RHODE ISLAND—OZONE—Continued

[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Kent County	June 9, 1999	1 hr.std.N.A.[2]		
Newport County	June 9, 1999	1 hr.std.N.A.[2]		
Providence County	June 9, 1999	1 hr.std.N.A.[2]		
Washington County	June 9, 1999	1 hr.std.N.A.[2]		

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

7. In § 81.343, the table entitled ''Tennessee—Ozone (1-Hour Standard)'' is amended by revising the entry for ''Memphis Area'' to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—OZONE

[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Memphis Area:				
Shelby County	June 9, 1999	1 hr.std.N.A.[2]		
*	*	*	*	*

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

8. In § 81.350, the table entitled ''Wisconsin—Ozone (1-Hour Standard)'' is amended by revising the entry for ''Door County Area'' to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—OZONE

[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Door County Area:				
Door County	June 9, 1999	1 hr.std.N.A.[2]		
*	*	*	*	*

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

[FR Doc. 99–14595 Filed 6–7–99; 10:42 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket Nos. 96–45 and 96–262; FCC 99–119]

Federal-State Joint Board on Universal Service; Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The document Federal-State Joint Board on Universal Services; Access Charge Reform establishes the framework for a new forward-looking high-cost universal service support mechanism. The new mechanism will have a two-part methodology that considers both the relative costs of providing supported services and the states' ability to support those costs using their own resources. In taking these steps, we are moving closer to bringing to fruition the work of the Joint Board and this Commission to render universal service support mechanisms explicit, sufficient, and sustainable as local competition develops. The federal support mechanism would provide support for costs that exceed both the

national benchmark and the individual state's resources to support those costs.

DATES: Effective June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554.

I. Introduction

1. The Telecommunications Act of 1996 (1996 Act) has fostered and accelerated the development of competition in local telecommunications markets across the nation. The 1996 Act also, for the first time, wrote into law the Commission's long-standing policy of supporting universal service. In codifying this federal policy, Congress sought to ensure that universal service remains achievable and sustainable as local competition develops.

2. In this Order, based on recommendations from the Federal-State Joint Board on Universal Service (Joint Board), we take action to achieve this Congressional goal and to ensure that mechanisms exist so that non-rural carriers' rates for services supported by universal service mechanisms remain affordable in all regions of the nation and reasonably comparable to those prevalent in urban areas. In taking these steps, we are moving closer to bringing to fruition the work of the Joint Board and this Commission to render universal service support mechanisms explicit, sufficient, and sustainable as local competition develops.

3. In this Order, we adopt broad revisions to the federal support mechanisms, in light of the Joint Board's most recent recommendations, to permit rates to remain affordable and reasonably comparable across the nation, consistent with the 1996 Act and the competitive environment that it envisions. To accomplish these goals, as recommended by the Joint Board, we establish a methodology for determining non-rural carriers' support amounts, based on forward-looking costs estimated using a single, national model, and a national cost benchmark. We explicitly reconsider and repudiate any suggestion in the *First Report and Order*, 62 FR 32862 (June 17, 1997), that federal support should be limited to 25 percent of the difference between the benchmark and forward-looking cost estimates, in favor of the more nuanced balancing of federal and state responsibilities outlined by the Joint Board. To the extent a state's resources are deemed inadequate to maintain affordable and reasonably comparable rates, the federal mechanism will provide the necessary support. We also adopt today the hold-harmless and portability principles recommended by the Joint Board.

A. The Purpose of Support

4. We agree with the Joint Board that a primary focus in reforming the federal high-cost universal service support mechanism is to enable intrastate rates to remain both affordable and reasonably comparable across high-cost and urban areas. We also agree with the Joint Board that the Commission bears the responsibility to ensure that interstate rate structures comply with the Congressional mandates expressed in the Communications Act of 1934, as amended (the Act). In this section, we adopt the majority of the Joint Board's conclusions and recommendations concerning affordability, reasonable comparability, explicit interstate support, and explicit intrastate support. Pursuant to the Joint Board's recommendation, we are leaving the existing support mechanism in place for non-rural carriers for an additional six months. We anticipate adopting the permanent methodology for calculating and distributing support for non-rural carriers, based on forward-looking economic costs, this fall for implementation on January 1, 2000.

1. Enabling Reasonably Comparable Rates

5. We agree with the Joint Board that a central purpose of federal universal service support mechanisms is to enable rates in rural areas to remain reasonably comparable to rates in urban areas, and we adopt the Joint Board's interpretation of the reasonable comparability standard to refer to ''a fair range of urban/rural rates both within a state's borders, and among states nationwide.'' This does not mean, of course, that rate levels in all states, or in every area of every state, must be the same. In particular, as the local exchange market becomes more competitive, it would be unreasonable to expect rate levels not to vary to reflect the varying costs of serving different areas. The Joint Board and the Commission have concluded that current rate levels are affordable. Therefore, we interpret the goal of maintaining a ''fair range'' of rates to mean that support levels must be sufficient to prevent pressure from high costs and the development of competition from causing unreasonable increases in rates above current, affordable levels. When we use the term ''reasonably comparable'' throughout this Order, we are referring to this definition of the term.

6. We find that, once we have resolved several implementation issues and further verified the forward-looking cost model, the Joint Board's recommended methodology largely will be an appropriate means for the federal mechanism to ensure that states have the ability to achieve reasonable comparability. Specifically, the Joint Board's proposed methodology will ensure that any state with per-line costs substantially above the nationwide average will receive federal support for those intrastate costs, unless the state has the ability to maintain reasonably comparable rates without such support. States, of course, retain primary responsibility for local rate design policy and, as such, bear the responsibility to marshall state and federal support resources to achieve reasonable comparability of rates.

7. This approach does not consider rates directly. Instead, it uses costs as an indicator of a state's ability to maintain reasonable comparability of rates within the state and relative to other states. We conclude that the underlying assumption in the Joint Board's recommendation—that a relationship exists between high costs and high rates—is a sound one, because rates are generally based on costs. We adopt this approach, in part, because states possess broad discretion in developing local rate designs. State rate designs may reflect a broad array of policy choices that affect actual rates for local service, intrastate access, enhanced services, and other intrastate services. A state facing costs substantially in excess of the national average, however, may be unable through any reasonable combination of local rate design policy choices to achieve rates reasonably comparable to those that prevail nationally. Through an examination of the underlying costs, instead of the resulting rates, we can evaluate the cost levels that must be supported in each state in order to develop reasonably comparable rates. Because responsibility for such support is shared at the federal and state levels, determining the federal portion based on costs rather than rates allows the federal jurisdiction to help accomplish the goal of rate comparability without having to evaluate states' policy choices affecting those rates.

8. By providing support for costs in any state that exceed a benchmark level,

the Joint Board's recommended methodology ensures that the cost levels net of support that must be recovered through intrastate rates—and, by analogy, its assumed rate levels—must substantially exceed the national average. By taking account of the cost levels that must be supported in each state in order to enable reasonable comparability of rates, the Joint Board's methodology ensures that federal support is targeted to areas where it is necessary to achieve its intended purpose—enabling reasonable comparability of rates—and also that overall support levels are no higher than necessary to achieve this goal. We agree with the Joint Board that this methodology will result in federal support levels for each state that are appropriate to achieve the statutory principle of reasonable comparability of rates.

9. In the *First Report and Order*, the Commission concluded that the share of support provided by the federal mechanism should initially be set at 25 percent of the difference between the forward-looking cost of providing the supported services and a national benchmark. In adopting the Joint Board's recommended methodology, we reconsider the Commission's conclusions in the *First Report and Order* regarding the federal share of support. The Joint Board's recommended methodology for enabling reasonable comparability of rates will define the sharing of responsibility between the federal and state jurisdictions for high-cost intrastate universal service support in a way markedly different from the 25 percent federal share methodology adopted in the *First Report and Order*. Instead of allocating responsibility for universal service support based on fixed percentages, the Joint Board's recommended methodology recognizes the states' primary role in enabling reasonable comparability of rates. Under this recommendation, to the extent a state possesses the ability to support its high-cost areas wholly through internal means, the methodology we adopt recognizes that no federal support is required in that state to enable reasonably comparable local rates. Conversely, to the extent that a state faces larger rate comparability challenges than can be addressed internally, our forward-looking methodology places no artificial limits on the amount of federal support that is available, thus resulting in sufficient support as required by the 1996 Act.

10. We find that section 254(b)(3) supports the use of federal support to enable reasonable rate comparability among states. By specifying that ''[c]onsumers in all regions of the Nation'' should have rates and services reasonably comparable to rates and services in urban areas, we believe that Congress intended national, as opposed to state-by-state, comparisons. Some commenters dispute the Joint Board's interpretation of reasonable comparability. For example, the California Commission asserts that using federal universal service support to enable rate comparability among states would impermissibly expand the scope of section 254(b)(3), and that support should merely seek to enable the reasonable comparability of rates within each state. Similarly, the Maryland Commission claims that the Joint Board's interpretation would lead to the comparison of rural rates in all states to some fictional national urban rate, with the potentially anomalous result that rural rates in a state could be lower than urban rates in that state. The Joint Board's approach for enabling rate comparability relies not on a national urban rate, as the Maryland Commission asserts, but rather on a methodology that ensures that no state will face per-line costs that substantially exceed the costs faced by other states, taking into account the individual state's ability to support its own universal service needs. In this way, the Joint Board sought to ensure that every state has the means at its disposal to achieve reasonable comparability of rates in that state. We agree that the Joint Board's approach is an appropriate way for federal support mechanisms to enable ''consumers in all regions of the Nation'' to have access to ''reasonably comparable'' rates. We emphasize again, however, that, because states establish local rates, each state's policies will determine the level of urban rates relative to rural rates in that state.

2. Enabling Affordable Rates

11.We decline to adopt the proposals suggested by the D.C. Commission and Ad Hoc. We continue to believe, consistent with the Joint Board's recommendation, that rates for local service are generally affordable. Indeed, since March 1989, at least 93 percent of all households in the United States have had telephone service, and as of November 1998, the subscribership rate was 94.2 percent. While affordability encompasses more than subscribership, the Joint Board and the Commission agree that the states are better equipped to determine which additional factors can and should be used to measure affordability.

12.The principle of ensuring reasonably comparable rates, set forth in section 254(b)(3), does not specify an income component. To the contrary, although affordability may vary with individual subscriber income, section 254(b)(3)'s statement that consumers in rural and high-cost areas of the country should have access to telecommunications services at rates that are reasonably comparable to rates in urban areas is not qualified. Therefore, we find no congressional mandate for the Commission to implement or to require that states implement means-testing in conjunction with mechanisms designed to provide support to high-cost areas and to enable reasonable comparability of rates nationwide. Affordability problems, as they relate to low-income consumers, raise many issues that are unrelated to the need for support in high-cost areas, and section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates. The specific affordability issues unique to low-income consumers, including all factors that may be relevant to means-testing or other need-based inquiries, are best addressed at the federal level through programs specifically designed for this purpose. Indeed, the Commission already has such programs in place, namely, the Lifeline and Link-Up programs, which provide assistance for low-income consumers to get connected and stay connected to the telecommunications network. As discussed in the *First Report and Order*, we believe that the impact of household income on subscribership is more appropriately addressed through programs designed to help low income households obtain and retain telephone service, rather than as part of the federal high-cost support mechanism.

13. Moreover, forcing states to adopt means testing or limits on rates of return in order to receive federal high-cost support would be contrary to the Joint Board's recommendations. Although it may be within the Commission's jurisdiction to condition federal support on specific state action, the Joint Board recommended against our doing so in the high-cost context. Individual state commissions are in a position to evaluate specific affordability issues facing their respective states, and we believe that individual states should retain the primary responsibility to decide questions of affordability and to weigh the relative importance of factors such as consumer income and local rate design. Therefore, we decline to require means testing for federal high-cost support. An individual state, however,

could voluntarily adopt an explicit support mechanism using means testing or other cost-of-living data, as suggested by the D.C. Commission and Ad Hoc. Although the states retain discretion to adopt such a mechanism, we will continue to monitor the issue of rate affordability, and we will take remedial action, to the extent we have jurisdiction to do so, if it becomes necessary.

3. Making Interstate Support Explicit

14. We agree with the Joint Board that the Commission has the jurisdiction and responsibility to identify support for universal service that is implicit in interstate access charges. Moreover, we agree with the Joint Board that it is part of our statutory mandate that any such support, to the extent possible, be made explicit. In this proceeding and in our pending *Access Charge Reform*, 62 FR 31040 (June 6, 1997), proceeding, we are endeavoring to identify the types of implicit support in interstate access charges and the amount of that support. As we move forward with our efforts to reform interstate access charges, we will develop additional information on the costs of interstate access necessary to evaluate the Joint Board's recommendations in this area and the associated record. The overwhelming majority of commenters addressing the Joint Board's recommendations, however, agree that interstate access rates contain implicit support that should be made explicit. These commenters differ only as to the amount of their estimate of implicit support presently in access rates and the method for making it explicit. We anticipate taking action in the fall of 1999 to resolve the issue of making interstate support explicit, and we will address the Joint Board's recommendations at that time. Although, as explained, the statutory goal of making explicit the support that is currently implicit in interstate access charges is distinct from the statutory goal of ensuring reasonably comparable intrastate rates, we nevertheless recognize the close relationship between the implementation of the permanent revised support mechanism on January 1, 2000 and the *Access Charge Reform* proceeding. We therefore intend to move ahead with access reform in tandem with the implementation of the revised methodology.

4. Making Intrastate Support Explicit

15. Historically, states have ensured universal service principally through implicit support mechanisms, such as geographic rate averaging and above-cost pricing of vertical services, such as call waiting, voice mail, and caller ID. We agree with the Joint Board that the 1996 Act does not require states to adopt explicit universal service support mechanisms. Section 254(e) does not specifically mention state support mechanisms. Section 254(b)(5) declares that ''[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.'' Section 254(f) provides that states ''may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service.'' The permissive language in both of these sections demonstrates that Congress did not require states to establish explicit universal service support mechanisms. Accordingly, our actions today are consistent with the directives of the 1996 Act.

16. As the Joint Board acknowledged, however, the development of competition in local markets is likely to erode states' ability to support universal service through implicit mechanisms. We agree with the Joint Board that the erosion of intrastate implicit support does not mean that federal support must be provided to replace implicit intrastate support that is eroded by competition. Indeed, it would be unfair to expect the federal support mechanism, which by its very nature operates by transferring funds among jurisdictions, to bear the support burden that has historically been borne within a state by intrastate, implicit support mechanisms. The Joint Board stated that states ''possess the jurisdiction and responsibility to address these implicit support issues through appropriate rate design and other mechanisms within a state,'' and it concluded that states ''should bear the responsibility for the design of intrastate funding mechanisms.'' The Joint Board's position is consistent with the methodology that it recommended for determining federal support levels. That methodology does not mandate any particular state action, but assumes that states will take some action, whether through rate design or through an explicit support mechanism, to support universal service within the state, and provides for federal support where such state efforts would be insufficient to achieve reasonable comparability of rates. We will continue to monitor state efforts at eliminating implicit support and will consider additional measures should state efforts be insufficient in this regard.

B. Methodology for Estimating Costs and Computing Support

17. We are adopting the majority of the Joint Board's recommendations for a revised methodology for estimating costs and calculating federal support levels to enable reasonably comparable local rates for non-rural carriers. We are seeking further comment, however, on specific implementation issues in an Further Notice of Proposed Rulemaking (*FNPRM*). We conclude that the revised universal service high-cost support mechanism shall take effect on January 1, 2000. We anticipate that by January 1, 2000, the Commission will have made final determinations on all outstanding issues raised, and all verification of the cost model that will be used to estimate the forward-looking costs of providing supported services will have been completed.

18. Specifically, we adopt the Joint Board's recommendation that forward-looking economic costs should be used to estimate the costs of providing supported services. We also adopt the Joint Board's general recommendation that the methodology should rely primarily on states to achieve reasonably comparable rates within their borders while providing support for above-average costs to the extent that such costs prevent the state from enabling reasonable comparability of rates. We further adopt the Joint Board's recommendations that this explicit federal support mechanism should not be significantly larger than the current explicit federal mechanism.

1. Forward-Looking Economic Costs

19. We adopt the Joint Board's recommendation that support calculations be based on forward-looking costs, and that those costs be estimated using a single national model. As we stated in the *First Report and Order*, a methodology based on forward-looking economic costs will ''send the correct signals for entry, investment, and innovation in the long run.'' Many commenters support the use of forward-looking economic costs as the basis for estimating the costs of providing the supported services, because the use of forward-looking economic costs will encourage efficient entry and investment. The use of a carrier's book costs, by contrast, would not allocate support in a competitively neutral manner among potentially competing carriers. Instead, such a system would tend to distort support payments because current book costs are influenced by a variety of carrier-specific factors, such as the age of the plant, depreciation rates, efficiency of

design, and other factors. Support based on forward-looking models will ensure that support payments remain specific, predictable, and sufficient, as required by section 254, particularly as competition develops. To achieve universal service in a competitive market, support should be based on the costs that drive market decisions, and those costs are forward-looking costs.

20. Although we believe that forward-looking costs will set support levels most efficiently, we decline to adopt a suggestion of the Ohio Consumers' Counsel that carriers should receive the lesser of either current amounts of high-cost support or a forward-looking economic cost model-based amount. The hold-harmless provision set forth in of this Order is intended to prevent dislocation and rate shocks as we make the transition to a support system based on forward-looking costs. As noted, we intend for the Joint Board and the Commission to re-evaluate non-rural carriers' support mechanisms, including the hold-harmless provision, three years from the date that the revised mechanism is implemented.

21. Although some commenters have expressed concerns about the accuracy of the outputs of the cost model, we agree with the Joint Board that a national forward-looking model will provide a more consistent approach by which to develop a method for measuring rate comparability than would individual state cost studies. We believe state cost studies could rely on differing forward-looking cost methodologies, including differing assumptions or input data elements that would prevent meaningful comparisons of the resulting forward-looking cost estimates, and thus would provide a less accurate and consistent picture by which we could evaluate the cost levels that must be supported in each state to develop reasonably comparable rates. Therefore, we reject the use of state cost studies for the purpose of developing our method for rate comparability. States, of course, retain the flexibility to design state-level support mechanisms using other indicators of cost.

22. At this time, however, there has not been adequate time to verify the results of the cost model and to verify that certain input data elements are accurate. Thus, we cannot implement immediately a revised high-cost support mechanism based on forward-looking economic costs. We anticipate that the model and the input data will be verified and ready for use by January 1, 2000.

23. The Joint Board recommended that, if the Commission did not implement a forward-looking support mechanism on July 1, 1999 to enable the reasonable comparability of non-rural carriers' rates, the Commission should provide interim relief to high-cost states served primarily by non-rural carriers. In formulating this Order, we have continued to consult with the state Joint Board members, and they recently filed a letter stating that the Commission should not adopt an interim mechanism, given the brevity of the implementation delay that we adopt today. The state Joint Board members state that they have been unable to develop a workable interim solution, and that the administrative complexity of overlaying changes in collection and disbursement onto the existing system for only six months does not appear prudent. In light of the state members' position on this issue, and the reasons they present in their letter, we conclude that we should not adopt an interim support mechanism at this time.

2. Shared Federal-State Responsibility for Reasonably Comparable Rates

24. We agree with the Joint Board that the states share responsibility for universal service, and that states should have ''specific, predictable, and sufficient'' mechanisms in place to maintain and advance universal service. We further agree with the Joint Board that, because rates are generally affordable, and subscribership is high in most parts of the country, federal involvement may be limited to instances where states face significant obstacles in maintaining reasonably comparable rates. Because affordability is closely tied to local rate levels, established and regulated by the states, we conclude that states are well-positioned to adopt local rate structures and intrastate universal service support mechanisms that maintain affordable and reasonably comparable rates on a statewide basis. Federal mechanisms, in contrast, will assure that these goals are met nationally by providing support to those states where the cost of providing the supported services substantially exceed the national average. We find that the appropriate balance of responsibility for enabling reasonably comparable local rates can be struck through the methodology recommended by the Joint Board. Accordingly, we reconsider and reject the decision in the *First Report and Order* that the federal share of support should be limited to 25 percent of the difference between the forward-looking cost of providing the supported services and a national benchmark, and directed only to the interstate jurisdiction.

3. Determination of Federal Support Amounts

(1) Determining the National Benchmark. 25. We adopt the Joint Board's recommendation that federal high-cost intrastate support should be determined using a cost-based benchmark and should be provided where states are unable to provide sufficient intrastate universal service support to non-rural carriers with costs that exceed a national benchmark. In so doing, we reconsider and reject the determination in the *First Report and Order* that federal support for rate comparability should be determined using a revenue-based benchmark. Given the focus of the *Second Recommended Decision,* 63 FR 67837 (December 9, 1998), on rate comparability, and its recommendation that the Commission should rely on the cost of providing the supported services when determining support amounts, rather than local rates, we believe that a cost-based benchmark is more appropriate. We agree with the Joint Board's re-examination of this issue and its departure in the *Second Recommended Decision* from its original recommendation that a cost-based benchmark should not be used. We have continued to coordinate with the Joint Board in developing specific details of the methodology for determining high-cost support for non-rural carriers.

26. In the first step of the revised support methodology, areas will be identified where the forward-looking cost of providing the supported services exceeds the benchmark amount. We agree with the Joint Board that a cost-based benchmark provides a better gauge with which to identify areas in need of support to enable reasonably comparable rates than would a revenue benchmark. Contrary to the assertions of some commenters, revenues may not accurately reflect the level of need for support to enable reasonably comparable rates because states have varying rate-setting methods and goals.

(2) Determining a State's Ability to Support its High-Cost Areas. 27. We further agree with the Joint Board that federal support should be available to enable local rate comparability if the state cannot do so on its own, and thus that federal support for this purpose should be determined based, in part, on a state's ability to support its universal service needs internally. Given the difficulties in determining a state's ability to support its high-cost areas, and after extensive consultation with the Joint Board, we have concluded that a set dollar amount per line is an

appropriate method by which to ascertain a state's internal ability to achieve rate comparability. We agree with the Maine Commission that a fixed dollar amount per line is a reasonably specific and certain method by which to determine a state's share of responsibility for universal service support. We also believe that using a fixed dollar amount per line is an administratively simple methodology that can be applied in a consistent manner to all states. In this Order, however, we have not set a specific per-line dollar amount.

28. We agree in principle with those commenters that assert that using a fixed percentage of each state's intrastate revenues as the level of the state's responsibility for its universal service needs could unduly burden high-cost states that also have high intrastate revenues because they currently have high rates due to high costs. However a state chooses to bear its universal service burden (*i.e.,* through existing, implicit rate designs or through an explicit support mechanism), the ability to spread the burden over a larger number of lines will make the burden easier for a state to bear. In contrast, using the ratio of high-cost to low-cost lines, one method suggested by the Joint Board, may not be as predictable as using a fixed dollar amount per line, because the number of high-cost to low-cost lines may fluctuate over time. Using the ratio of high-cost to low-cost lines also would be an administratively difficult method of determining a state's internal ability to achieve rate comparability, given the fact that supporting data would need to be obtained from a variety of sources in each state. Finally, the Joint Board's recommendation that intrastate support be calculated as a percentage of intrastate telecommunications revenues was based in part on its judgment that intrastate telecommunications revenues provide a rough measure of the funds available to support intrastate mechanisms. Because we have decided to adopt a cost-based benchmark rather than a benchmark that is based on revenues, we do not believe that a percentage-based cap on intrastate responsibility would in every case provide a meaningful measure of a state's ability to fund intrastate support.

29. We emphasize that states are not, through the adoption of this approach, required to impose a per-line charge to support universal service, nor are carriers necessarily entitled to recover this amount from new or explicit state mechanisms. As the Joint Board explained, this amount reflects a reasonable estimate of the state's ability to achieve reasonably comparable rates on a statewide basis and establishes a level above which federal support, consisting of funds transferred from other jurisdictions, should be provided to assist the state in achieving rates that are reasonably comparable to those in other states. States largely are already making use of this ability by providing carriers with substantial universal service support, often through rate averaging and other rate design methodologies, and states are best positioned to determine how and whether these mechanisms need to be altered to ensure that carriers do not double-recover universal service support. Given the substantial amounts of universal service support already built into state rate designs, we agree with the Joint Board that providing the full amount of support determined by the federal methodology from federal mechanisms, without any estimate of state support, is likely to lead to carrier double-recovery.

30. Thus, in the second step of the revised support methodology, an assessment will be made as to whether the perceived support need, as established in the first step of the methodology, exceeds the state's ability to achieve reasonable comparability of rates. The state's ability will be estimated by multiplying a dollar figure by the number of lines served by non-rural carriers in the state. Any needed support that exceeds this estimate of the state's ability to support its own high-cost areas will be provided by the federal mechanism. In this way, the mechanism will ensure that every state will have adequate resources to ensure reasonably comparable rates.

4. Size of the Federal Support Mechanism and Hold-Harmless

31. In this Order, we adopt the recommendation of the Joint Board that a hold-harmless provision should be implemented to prevent substantial reductions of federal support and potentially significant rate increases. Adoption of a hold-harmless provision will both serve to avoid any potential rate shock when the new federal support mechanism goes into effect, and to prevent undue disruption of state rate designs that may have been constructed upon, and thus are dependent upon, current federal high-cost support flows. We agree with the Joint Board that the hold-harmless amounts should be provided in lieu of the amounts computed by the two-step forward-looking methodology described, whenever the hold-harmless amount exceeds the amount indicated by the forward-looking methodology.

32. In determining the size of the new federal mechanism to enable reasonably comparable local rates, we must fulfill our statutory obligation to assure sufficient, specific, and predictable universal service support without imposing an undue burden on carriers and, potentially, consumers to fund any increases in federal support. Because increased federal support would result in increased contributions and could increase rates for some consumers, we are hesitant to mandate large increases in explicit federal support for local rates in the absence of clear evidence that such increases are necessary either to preserve universal service, or to protect affordable and reasonably comparable rates, consistent with the development of efficient competition. Rather, we agree with the Joint Board that current conditions do not necessitate substantial increases in federal support for local rates. We believe that limiting the amount of new support that each state receives under the new mechanism is consistent with the Joint Board's recommendation that the amount of such federal support should not increase significantly.

33. The Joint Board initially recommended that having the federal mechanism calculate support using study-area average costs would be one way roughly to maintain the current size of the federal mechanism. Indeed, the current system calculates costs using study area-averaged costs. While we agree with the Joint Board that there is no current need for large increases in the size of the federal support mechanism for local rates, we are seeking further comment in an *FNPRM* on whether it is equally important, even at this early stage in the development of local competition, to provide support that is calculated at a more granular level. Given that telephone service currently is largely affordable, and any significant increase in the size of federal support for local rates appears unnecessary, we conclude that we should limit the size of the federal mechanism, as recommended by the Joint Board.

5. Portability of Support

34. In the *Second Recommended Decision,* the Joint Board recommended that the Commission maintain the policy established in the *First Report and Order* of making high-cost support available to all eligible telecommunications carriers, whether they be incumbent LECs, competitive carriers, or wireless carriers. The Joint Board stated that portable support is consistent with the principle of competitive neutrality, and expressed

its continued support for competitive neutrality as a guiding principle of universal service reform. GTE and USTA expressed general support for this recommendation.

35. We conclude, consistent with the Joint Board's recommendation, that the policy the Commission established in the *First Report and Order* of making support available to all eligible telecommunications carriers should continue. All carriers, including commercial mobile radio service (CMRS) carriers, that provide the supported services, regardless of the technology used, are eligible for ETC status under section 214(e)(1). We reiterate that the plain language of section 214(e)(1) prohibits the Commission or the states from adopting additional eligibility criteria beyond those enumerated in section 214(e)(1). We also reaffirm that under section 214(e), a state commission must designate a common carrier, including carriers that use wireless technologies, as an eligible carrier if it determines that the carrier has met the requirements of section 214(e)(1). We re-emphasize that the limitation on a state's ability to regulate rates and entry by wireless service carriers under section 332(c)(3) does not allow the states to deny wireless carriers ETC status.

36. We agree with the Joint Board that competitive neutrality is a fundamental principle of universal service reform, and that portability of support is necessary to ensure that universal service support is distributed in a competitively neutral manner. We also agree with US West that ''portability'' of support should not be used to divert federal funds from high-cost areas to other areas. For this very reason, we conclude that all carriers, both incumbent LECs and competitive LECs, must use high-cost support in a manner consistent with section 254.

37. Although we adopt a hold-harmless provision we do not believe that the Joint Board intended incumbent LECs to be held harmless for federal high-cost support amounts that they lose when a customer elects to switch carriers and begins taking service from a competitive LEC. Such a conclusion would contravene the Joint Board's desire that competitive neutrality be a driving force behind universal service reform. Moreover, it would eviscerate the concept of ''portable'' support if the loss of customers to a competitor did not change the incumbent's support amounts. We conclude, therefore, that incumbent LECs will not be held harmless for reductions in their federal high-cost support amounts that result from competitive LECs capturing that incumbent LEC's customers. In addition, a competitive LEC or other carrier that gains an incumbent LEC's customers, and hence any high-cost support that the incumbent LEC had received for those customers, may only use that support in a manner consistent with section 254.

6. Use of Support

38. We conclude that carriers must apply federal high-cost universal service support in a manner consistent with section 254. Specifically, section 254(e) requires carriers to use universal service support ''only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.''

39. We also conclude that, if we find that a carrier has not applied its universal service high-cost support in a manner consistent with section 254, we have the authority to take appropriate enforcement actions. States or other parties may petition the Commission, pursuant to section 208 of the Act, if such parties believe that a common carrier has misapplied its high-cost universal service support. States or other parties should avail themselves of the Commission's formal complaint procedures if they believe that a common carrier is not using its federal universal service high-cost support in accordance with the directions we have set forth in this Order. Because the Commission's statutory authority under section 208 extends to violations of the Act by all common carriers, we conclude that all potential recipients of high-cost support would be subject to our enforcement jurisdiction. Depending on the nature of the complaint, furthermore, a complaint filed by a party against a common carrier alleging misapplication of universal service high-cost support could qualify for resolution under the Commission's ''accelerated docket'' procedures.

C. Carrier Recovery of Universal Service Contributions from Consumers

40. Because we have resolved, or are resolving, all of the carrier recovery issues in the *Truth-in-Billing* proceeding, we need not revisit them here. We continue to believe that the ongoing *Truth-in-Billing* proceeding, with the detailed record being developed there, is the correct forum to resolve these issues. We wish to emphasize, however, that prior to the adoption in the *Truth-in-Billing* proceeding of any final standardized label for universal service charges on consumer bills, we will not hesitate to take enforcement action against carriers who engage in unjust or unreasonable practices in violation of section 201(b).

D. Assessing Contributions from Carriers

41. The Fifth Circuit has not yet issued a decision in *Texas Public Utility Counsel* v. *FCC.* While we acknowledge the Joint Board's observation that changing the assessment base to include both interstate and intrastate end-user telecommunications revenues would ease burdens on carriers that would not otherwise have to separate revenues on a jurisdictional basis and that a broader revenue base would result in a lower assessment rate, these recommendations are contingent upon the Fifth Circuit's decision in *Texas Public Utility Counsel* v. *FCC.* Accordingly, pending further resolution of this matter by the Fifth Circuit, the assessment base and the recovery base for contributions to the high-cost and low-income universal service support mechanism that we adopted in the *First Report and Order* shall remain in effect.

E. Unserved Areas

42. During the proceedings that led to the *Second Recommended Decision,* the Arizona Corporation Commission submitted a proposal to use a portion of federal support to address the problem of unserved areas and the inability of low-income residents to obtain telephone service because they cannot afford to pay line extension or construction charges. In the *Second Recommended Decision,* the Joint Board expressed its interest in ensuring that telephone service is provided to unserved areas, and recognized that states other than Arizona may have unserved areas that may need to be examined. Because providing service to unserved areas has historically been addressed by the states, the Joint Board concluded that the states should continue to address unserved area problems, to the extent they are able to do so. The Joint Board recognized, however, that there may be some circumstances that warrant federal universal service support for line extensions to unserved areas. The Joint Board recommended that the Commission investigate the question of unserved areas in a separate proceeding and determine, in consultation with the Joint Board, whether there are unserved areas that warrant any federal universal service consideration.

43. We agree with the Joint Board that, while the states have historically addressed the issue of providing service to unserved areas, there may be unserved areas, or inadequately-served areas characterized by extremely low density, low penetration, and high costs

that warrant additional federal universal service support. Commenters who addressed this issue agree with the Joint Board that the Commission should investigate this issue further. Bringing service to these areas is clearly within the goal of the 1996 Act to accelerate deployment of services to ''all Americans.'' In accordance with the Joint Board's recommendations, therefore, we will initiate a separate proceeding in July of 1999 to more fully develop the record on this issue, and investigate the nature and extent of the ''unserved area'' issue in the nation. We anticipate that, as a result of this separate proceeding, and in consultation with the Joint Board, we will be better able to determine whether any of these unserved areas should receive federal universal service support.

F. Periodic Review

44. In the *Second Recommended Decision,* the Joint Board noted that the 1996 Act contemplates that the Joint Board may periodically make recommendations to the Commission regarding modifications in the definition of services supported by the federal universal service support mechanism. In addition to recommending that the Commission continue to consult with the Joint Board on matters addressed in the *Second Recommended Decision,* the Joint Board specifically recommended that the Joint Board and the Commission broadly reexamine the high cost universal service mechanism no later than three years from the implementation date of the revised universal service high-cost mechanism.

45. We affirm our commitment to consulting with the Joint Board on an ongoing basis on issues addressed in this Order. We agree with the Joint Board that both ongoing and periodic review is necessary in light of the fact that the telecommunications industry is rapidly changing, and both competition and technological change may affect universal service needs in rural, insular, and high cost areas. We conclude that, in addition to ongoing consultation with the Joint Board, the Commission and the Joint Board shall, on or before January 1, 2003, comprehensively examine the operation of the high cost universal service mechanism implemented in this Order, including the hold-harmless mechanism.

II. Procedural Matters

A. Regulatory Flexibility Act

46. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency promulgates a final rule, unless the agency certifies that the proposed or final rule will not have ''a significant economic impact on a substantial number of small entities,'' and includes the factual basis for such certification. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. The Small Business Administration (SBA) defines a ''small business concern'' as an enterprise that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.

47. We conclude that neither an IRFA nor a FRFA are required here because the foregoing *Report and Order* adopts a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations, affiliates of such corporations, or dominant in their field of operations. Therefore, we certify, pursuant to section 605(b) of the RFA, that the final rule adopted in the *Report and Order,* will not have a significant economic impact on a substantial number of small entities. The Office of Public Affairs, Reference Operation Division, will send a copy of this certification, along with this *Report and Order,* to the Chief Counsel for Advocacy of the SBA in accordance with the RFA. In addition, this certification, *Report and Order* (or summaries thereof) will be published in the **Federal Register**.

B. Effective Date of Final Rules

48. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the **Federal Register**. Pursuant to our rules, our existing high-cost support mechanism is scheduled to be phased out on July 1, 1999. In this Order, however, we conclude that the new forward-looking high-cost support mechanism should be implemented on January 1, 2000, instead of July 1, 1999, as previously planned. The amendments we adopt in this Order extend the present high-cost support mechanism from July 1, 1999, until January 1, 2000, when the new forward-looking high-cost support mechanism will be implemented. Thus, the amendments must become effective before July 1, 1999. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the required July 1, 1999 effective date. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

III. Ordering Clauses

49. 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 Report and Order is adopted, June 9, 1999.

50. It is further ordered that part 36 of the Commission's rules, 47 CFR 36, is amended as set forth, effective immediately upon publication of the text thereof in the **Federal Register**.

List of Subjects in 47 CFR Part 36

Reporting and recordkeeping requirements and Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 54 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.

§ 36.601 [Amended]

2. In 47 CFR 36.601(c) remove the date ''July 1, 1999'' and add, in its place each place it appears, the date ''January 1, 2000.''

[FR Doc. 99–14698 Filed 6–8–99; 8:45 am]

BILLING CODE 6712–01–P