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch. Discounts are not available for internal connections in non-instructional buildings of a school or school district, or in administrative buildings of a library, to the extent that a library system has separate administrative buildings, unless those internal connections are essential for the effective transport of information to an instructional building of a school or to a non-administrative building of a library. Internal connections do not include connections that extend beyond a single school campus or single library branch. There is a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way.

25. Amend § 54.507 by revising paragraphs (e), (f) and the first sentence of (g)(4) to read as follows:

§ 54.507 Cap.

* * * * *

(e) *Long term contracts.* If schools and libraries enter into long term contracts for eligible services, the Schools and Libraries Corporation shall only commit funds to cover the pro rata portion of such a long term contract scheduled to be delivered during the funding year for which universal service support is sought.

(f) *Date services must be supplied.* The Schools and Libraries Corporation shall not approve funding for services received by a school or library before January 1, 1998.

(g) * * *

(4) The Administrator shall notify the Schools and Libraries Corporation of any funds still remaining after all requests submitted by schools and libraries described in paragraphs (g)(2) and (g)(3) of this section during the 30-day period have been met. * * *

26. Amend § 54.511 by revising paragraphs (b) and (c) and adding new paragraph (d) to read as follows:

§ 54.511 Ordering services.

* * * * *

(b) *Lowest corresponding price.* Providers of eligible services shall not charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory. Promotional rates offered by a service provider for a period of more than 90 days must be included among the comparable rates upon which the lowest corresponding price is determined.

(c) *Existing contracts.*

(1) A signed contract for services eligible for discounts pursuant to this subpart between an eligible school or library as defined under § 54.501 or consortium that includes an eligible school or library and a service provider shall be exempt from the competitive bid requirements set forth in § 54.504(a) as follows:

(i) A contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life the contract; or

(ii) A contract signed after July 10, 1997, but before the date on which the universal service competitive bid system described in § 54.504 is operational, is exempt from the competitive bid requirements only with respect to services that were provided under such contract between January 1, 1998 and December 31, 1998.

(2) For a school, library, or consortium that includes an eligible school or library that takes service under or pursuant to a master contract, the date of execution of that master contract represents the applicable date for purposes of determining whether and to what extent the school, library,

or consortium is exempt from the competitive bid requirements.

(3) The competitive bid system will be deemed to be operational when the Schools and Libraries Corporation is ready to accept and post FCC Form 470 from schools and libraries on a website and that website is available for use by service providers.

(d) The exemption from the competitive bid requirements set forth in paragraph (c) shall not apply to voluntary extensions of existing contracts.

27. Amend § 54.517 by revising paragraph (a) to read as follows:

§ 54.517 Services provided by non-telecommunications carriers.

(a) Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing the supported services described in paragraph (b) of this section for eligible schools, libraries, and consortia including those entities.

* * * * *

28. Add § 54.518 to subpart F to read as follows:

§ 54.518 Wide area networks.

To the extent that states, schools, or libraries build or purchase a wide area network to provide telecommunications services, the cost of such wide area networks shall not be eligible for universal service discounts provided under this subpart.

29. Add § 54.519 to subpart F to read as follows:

§ 54.519 State telecommunications networks.

(a) *Telecommunications services.* State telecommunications networks may secure discounts under the universal service support mechanisms on supported telecommunications services (as described in § 54.502) on behalf of eligible schools and libraries (as described in § 54.501) or consortia that include an eligible school or library. Such state telecommunications networks shall pass on such discounts to eligible schools and libraries and shall:

(1) Maintain records listing each eligible school and library and showing the basis for each eligibility determination;

(2) Maintain records demonstrating the discount amount to which each eligible school and library is entitled and the basis for such determination;

(3) Make a good faith effort to ensure that each eligible school or library receives a proportionate share of the shared services;

(4) Request that service providers apply the appropriate discount amounts on the portion of the supported services used by each school or library;

(5) Direct eligible schools and libraries to pay the discounted price; and

(6) Comply with the competitive bid requirements set forth in § 54.504(a).

(b) *Internet access and installation and maintenance of internal connections.* State telecommunications networks either may secure discounts on Internet access and installation and maintenance of internal connections in the manner described in paragraph (a) of this section with regard to telecommunications, or shall be eligible, consistent with § 54.517(b), to receive universal service support for providing such services to eligible schools, libraries, and consortia including those entities.

30. Amend § 54.603 by revising the section heading and paragraphs (b)(1) introductory text, (b)(2) and (b)(3) to read as follows:

§ 54.603 Competitive bid requirements.

* * * * *

(b) Posting of FCC Form 465.

(1) An eligible health care provider seeking to receive telecommunications services eligible for universal service support under this subpart shall submit a completed FCC Form 465 to the Rural Health Care Corporation. FCC Form 465 shall be signed by the person authorized to order telecommunications services for the health care provider and shall include, at a minimum, that person's certification under oath that:

* * * * *

(2) The Rural Health Corporation shall post each FCC Form 465 that it receives from an eligible health care provider on its website designated for this purpose.

(3) After posting an eligible health care providers FCC Form 465 on the Rural Health Care Corporation website, the Rural Health Care Corporation shall send confirmation of the posting to the entity requesting services. The health care provider shall wait at least 28 days from the date on which its FCC Form 465 is posted on the website before making commitments with the selected telecommunications carrier(s).

* * * * *

31. Add § 54.604 to subpart G to read as follows:

§ 54.604 Existing contracts.

(a) *Existing contract.* A signed contract for services eligible for support pursuant to this subpart between an eligible health care provider as defined under § 54.601 and a service provider shall be exempt from the competitive bid requirements set forth in § 54.603(a) as follows:

(1) A contract signed on or before July 10, 1997 is exempt from the competitive bid requirement for the life of the contract; or

(2) A contract signed after July 10, 1997 but before the date on which the universal service competitive bid system described in § 54.603 is operational is exempt from the competitive bid requirements only with respect to services that will be provided under such contract between January 1, 1998 and December 31, 1998.

(b) For rural health care providers that take service under or pursuant to a master contract, as defined in § 54.500(f), the date of execution of that master contract represents the applicable date for purposes of determining whether and to what extent the rural health care provider is exempt from the competitive bid requirements.

(c) The competitive bid system will be deemed to be operational when the Rural Health Care Corporation is ready to accept and post FCC Form 465 from rural health care providers on a website and that website is available for use by service providers.

(d) The exemption from competitive bid requirements set forth in paragraph (a) shall not apply to voluntary extensions of existing contracts.

32. Amend § 54.605 by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 54.605 Determining the urban rate.

* * * * *

(d) The ''standard urban distance'' for a state is the average of the longest diameters of all cities with a population of 50,000 or more within the state.

(e) The Rural Health Care Corporation shall calculate the ''standard urban distance'' and shall post the ''standard urban distance'' and the maximum supported distance for each state on its website.

33. Amend § 54.609 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 54.609 Calculating support.

(a) Except with regard to services provided under § 54.621 and subject to the limitations set forth in this subpart, the amount of universal service support for an eligible service provided to a rural health care provider shall be the difference, if any, between the urban rate and the rural rate charged for the service, as defined herein. In addition, all reasonable charges that are incurred by taking such services, such as state and federal taxes shall be eligible for universal service support. Charges for termination liability, penalty surcharges, and other charges not

included in the cost of taking such service shall not be covered by the universal service support mechanisms.

* * * * *

(c) The universal service support mechanisms shall cover reduced rates on intrastate telecommunications services, as set forth in § 54.101(a), provided to rural health care providers as well as interstate telecommunications services.

34. Amend § 54.619 by revising paragraphs (b) and (d) to read as follows:

§ 54.619 Audit program.

* * * * *

(b) *Production of records.* Health care providers shall produce such records at the request of any auditor appointed by the Rural Health Care Corporation or any other state or federal agency with jurisdiction.

* * * * *

(d) *Annual report.* The Rural Health Care Corporation shall use the information obtained under paragraph (a) of this section to evaluate the effects of the regulations adopted in this subpart and shall report its findings to the Commission on the first business day in May of each year.

35. Amend § 54.623 by revising paragraph (e) to read as follows:

§ 54.623 Cap.

* * * * *

(e) *Long term contracts.* If health care providers enter into long term contracts for eligible services, the Rural Health Care Corporation shall only commit funds to cover the portion of such a long term contract scheduled to be delivered during the funding year for which universal service support is sought.

36. Add § 54.625 to subpart G to read as follows:

§ 54.625 Support for services beyond the maximum supported distance for rural health care providers.

(a) The maximum support distance is the distance from the health care provider to the farthest point on the boundary of the nearest large city, as calculated by the Rural Health Care Corporation.

(b) An eligible rural health care provider may purchase an eligible telecommunications service, as defined in § 54.601(c)(1) through (c)(2), that is provided over a distance that exceeds the maximum supported distance.

(c) If an eligible rural health care provider purchases an eligible telecommunications service, as defined in § 54.601(c)(1) through (c)(2), that exceeds the maximum supported distance, the health care provider must pay the applicable rural rate for the distance that such service is carried beyond the maximum supported distance.

37. Amend § 54.703 by adding a new last sentence to paragraphs (b) and (c) to read as follows:

§ 54.703 Contributions.

* * * * *

(b) * * * The following entities will not be required to contribute on the basis of revenues derived from the provision of interstate telecommunications: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters of video programming; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

(c) * * * The following entities will not be required to contribute on the basis of revenues derived from the provision of interstate telecommunications: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters of video programming, systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

38. Revise § 54.705 to read as follows:

§ 54.705 De minimis exemption.

If a contributor's contribution to universal service in any given year is less than $10,000 that contributor will not be required to submit a contribution or Universal Service Worksheet for that year. If a contributor improperly claims exemption from the contribution requirement, it will subject to the criminal provisions of sections 220(d) and (e) of the Act regarding willful false submissions and will be required to pay the amounts withheld plus interest.

39. Amend § 54.709 by revising paragraph (a) introductory text, and paragraph (a)(3) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and contribution factors determined quarterly by the Commission.

* * * * *

(3) Total projected expenses for universal service support programs for each quarter must be approved by the Commission before they are used to calculate the quarterly contribution factors and individual contributions. For each quarter, the High Cost and Low Income Committee or the permanent Administrator once the permanent Administrator is chosen and the Schools and Libraries and Rural Health Care Corporations must submit their projections of demand for the high cost and low-income programs, the schools and libraries program, and rural health care program, respectively, and the basis for those projections, to the Commission and the Common Carrier Bureau at least 60 calendar days prior to the start of that quarter. For each quarter, the Administrator and the Schools and Libraries and Rural Health Care Corporations must submit their projections of administrative expenses for the high cost and low-income programs, the schools and libraries program and the rural health care program, respectively, and the basis for those projections to the Commission and the Common Carrier Bureau at least 60 calendar days prior to the start of that quarter. Based on data submitted to the Administrator on the Universal Service Worksheets, the Administrator must submit the total contribution bases to the Commission and the Common Carrier Bureau at least 60 days before the start of each quarter. The projections of demand and administrative expenses and the contribution factors shall be announced by the Commission in a Public Notice published in the **Federal Register** and shall be made available on the Commission's website. The Commission reserves the right to set projections of demand and administrative expenses at amounts that the Commission determines will serve the public interest at any time within the 14-day period following publication of the Commission's Public Notice. If the Commission takes no action within 14 days of the Public Notice announcing projections of demand and administrative expenses, the projections of demand and administrative expenses, and contribution factors shall be deemed approved by the Commission. Once the projections are approved, the Administrator shall apply the quarterly contribution factors to determine individual contributions.

* * * * *

PART 69—ACCESS CHARGES

40. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 254, and 403.

41. Amend § 69.153 by adding paragraph (h) to read as follows:

§ 69.153 Presubscribed interexchange carrier charge (PICC).

* * * * *

(h) If a local exchange carrier receives low income universal service support on behalf of a customer under § 54.403(d) of this chapter, then the local exchange carrier shall not recover a residential presubscribed interexchange carrier charge from that end-user customer or its presubscribed interexchange carrier. Any amounts recovered under § 54.403(d) of this chapter by the local exchange carrier shall be treated as if they were recovered through the presubscribed interexchange carrier charge.

42. Amend § 69.612 by revising the first sentence of paragraph (a)(3) to read as follows:

§ 69.612 Long term and transitional support.

* * * * *

(a) * * *

(3) Beginning July 1, 1994, and thereafter, the Long Term Support payment obligation shall be funded by each telephone company that files its own Carrier Common Line tariff and does not receive transitional sup port. * * *

* * * * *

45. Amend § 69.616 by revising the third sentence of paragraph (d) to read as follows:

§ 69.616 Independent subsidiary functions.

* * * * *

(d) * * * The independent subsidiary may borrow start-up funds from the association. Such funds may not be drawn from the Telecommunications Relay Services (TRS) fund or TRS administrative expense accounts. * * *

46. Amend § 69.619 by revising paragraph (b) to read as follows:

§ 69.619 Schools and Libraries Corporation functions.

* * * * *

(b) The Schools and Libraries Corporation shall implement the rules of priority in accordance with § 54.507(g) of this chapter.

* * * * *

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