

frequency bands that are allocated primarily for Federal use, are to transition to narrower, more spectrally efficient channels in a process commonly known as "narrowbanding." This document contains a correction to the effective date in footnote US312 and § 90.20 (e)(6), which was incorrectly stated.

**DATES:** Effective May 27, 2005.

**FOR FURTHER INFORMATION CONTACT:** Tom Mooring, Office of Engineering and Technology, (202) 418-2450, email: [Tom.Mooring@fcc.gov](mailto:Tom.Mooring@fcc.gov).

**SUPPLEMENTARY INFORMATION:** In FR Doc. 05-8338, appearing on pages 21659 and 21660 in the **Federal Register** of Wednesday, April 27, 2005, the following corrections are made:

1. On page 21659, in the third column, third sentence in footnote US312 the date "April 27, 2019" is corrected to read as "May 27, 2019".

2. On page 21660, in paragraph (e)(6), in the third column, first sentence the date "April 27, 2019" is corrected to read "May 27, 2019".

Federal Communications Commission.

**Marlene Dortch,**  
*Secretary.*

[FR Doc. 05-10336 Filed 5-24-05; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 96-45; FCC 05-46]

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission addresses the minimum requirements for a telecommunications carrier to be designated as an "eligible telecommunications carrier" or "ETC," and thus eligible to receive federal universal service support. Specifically, consistent with the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we adopt additional mandatory requirements for ETC designation proceedings.

**DATES:** Effective June 24, 2005 except for §§ 54.202 and 54.209 which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the

effective date of those sections. Written comments by the public on the new and/or modified information collection requirements are due July 25, 2005.

**ADDRESSES:** All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov). Parties should also send three paper copies of their filings to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B540, Washington, DC 20554. See Supplemental Information for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Mark Seifert, Assistant Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400, TTY (202) 418-0484. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at (202) 418-0214, or via the Internet at [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, in CC Docket No. 96-45, FCC 05-46, released March 17, 2005. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

#### I. Introduction

1. This *Report and Order* addresses the minimum requirements for a telecommunications carrier to be designated as an "eligible telecommunications carrier" or "ETC," and thus eligible to receive federal universal service support. Specifically, consistent with the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we adopt additional mandatory requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act). In addition, as recommended by the Joint Board, we

encourage states that exercise jurisdiction over ETC designations pursuant to section 214(e)(2) of the Act, to adopt these requirements when deciding whether a common carrier should be designated as an ETC. We believe that application of these additional requirements by the Commission and state commissions will allow for a more predictable ETC designation process.

2. We also believe that because these requirements create a more rigorous ETC designation process, their application by the Commission and state commissions will improve the long-term sustainability of the universal service fund. Specifically, in considering whether a common carrier has satisfied its burden of proof necessary to obtain ETC designation, we require that the applicant: (1) Provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy consumer protection and service quality standards; (4) offer local usage plans comparable to those offered by the incumbent local exchange carrier (LEC) in the areas for which it seeks designation; and (5) acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. In addition, we make these additional requirements applicable on a prospective basis to all ETCs previously designated by the Commission, and we require these ETCs to submit evidence demonstrating how they comply with this new ETC designation framework by October 1, 2006, at the same time they submit their annual certification filing. As explained in greater detail below, however, we do not adopt the Joint Board's recommendation to evaluate separately whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area because we conclude the objective of such criterion will be achieved through the other requirements adopted in this *Report and Order*.

3. In this *Report and Order*, we also set forth the analytical framework the Commission will use to determine whether the public interest would be served by an applicant's designation as an ETC. We find that, under the statute, an applicant should be designated as an

ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier. Although the outcome of the Commission's § 214(e)(6) analysis may vary depending on whether the area is served by a rural or non-rural carrier, we clarify that the Commission's public interest examination for ETC designations will review many of the same factors for ETC designations in areas served by non-rural and rural incumbent LECs. In addition, as part of our public interest analysis, we will examine the potential for cream-skimming effects in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC. We also encourage states to apply the Commission's analysis in determining whether or not the public interest would be served by designating a carrier as an ETC.

4. In addition, we further strengthen the Commission's reporting requirements for ETCs in order to ensure that high-cost universal service support continues to be used for its intended purposes. An ETC, therefore, must submit, among other things, on an annual basis: (1) Progress updates on its five-year service quality improvement plan, including maps detailing progress towards meeting its five-year improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why any network improvement targets have not been met; (2) detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future; and (3) how many requests for service from potential customers were unfulfilled for the past year and the number of complaints per 1,000 handsets or lines. These annual reporting requirements are required for all ETCs designated by the Commission. We encourage states to require these reports to be filed by all ETCs over which they possess jurisdiction.

5. As explained below, we do not adopt the recommendation of the Joint Board to limit high-cost support to a single connection that provides access to the public telephone network. Section 634 of the 2005 Consolidated Appropriations Act prohibits the

Commission from utilizing appropriated funds to "modify, amend, or change" its rules or regulations to implement this recommendation. Nevertheless, we believe the rigorous ETC designation requirements adopted above will ensure that only ETCs that can adequately provide universal service will receive ETC designation, thereby lessening fund growth attributable to the designation and supporting the long-term sustainability of the universal service fund.

6. We also agree with the Joint Board's recommendation that changes are not warranted in our rules concerning procedures for redefinition of service areas served by rural incumbent LECs. In addition, in this *Report and Order*, we grant several petitions for redefinition of rural incumbent LEC service areas. Moreover, we direct the Universal Service Administrative Company (USAC), in accordance with direction from the Wireline Competition Bureau, to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules. We also modify the Commission's annual certification and line count filing deadlines so that newly designated ETCs are permitted to file that data within sixty days of their ETC designation date. This will allow high-cost support to be distributed as of the date of ETC designation. In addition, to enable price cap LECs and/or competitive ETCs that miss the June 30 annual interstate access support (IAS) certification deadline to receive IAS support, we modify the quarterly certification schedule for the receipt of IAS support. These carriers may file their certification after June 30 in order to receive IAS support in the second calendar quarter after the certification is filed. Finally, we decline to define mobile wireless customer location in terms of "place of primary use," as defined by the Mobile Telecommunications Sourcing Act (MTSA), for universal service purposes.

## II. Scope of Support

7. On December 8, 2004, Congress passed the *2005 Consolidated Appropriations Act*, which includes a provision prohibiting the Commission from utilizing appropriated funds to "modify, amend, or change its rules or regulations for Universal Service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments." Accordingly, in this *Report and Order*,

we do not consider the portion of the Joint Board's *Recommended Decision*, released February 27, 2004, related to limiting the scope of high-cost support to a single connection that provides access to the public telephone network.

## III. ETC Designation Process

8. State commissions and the Commission are charged with reviewing ETC designation applications for compliance with section 214(e)(1) of the Act. A common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area. The ETC must offer such services using either its own facilities or a combination of its own facilities and resale of another carrier's services. The ETC must also advertise the supported services and the associated charges throughout the service area for which designation is received, using media of general distribution. In addition, an ETC must advertise the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services. In this *Report and Order*, we adopt additional requirements consistent with section 214 of the Act that all ETC applicants must meet to be designated an ETC by this Commission. Further, although specific requirements set forth in this *Report and Order* may be relevant only for wireless ETC applicants and some may be relevant for wireline ETC applicants, this ETC designation framework generally applies to any type of common carrier that seeks ETC designation before the Commission under section 214(e)(6) of the Act.

9. In addition, we set forth our public interest analysis for ETC designations, which includes an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor's service offering. As part of our public interest analysis, we also will examine the potential for cream-skimming in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC.

10. We encourage state commissions to require ETC applicants over which they have jurisdiction to meet these same conditions and to conduct the same public interest analysis outlined in this *Report and Order*. We further encourage state commissions to apply these requirements to all ETC applicants in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.

### A. Eligibility Requirements

11. As described above, ETC applicants must meet statutorily prescribed requirements before we can approve their designation as an ETC. Based on the record before us, we find that an ETC applicant must demonstrate: (1) A commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. As noted above, these requirements are mandatory for all ETCs designated by the Commission. ETCs designated by the Commission prior to this *Report and Order* will be required to make such showings when they submit their annual certification filing on October 1, 2006. We also encourage state commissions to apply these requirements to all ETC applicants over which they exercise jurisdiction. We do not believe that different ETCs should be subject to different obligations, going forward, because of when they happened to first obtain ETC designation from the Commission or the state. These are responsibilities associated with receiving universal service support that apply to all ETCs, regardless of the date of initial designation.

#### 1. Commitment and Ability To Provide the Supported Services

12. We adopt the requirement that an ETC applicant must demonstrate its commitment and ability to provide supported services throughout the designated service area: (1) By providing services to all requesting customers within its designated service area; and (2) by submitting a formal network improvement plan that demonstrates how universal service funds will be used to improve coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high-cost support. We encourage states to adopt these requirements and, as recommended by the Joint Board, to do so in a manner that is flexible with applicable state laws and policies. For example, states that adopt these requirements should determine, pursuant to state law, what constitutes a "reasonable request" for service. In addition, we encourage states to follow

the Joint Board's proposal that any build-out commitments adopted by states "be harmonized with any existing policies regarding line extensions and carrier of last resort obligations."

13. First, we agree with and adopt the Joint Board recommendation to establish a requirement that an ETC applicant demonstrate its capability and commitment to provide service throughout its designated service area to all customers who make a reasonable request for service. We conclude that this requirement, which we adopted in the *Virginia Cellular ETC Designation Order*, 69 FR 8958, February 26, 2004 and *Highland Cellular ETC Designation Order*, 69 FR 26097, May 11, 2004 is appropriate as a general rule to ensure that all ETCs serve requesting customers in their designated service area. Therefore, consistent with these orders, we require that an ETC applicant make specific commitments to provide service to requesting customers in the service areas for which it is designated as an ETC. If the ETC's network already passes or covers the potential customer's premises, the ETC should provide service immediately. In those instances where a request comes from a potential customer within the applicant's licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) Modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment. We believe that these requirements will ensure that an ETC applicant is committed to serving customers within the entire area for which it is designated. If an ETC applicant determines that it cannot serve the customer using one or more of these methods, then the ETC must report the unfulfilled request to the Commission within 30 days after making such determination.

14. Second, we require an applicant seeking ETC designation from the Commission to submit a formal plan detailing how it will use universal service support to improve service within the service areas for which it seeks designation. Specifically, we require that an ETC applicant submit a five-year plan describing with specificity its proposed improvements

or upgrades to the applicant's network on a wire center-by-wire center basis throughout its designated service area. The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support. This showing must include: (1) How signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements. To demonstrate that supported improvements in service will be made throughout the service area, applicants should provide this information for each wire center in each service area for which they expect to receive universal service support, or an explanation of why service improvements in a particular wire center are not needed and how funding will otherwise be used to further the provision of supported services in that area. We clarify that service quality improvements in the five-year plan do not necessarily require additional construction of network facilities. Furthermore, as discussed *infra*, in connection with its annual reporting obligations, an ETC applicant must submit coverage maps detailing the amount of high-cost support received for the past year, how these monies were used to improve its network, and specifically where signal strength, coverage, or capacity has been improved in each wire center in each service area for which funding was received. In addition, an ETC applicant must submit on an annual basis a detailed explanation regarding why any targets established in its five-year improvement plan have not been met.

15. Some commenters assert that an applicant should submit more detailed build-out plans than discussed above, while other commenters request that the build-out plans include a specific timeline, including start and completion dates. Our approach incorporates many commenters' suggestions; however, mandatory completion dates established by the Commission would not account for unique circumstances that may affect build-out, including the amount of universal service support or customer demand. On balance, we find that our approach allows consideration of fact-specific circumstances of the carrier and

the designated service area, while ensuring that high-cost support will be used to improve service.

## 2. Ability To Remain Functional in Emergency Situations

16. We adopt the Joint Board's recommendation that we require an ETC applicant to demonstrate its ability to remain functional in emergency situations. Specifically, in order to be designated as an ETC, an applicant must demonstrate it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. We believe that functionality during emergency situations is an important consideration for the public interest. Moreover, to ensure that ETCs continue to comply with this requirement, as discussed *infra*, ETCs designated by the Commission must certify on an annual basis that they are able to function in emergency situations. Because most emergency situations are local in nature, we anticipate that state commissions that choose to adopt an emergency functionality requirement may also identify other geographically-specific factors that are relevant for consideration. If states impose any additional requirements, we encourage them to do so in a manner that is consistent with the universal service principle of competitive neutrality.

17. We also disagree with commenters that propose that the Commission adopt a specific benchmark requiring an ETC to maintain eight hours of back-up power and ability to reroute traffic to other cell sites in emergency situations. We believe that such a benchmark is inappropriate because, although an ETC may have taken reasonable precautions to remain functional during an emergency, the extreme or unprecedented nature of the emergency may render the carrier inoperable despite any precautions taken, including battery back-up and plans to reroute traffic. Furthermore, we reject suggestions that ETCs should be required to publish signal strength for their primary digital technology because signal coverage, quality, or capacity will already be reported on an annual basis to the Commission as part of the five-year network improvement plan.

18. Furthermore, as discussed *infra*, in connection with its annual reporting obligations, an ETC applicant must submit data concerning outages in its designated service areas on an annual basis. In addition, to minimize the administrative burdens that may be

associated with such reports, these reporting requirements are modeled after the Commission's reporting requirements concerning outages adopted in the *Outage Reporting Order*, 69 FR 68859, November 26, 2004.

## 3. Consumer Protection

19. As recommended by the Joint Board, we require a carrier seeking ETC designation to demonstrate its commitment to meeting consumer protection and service quality standards in its application before the Commission. We find that an ETC applicant must make a specific commitment to objective measures to protect consumers. Consistent with the designation framework established in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* and as suggested by commenters, a commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC applicant seeking designation before the Commission. We will consider the sufficiency of other commitments on a case-by-case basis. We believe that requiring an ETC applicant to demonstrate that it will comply with these consumer protection requirements is consistent with section 254 of the Act, and with related Commission orders that require policies that universal service serve "the public interest, convenience and necessity" and ensure that consumers are able to receive an evolving level of universal service that "tak[es] into account advances in telecommunications, and information technologies and services." In addition, an ETC applicant, as described *infra*, must report information on consumer complaints per 1,000 handsets or lines on an annual basis.

20. We also believe that adopting state specific requirements as part of our ETC designation process might require the Commission to interpret state statutes and rules. An ETC applicant must commit to serve the entire service area and must provide five-year network improvement plans addressing each wire center for which it expects to receive support. We therefore conclude, given the consumer protection measures and other requirements adopted above and the provision in section 214(e)(4) of the Act that protects customers in the event that another ETC relinquishes designation, that it is unnecessary to impose additional obligations as a condition of granting ETC status to a competitive carrier.

21. As with the other requirements adopted in this *Report and Order*, state

commissions that exercise jurisdiction over ETC designations may either follow the Commission's framework or impose other requirements consistent with federal law to ensure that supported services are offered in a manner that protects consumers. Several commenters argue that an ETC should be required to submit to the same state laws concerning consumer protection that the incumbent LEC must follow. These include, for example, billing, collection, and mediation obligations. In determining whether any additional consumer protection requirement should apply as a prerequisite for obtaining ETC designation from the state—*i.e.*, where such a requirement would not otherwise apply to the ETC applicant—we encourage states to consider, among other things, the extent to which a particular regulation is necessary to protect consumers in the ETC context, as well as the extent to which it may disadvantage an ETC specifically because it is not the incumbent LEC. We agree with the Joint Board's assertion that "states should not require regulatory parity for parity's sake." We therefore encourage states that impose requirements on an ETC to do so only to the extent necessary to further universal service goals.

22. We also reject commenters' arguments that consumer protection requirements imposed on wireless carriers as a condition for ETC designation are necessarily inconsistent with section 332 of the Act. While section 332(c)(3) of the Act preempts states from regulating the rates and entry of CMRS providers, it specifically allows states to regulate the other terms and conditions of commercial mobile radio services. Therefore, states may extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service.

## 4. Local Usage

23. We adopt the Joint Board's recommendation that we establish a local usage requirement as a condition of receiving ETC designation. Specifically, we require an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation. As in past orders, however, we decline to adopt a specific local usage threshold.

24. The Commission requires an ETC to provide local usage in order to receive universal service high-cost support. In the *First Report and Order*,

62 FR 32862, June 17, 1997, the Commission determined that an ETC should provide some minimum amount of local usage as part of its "basic service" package of supported services, but declined to specify the exact amount of local usage required. We believe the Commission should review an ETC applicant's local usage plans on a case-by-case basis. For example, an ETC applicant may offer a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or the applicant may propose a local calling plan that offers a specified number of free minutes of service within the local service area. We also can envision circumstances in which an ETC is offering an unlimited calling plan that bundles local minutes with long distance minutes. The applicant may also plan to provide unlimited free calls to government, social service, health facilities, educational institutions, and emergency numbers. Case-by-case consideration of these factors is necessary to ensure that each ETC provides a local usage component in its universal service offerings that is comparable to the plan offered by the incumbent LEC in the area.

25. We encourage state commissions to consider whether an ETC offers a local usage plan comparable to those offered by the incumbent in examining whether the ETC applicant provides adequate local usage to receive designation as an ETC. In addition, although the Commission has not set a minimum local usage requirement, there is nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.

#### 5. Equal Access

26. The Joint Board recommended that the Commission adopt guidelines that would encourage states to require an ETC be prepared to provide equal access if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(4) of the Act. Although we do not impose a general equal access requirement on ETC applicants at this time, ETC applicants should acknowledge that we may require them to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area. Specifically, we find that if such circumstances arise, the Commission should consider whether to impose an equal access or similar requirement under the Act. Accordingly, we will decide whether to

impose any equal access requirements on a case-by-case basis.

27. Under section 214(e)(4) of the Act, if an ETC relinquishes its ETC designation, the Commission must examine whether the customers that are being served by the relinquishing carrier will be served by the remaining ETC or ETCs. As part of that process, the Commission might also examine whether it is necessary to require the remaining ETC to provide equal access. Furthermore, under section 251(h)(2) of the Act, the Commission may treat another carrier as the incumbent LEC if that carrier occupies a position in the market that is comparable to the position occupied by the incumbent LEC, if such carrier has substantially replaced an incumbent LEC, and if such treatment is consistent with the public interest, convenience and necessity. One obligation imposed on incumbent LECs is the requirement to offer equal access in connection with their wireline services.

#### 6. Adequate Financial Resources

28. We decline to adopt the Joint Board's recommendation that an ETC applicant demonstrate that it has the financial resources and ability to provide quality services throughout the designated service area. We believe that compliance with the existing requirements for ETC designation, along with the criteria adopted above, will require an ETC applicant to show that it has significant financial resources. Specifically, an applicant must demonstrate the ability to offer all the supported services in the designated area by submitting detailed commitments to build-out facilities, abide by service quality standards, and provide services throughout its designated service area upon request. And in its annual certification and reporting requirements, an ETC must demonstrate that it has used universal service support to provide quality service throughout the designated area. In addition, most wireless carriers, the largest group of competitive ETCs that the Commission designates, are already operating systems within their licensed market areas, thereby demonstrating in practice their ability to provide such services. Since 1994, moreover, wireless licensees have purchased their licenses at auction, which evinces that they have sufficient resources to provide service. After obtaining a license, whether by auction or other means, wireless carriers must further comply with the Commission's rules by meeting build-out or substantial service requirements for the particular service. Therefore, we find additional financial requirements

are unwarranted to demonstrate that an ETC applicant is capable of sustaining operations and supported services.

29. We further disagree with commenters that argue that an ETC should be required to demonstrate that it has the financial capability to sustain operations and supported services if an incumbent LEC relinquishes its designation. As discussed *infra*, section 214(e)(4) of the Act already contemplates safeguards for protecting customers served by an ETC that relinquishes its designation.

30. In sum, we do not believe that additional requirements concerning financial qualifications are necessary when determining whether to designate an ETC applicant. We believe that existing ETC obligations adequately ensure financial stability. In the event that state commissions do consider financial qualification factors in their ETC designations, we encourage them to do so in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.

#### B. Public Interest Determinations

31. Under section 214 of the Act, the Commission and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity. The Commission also must consider whether an ETC designation serves the public interest consistent with section 254 of the Act. Congress did not establish specific criteria to be applied under the public interest tests in section 214 or section 254. The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas. Beyond the principles detailed in the Act, the Commission and state commissions have used additional factors to analyze whether the designation of an additional ETC is in the public interest.

32. In instances where the Commission has jurisdiction over an ETC applicant, the Commission in this *Report and Order* adopts the fact-specific public interest analysis it has developed in prior orders. First, the Commission will consider a variety of factors in the overall ETC determination, including the benefits of

increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering. Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission also will conduct a creamskimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation. Based on this analysis, the Commission will deny designation if it concludes that the potential for creamskimming is contrary to the public interest. The Commission plans to use this analysis to review future ETC applications and strongly encourages state commissions to consider the same factors in their public interest reviews.

33. We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier. In the *Virginia Cellular ETC Designation Order*, the Commission determined that merely showing that a requesting carrier in a non-rural study area complies with the eligibility requirements outlined in section 214(e)(1) of the Act would not necessarily show that an ETC designation would be consistent with the public interest in every instance. We find the public interest concerns that exist for carriers seeking ETC designation in areas served by rural carriers also exist in study areas served by non-rural carriers. Accordingly, we find that many of the same factors should be considered in evaluating the public interest for both rural and non-rural designations, except that creamskimming effects will be analyzed only in rural study areas because the same potential for creamskimming does not exist in areas served by non-rural incumbent LECs.

34. We note that section 214 of the statute provides that, for areas served by a rural incumbent LEC, more than one ETC may be designated if doing so would serve the public interest. In addition, "[b]efore designating an additional [ETC] for an area served by a rural telephone company, the [state Commission under section 214(e)(2) or Commission under section 214(e)(6)] shall find that the designation is in the public interest." In contrast, section 214 provides that additional ETCs shall be designated in an area served by a non-rural incumbent LEC. Therefore, although we adopt one set of criteria for evaluating the public interest for ETC

designations in rural and non-rural areas, in performing the public interest analysis, the Commission and state commissions may conduct the analysis differently, or reach a different outcome, depending upon the area served. For example, the Commission and state commissions may give more weight to certain factors in the rural context than in the non-rural context and the same or similar factors could result in divergent public interest determinations, depending on the specific characteristics of the proposed service area, or whether the area is served by a rural or non-rural carrier.

#### 1. Cost-Benefit Analysis

35. We conclude that we will continue to consider and balance the factors listed below as part of our overall analysis regarding whether the designation of an ETC will serve the public interest. In determining whether an ETC has satisfied these criteria, the Commission places the burden of proof upon the ETC applicant.

(1) *Consumer Choice*: The Commission takes into account the benefits of increased consumer choice when conducting its public interest analysis. In particular, granting an ETC designation may serve the public interest by providing a choice of service offerings in rural and high-cost areas. The Commission has determined that, in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.

(2) *Advantages and Disadvantages of Particular Service Offering*: The Commission also considers the particular advantages and disadvantages of an ETC's service offering. For instance, the Commission has examined the benefits of mobility that wireless carriers provide in geographically isolated areas, the possibility that an ETC designation will allow customers to be subject to fewer toll charges, and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services. The Commission also examines disadvantages such as dropped call rates and poor coverage.

36. In addition, we believe that the requirements we have established in this *Report and Order* for becoming an ETC will help ensure that each ETC designation will serve the public interest. For example, the requirements to demonstrate compliance with a service quality improvement plan and to respond to any reasonable request for

service will ensure designation of ETC applicants that are committed to using high-cost support to alleviate poor service quality in the ETC's service area.

37. We disagree with commenters who contend that we should adopt a more precise cost-benefit test for the purpose of making public interest determinations. While we believe that a consideration of both benefits and costs is inherent in conducting a public interest analysis, we agree with the Joint Board's recommendation and decline to provide more specific guidance at this time on how this balancing should be performed. The specific determination, and the relative weight of the relevant considerations, must be evaluated on a case-by-case basis.

38. We also reject the assertions of several commenters that a more stringent analysis is necessary to determine whether an ETC designation is in the public interest. These commenters argue that the current ETC application process is not rigorous enough to meet section 214(e)(2) of the Act and that ETC applicants should be required to demonstrate the public benefit they will confer as a result of the ETC designation. We believe that the factors set out in the *Virginia Cellular ETC Designation Order*, as expanded in this *Report and Order*, allow for an appropriate public interest determination.

#### 2. Potential for Creamskimming Effects

39. As part of the public interest analysis for ETC applicants that seek designation below the service area level of a rural incumbent LEC, we will perform an examination to detect the potential for creamskimming effects that is similar to the analysis employed in the *Virginia Cellular ETC Designation Order* and the *Highland Cellular ETC Designation Order*. As discussed below, the state commissions that apply a creamskimming analysis similar to the Commission's will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.

40. When a competitive carrier requests ETC designation for an entire rural service area, it does not create creamskimming concerns because the affected ETC is required to serve all wire centers in the designated service area. The potential for creamskimming, however, arises when an ETC seeks designation in a disproportionate share of the higher-density wire centers in an incumbent LEC's service area. By serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than

is reflective of the rural incumbent LEC's costs of serving that wire center because support for each line is based on the rural telephone company's average costs for serving the entire service area unless the incumbent LEC has disaggregated its support. Because line density is a significant cost driver, it is reasonable to assume that the highest-density wire centers are the least costly to serve, on a per-subscriber basis. The effects of creamskimming also would unfairly affect the incumbent LEC's ability to provide service throughout the area since it would be obligated to serve the remaining high-cost wire centers in the rural service area while ETCs could target the rural incumbent LEC's customers in the lowest cost areas and also receive support for serving the customers in these areas. In order to avoid disproportionately burdening the universal service fund and ensure that incumbent LECs are not harmed by the effects of creamskimming, the Commission strongly encourages states to examine the potential for creamskimming in wire centers served by rural incumbent LECs. This would include examining the degree of population density disparities among wire centers within rural service areas, the extent to which an ETC applicant would be serving only the most densely concentrated areas within a rural service area, and whether the incumbent LEC has disaggregated its support at a smaller level than the service area (e.g., at the wire center level).

41. Because a low population density typically indicates a high-cost area, analyzing the disparities in densities can reveal when an ETC would serve only the lower cost wire centers to the exclusion of other less profitable areas. For instance, the Commission found in the *Virginia Cellular ETC Designation Order* that designating a wireless carrier as an ETC in a particular service area was not in the public interest due to the disparity in density between the high-density wire center in the area that the applicant was proposing to serve and the wire centers within the service area that the wireless carrier was not proposing to serve. Even if a carrier seeks to serve both high and low density wire centers, the potential for creamskimming still exists if the vast majority of customers that the carrier is proposing to serve are located in the low-cost, high-density wire centers.

42. The Commission has also determined that creamskimming concerns may be lessened when a rural incumbent LEC has disaggregated support to the higher-cost portions of the incumbent's service area.

Specifically, under the Commission's rules, rural incumbent LECs are permitted to depart from service area averaging and instead disaggregate and target per-line high-cost support into geographic areas below the service area level. By doing so, per-line support varies to reflect the cost of service in a particular geographic area, such as a wire center, within the service area. By reducing per-line support in high density areas, disaggregation may create less incentive in certain circumstances for an ETC to enter only those areas. Nevertheless, although disaggregation may alleviate some concerns regarding creamskimming by ETCs, because an incumbent's service area may include wire centers with widely disparate population densities, and therefore highly disparate cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities. This problem may be compounded where the cost characteristics of the rural incumbent LEC and competitive ETC applicant differ substantially. Thus, creamskimming may remain a concern where a competitive ETC seeks designation in a service area where the incumbent rural LEC has disaggregated high-cost support to the higher-cost portions of its service area.

43. We find that a creamskimming analysis is unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. Unlike the rural mechanism, which uses embedded costs to distribute support on a service area-wide basis, the non-rural mechanism uses a forward-looking cost model to distribute support to individual wire centers where costs exceed the national average by a certain amount. Therefore, under the non-rural methodology, high-density, low-cost wire centers receive little or no high-cost support, thereby protecting against the potential for creamskimming.

44. We urge state commissions to apply the Commission's creamskimming analysis when determining whether to designate an ETC in a rural service area. We reject assertions that a bright-line test is needed to determine whether creamskimming concerns are present. As demonstrated in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, we believe that a rigid standard would fail to take into account variations in population distributions, geographic characteristics, and other individual factors that could affect the outcome of a rural service area creamskimming effects analysis. We believe that the factors indicated above provide states

adequate guidance in determining whether an ETC application presents creamskimming concerns.

### 3. Impact on the Fund

45. We decline to adopt a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund. As the Commission has found in the past, analyzing the impact of one ETC on the overall fund may be inconclusive. Indeed, given the size of the total high-cost fund—approximately \$3.8 billion a year—it is unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund. In addition, the Commission is considering in other proceedings, such as the *Rural Referral Proceeding*, 69 FR 48232, August 9, 2004, how support is calculated for both rural incumbent LECs and ETCs. We also find, as discussed below, that certain proposals examining the effect on the fund as part of an ETC public interest analysis may be inconsistent with sections 214 and 254 of the Act and related Commission orders.

46. We find that per-line support received by the incumbent LEC should be one of many considerations in our ETC designation analysis. We believe that states making public interest determinations may properly consider the level of federal high-cost per-line support to be received by ETCs. High-cost support is an explicit subsidy that flows to areas with demonstrated levels of costs above various national averages. Thus, one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in any area may be the level of per-line support provided to the area. If the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund.

47. We decline, however, based on the record before us to adopt a specific national per-line support benchmark for designating ETCs. As the Joint Board noted, “[m]any factors mentioned by commenters as relevant to the public interest determination—such as topography, population density, line density, distance between wire centers, loop lengths and levels of investment—may all affect the level of high-cost support received in an individual service area.” Many commenters have argued that a per-line benchmark that denies entry to competitive ETCs in high-cost areas may prevent consumers in high-cost areas from receiving the benefit of competitive service offerings.

Although giving support to ETCs in particularly high-cost areas may increase the size of the fund, we must balance that concern against other objectives, including giving consumers throughout the country access to services comparable to services in urban areas and ensuring competitive neutrality. In addition, as a practical matter, we do not believe we currently have an adequate record to determine what specific benchmark or benchmark should be set.

48. For similar reasons, we also decline to adopt a proposal that would allow only one wireline ETC and one wireless ETC in each service area. Such a proposal that limits the number of ETCs in each service area creates a practical problem of determining which wireless and wireline provider would be selected. We also reject the application of a rebuttable presumption that it is not in the public interest to have more than one ETC in each rural high-cost area. We believe that a more comprehensive public interest analysis, which considers the specific facts of the application, is a better approach and is consistent with congressional intent. We also reject arguments that we should treat smaller wireless rural carriers differently than larger carriers. We do not believe that subjecting smaller wireless carriers to an expedited ETC application process or a lower level of scrutiny would serve the public interest, and we further believe that it may be contrary to the principle of competitive neutrality.

### C. Permissive Guidelines for State ETC Designation Proceedings

49. We encourage state commissions to require all ETC applicants over which they have jurisdiction to meet the same conditions and to conduct the same public interest analysis outlined in this *Report and Order*. We also encourage states to impose the annual certification and reporting requirements uniformly on all ETCs they have previously designated. In doing so, we encourage states to conform these guidelines with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable eligibility criteria and reporting requirements. We agree with the Joint Board's recommendation that a rigorous ETC designation process ensures that only fully qualified applicants receive designation as ETCs and that all ETC designees are prepared to serve all customers within the designated service area. Additionally, a set of guidelines allows for a more predictable application process among the states. We believe that these guidelines will

assist states in determining whether the public interest would be served by a carrier's designation as an ETC. We also believe that these guidelines will improve the long-term sustainability of the fund, because, if the guidelines are followed, only fully qualified carriers that are capable of and committed to providing universal service will be able to receive support.

50. As suggested by commenters and the Joint Board, we encourage state commissions to consider the requirements adopted in this *Report and Order* when examining whether the state should designate a carrier as an ETC. An ETC designation by a state commission can ultimately impact the amount of high-cost and low income monies distributed to an area served by a non-rural carrier, an area served by one or more rural carriers, or both. A single set of guidelines will encourage states to develop a single, consistent body of eligibility standards to be applied in all cases, regardless of the characteristics of the incumbent carrier. As noted above, however, the public interest analysis for ETC applications for areas served by rural carriers should be more rigorous than the analysis of applications for areas served by non-rural carriers.

51. We also find that states that exercise jurisdiction over ETC proceedings should apply these requirements in a manner that will best promote the universal service goals found in § 254(b). While Congress delegated to individual states the right to make ETC decisions, collectively these decisions have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund. In addition, these guidelines are designed to ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service. Moreover, state commissions that apply these guidelines will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.

52. We decline to mandate that state commissions adopt our requirements for ETC designations. Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity. We believe that § 214(e)(2) demonstrates Congress's intent that state

commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with Federal and other State law. States that exercise jurisdiction over ETCs should apply these requirements in a manner that is consistent with section 214(e)(2) of the Act. Furthermore, state commissions, as the entities most familiar with the service area for which ETC designation is sought, are particularly well-equipped to determine their own ETC eligibility requirements. Because the guidelines we establish in this *Report and Order* are not binding upon the states, we reject arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations. We also find that federal guidelines are consistent with the holding of United States Court of Appeals for the Fifth Circuit that nothing in section 214(e) of the Act prohibits the States from imposing their own eligibility requirements in addition to those described in § 214(e)(1). Consistent with our adoption of permissive federal guidelines for ETC designation, state commissions will continue to maintain the flexibility to impose additional eligibility requirements in state ETC proceedings, if they so choose.

53. We reject the argument that mandatory requirements are necessary to prevent waste, fraud, and abuse in the distribution of high-cost support. We note that safeguards already exist to protect against the misuse of high-cost support. For example, if a state commission believes that high-cost support is being used by an ETC in a manner that is inconsistent with section 254 of the Act, the state commission may decline to file an annual certification or may withdraw an ETC's designation, which would ensure that funds are no longer distributed to the ETC.

54. We also note that the Commission may institute an inquiry on its own motion to ensure that high-cost support is used "only for the provision, maintenance, and upgrading of facilities and services" for the areas in which ETCs are designated. In addition, if an ETC designated by the Commission fails to fulfill the requirements of sections 214 and 254 of the Act, the Commission has the authority to revoke a carrier's ETC designation. The Commission also may assess forfeitures for violations of Commission rules and orders. Consequently, we find that adequate measures exist to prevent waste, fraud and abuse of high-cost support by ETCs.

Nevertheless, the Commission will continue to monitor use of universal service funds by ETCs and develop rules as necessary to continue to ensure that funds are used in a manner consistent with section 254 of the Act.

55. Commenters further argue that mandatory requirements are necessary to prevent growth of the universal service fund. As discussed above, the Joint Board is currently contemplating in the *Rural Referral Proceeding* how universal service support can be effectively targeted to rural incumbent LECs and ETCs serving high-cost areas, while protecting against excessive fund growth. We believe that proceeding is a more appropriate forum for determining ways to limit fund growth.

#### *D. Administrative Requirements for ETC Designation Proceedings*

56. Consistent with USAC's request, we note that all future ETC designation orders adopted by the Commission will include: (1) The name of each incumbent LEC study area in which an ETC has been designated; (2) a clear statement of whether the ETC has been designated in all or part of each incumbent LEC's study area; and (3) a list of all wire centers in which the ETC has been designated, using either the wire center's common name or the Common Language Location Identification (CLLI) code. In addition, in instances where follow-up filings or other conditions have been imposed before the ETC designation is final, the Commission will notify USAC when the conditions have been fulfilled. We also encourage state commissions to follow these procedures in ETC orders they adopt. USAC contends, and we agree, that inclusion of this information in ETC designation orders will greatly facilitate USAC's data validation and other efforts to ensure that all carriers receive high-cost universal service support only in the areas in which they have been deemed eligible.

57. In addition, for carriers that file ETC petitions with the Commission seeking designation on tribal lands, we establish procedures to ensure that the appropriate tribal governments and tribal regulatory authorities are notified and provided with an opportunity to engage in consultation with the Commission and to comment in the ETC designation proceeding. We find these procedures are consistent with the Commission's *Tribal Policy Statement*, released in June 2000, which commits the Commission "to consult with tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect tribal governments, their land and resources."

Through consultation, the Commission and the tribal government have an opportunity to discuss how the ETC petition affects public interests of the particular tribal community, for example, the effects of the ETC designation on tribal self-determination efforts and potential economic opportunities, and on the tribal government's own communications priorities and goals, which the Commission recognizes as the sovereign right of tribal governments.

58. Specifically, the Commission requires that any applicant seeking ETC designation on tribal lands before the Commission provide copies of its petition to the affected tribal governments and tribal regulatory authorities at the time of filing. In addition, the Commission will send the relevant public notice seeking comment on those petitions to the affected tribal governments and tribal regulatory authorities by overnight express mail. As with the other guidelines adopted herein, we encourage state commissions to follow these guidelines for ETC designation proceedings affecting tribal lands so that the appropriate tribal governments and tribal regulatory authorities are notified of any tribal ETC petitions, related comment cycles or other opportunities to consult with the state commission and participate in the specific ETC designation proceeding.

#### **IV. Annual Certification and Reporting Requirements**

59. Our rules currently require all ETCs to make an annual certification, on or before October 1, that universal service support will be used for its intended purposes. As recommended by the Joint Board, we maintain and augment this requirement. Specifically, in order to continue to receive universal service support each year, we require each ETC over which we have jurisdiction, including an ETC designated by the Commission prior to this *Report and Order*, to submit annually certain information regarding its network and its use of universal service funds. These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes. This information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, at the same time as the carrier's certification that the universal service funds are being used consistent with the Act. In addition, following the effective date of this *Report and Order*, we anticipate initiating a proceeding to develop

procedures for review of these annual reports. Moreover, we anticipate initiating a separate proceeding on or before February 25, 2008, to examine whether the requirements adopted herein are promoting the use of high-cost support by ETCs in a manner that is consistent with section 254 of the Act. We further clarify that a carrier that has been previously designated as an ETC under § 214(e)(6) does not have to reapply for designation, but must comply with the annual certification and reporting requirements on a going-forward basis.

60. Every ETC designated by the Commission must submit the following information on an annual basis:

(1) Progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

(2) Detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) The date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

(3) The number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

(4) The number of complaints per 1,000 handsets or lines;

(5) Certification that the ETC is complying with applicable service quality standards and consumer

protection rules, *e.g.*, the CTIA Consumer Code for Wireless Service;

(6) Certification that the ETC is able to function in emergency situations;

(7) Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

61. We conclude that these reporting regulations are reasonable and consistent with the public interest and the Act. These reporting requirements will further the Commission's goal of ensuring that ETCs satisfy their obligation under section 214(e) of the Act to provide supported services throughout their designated service areas. The administrative burden placed on carriers is outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended. These reporting requirements also will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.

62. We encourage state commissions to adopt these annual reporting requirements. To the extent that they do so, we urge state commissions to apply the reporting requirements to all ETCs, not just competitive ETCs. In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements. In doing so, states should conform these requirements with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable reporting requirements. Individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements, including state-specific ETC eligibility requirements.

63. If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC

designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.

#### V. Other Issues

##### A. Service Area Redefinition Process

64. Section 214(e)(5) of the Act provides that states may establish geographic service areas within which competitive ETCs are required to comply with universal service obligations and are eligible to receive universal service support. For an area served by a rural incumbent LEC, however, the Act states that a company's service area for the purposes of ETC designation will be the rural incumbent LEC's study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under § 410(c), establish a different definition of service area for such company." This process of changing the incumbent LEC's study area—and therefore the competitive ETC's service area—is known as the redefinition of a service area. The Commission adopted § 54.207(c) of its rules to implement this requirement.

65. In its *Recommended Decision*, the Joint Board recommended that the Commission retain procedures established by the Commission in 1997 for the redefinition of rural service areas. We agree with that recommendation, and do not believe that changes are necessary at this time to our procedures for redefining rural service areas. We agree with the Joint Board that in redefining an incumbent LEC's study area so as to conform with the service area of a new ETC, the states and Commission should continue to work in concert to decide whether a different service area definition would better serve the public interest. First, under the current redefinition procedures for new ETCs, both state commissions and the Commission employ rigorous and fact-intensive analyses of requests for service area redefinitions that examine the impact of any redefinition on the affected rural incumbent LEC's ability to serve the entire study area, including the potential for creamskimming that may result from the redefinition. In addition, public comment is invited during every step in the process to ensure that the states and Commission are fully apprised of any impact the redefinition may have on the rural incumbent LEC.

66. We disagree with commenters that argue that the Commission should adopt rules prohibiting redefinition below the study area level when new ETCs are

designated in an incumbent LEC's service area. In particular, we find that this proposal ignores the provision in § 214(e)(5) that allows redefinition to occur. In any event, the process described above adequately protects against harm to the rural incumbent LEC that may result from redefinition. We also reject the argument posed by certain commenters that contend that the Commission should require redefinition of all study areas for which competitive ETCs seek designation or have been designated instead of redefining service areas on a case-by-case basis. At this time, we believe that the existing case-specific analysis adequately protects the interests of incumbent LECs.

##### B. Pending Redefinition Petitions

67. The Commission has before it several petitions seeking redefinition of incumbent LEC study areas. We grant these petitions as described below. These petitions, which were filed by either a competitive ETC or a state commission, fall into three categories. One category involves petitions seeking to redefine a rural incumbent LEC's service area into multiple smaller service areas at the wire center level. The second category of petitions involves ETCs that were designated for service areas that included portions of the incumbent LEC's wire centers instead of entire wire centers. These petitions seek to redefine the rural incumbent LEC study area for the same areas, including some partial wire centers, such that the ETC's designated service area and the incumbent LEC's redefined service area would be the same. The third category involves two petitions that seek to redefine the incumbent LEC's service area into multiple smaller service areas at the wire center level. However, the state commissions had designated these carriers' service areas to include some areas smaller than the incumbent LEC's wire centers. As a result, the designated service areas and the proposed redefined areas are not the same.

68. Since these petitions were filed, the Commission released the *Highland Cellular ETC Designation Order*, in which the Commission rejected Highland's petition for designation in only a portion of a rural incumbent LEC's service area. Specifically, Highland requested that it be allowed to serve parts of the rural incumbent LEC's wire centers. We concluded that designating an ETC for only a portion of a wire center served by a rural incumbent LEC would be inconsistent with the public interest. We also found that the competitive ETC applicant must

commit to provide the supported services to customers throughout a minimum geographic area. We concluded that a rural telephone company's wire center is the appropriate minimum geographic area for ETC designation because rural carrier wire centers typically correspond with county or town boundary lines. We continue to believe, as we stated in the *Highland Cellular ETC Designation Order*, that requiring a competitive ETC to serve an entire wire center will make it less likely that the competitor will relinquish its ETC designation at a later date and will best address creamskimming concerns in an administratively feasible manner.

69. In this *Report and Order*, we conclude that the same principles that we apply to ETC designation requests also apply when we are considering whether to grant a petition for redefinition. We recognize, however, that because of the timing of the underlying state ETC designation decisions, many of these pending petitions could not be in full compliance with the factors considered in the *Highland Cellular ETC Designation Order*. For example, some petitions follow the ETC designation and redefinition framework that was applied by the Commission prior to the *Highland Cellular ETC Designation Order*. Other petitions have not presented a creamskimming analysis that examines population density data to determine whether the ETC is seeking designation only in high-density wire centers of the affected study area, which could undercut the rural incumbent LEC's ability to provide service throughout its entire study area, as detailed in the *Virginia Cellular ETC Designation Order*. As a result, because the Commission had not fully elaborated on its creamskimming analysis based on population density or adopted the policy that competitive LEC service areas should not be defined below the wire center level, these state commissions granting ETC designation and seeking redefinition could not have applied the requirements set forth in the *Highland Cellular ETC Designation Order*.

70. Because the states complied with applicable federal rules and guidelines at the time the redefinition petitions were filed, we decline to upset those determinations. We therefore find that granting these redefinition petitions would serve the public interest. Accordingly, we grant these redefinition petitions pursuant to section 214(e)(5) of the Act. On a going forward basis, however, we intend to rigorously apply the standards set forth in the *Highland*

*Cellular ETC Designation Order* and *Virginia Cellular ETC Designation Order*.

#### *C. Identification of Wireless Customer Locations*

71. *Background.* In the *Rural Task Force Order*, 66 FR 30080, June 5, 2001, the Commission required wireless competitive ETCs to use the customer's billing address to identify the location of a mobile wireless customer. The Commission concluded that this approach was reasonable and the most administratively simple solution to the problem of determining the location of a wireless customer for universal service purposes. The Commission recognized, however, that the use of a customer's billing address might allow carriers to identify a customer in a high-cost zone when service is primarily taken in a low-cost zone for the purpose of receiving a higher level of per-line support. The Commission stated that it would take appropriate enforcement action if an ETC were to engage in such arbitrage, and that it might revisit the use of a customer's billing address as more mobile wireless carriers become eligible to receive support.

72. In the *Rural Task Force Order*, the Commission declined to use the Mobile Telecommunications Sourcing Act (MTSA) definition of "place of primary use" to determine a mobile wireless customer's location. In declining to adopt the MTSA definition to determine wireless customer location for universal service purposes, the Commission expressed concern that states might not have established databases pursuant to the Act, and that use of the MTSA definition might impose undue administrative burdens on mobile wireless ETCs. In its *Recommended Decision*, the Joint Board determined that the Commission should further develop the record on defining mobile wireless customer location in terms of place of primary use, as defined by the MTSA, for universal service purposes. In particular, the Joint Board concluded that the place of primary use represents the preferred definition of wireless customer location for universal service purposes because it reflects whether a customer actually uses mobile wireless phone service in a high-cost area. The Joint Board therefore recommended that the Commission develop the record on: (1) Whether the MTSA's place of primary use approach is an efficient method for determining the location of mobile service lines; (2) whether a "place of primary use" definition should be optional or mandatory; (3) whether a definition based on place of primary use would alleviate concerns

about fraudulent billing addresses, and; (4) if the place of primary use definition is adopted, how it should work in conjunction with virtual NXX.

73. *Discussion.* We are not convinced that there is a significant difference between our current definition, which relies on a customer's billing address, and the MTSA definition, which relies on the customer's residential street address or primary business street address. In a large percentage of cases, the two will be the same. In both cases, the underlying address information will be provided by the customer, who is unlikely to be providing false information in order to increase universal service payments to its service provider. If anything, customers have a greater incentive to provide false or misleading information under the MTSA, which will govern applicable taxes imposed on the customer. Further, as noted in the *Rural Task Force Order*, if a competitive ETC misuses a customer's billing address by identifying a customer in a high-cost zone when service is primarily provided in a low-cost zone for the purpose of receiving a higher level of per-line support, the Commission may take appropriate enforcement action. We further note that, to date, we are not aware of any carriers filing petitions before the Commission contending that a wireless ETC is misusing customer billing addresses for arbitrage purposes.

74. As a result, we decline to change our method for identifying the location of mobile wireless customers. We, therefore, do not adopt the place of primary use definition at this time. Moreover, we note that few commenters provided responses to the specific questions from the Joint Board. The Iowa Utilities Board, one of the few commenters responding to the Joint Board's questions, submitted an analysis concerning the billing address methodology that found that only a small number of customers have billing addresses in locations other than where service is located. Given the limited data we currently have, we see no reason to modify our method of determining wireless customer locations.

#### *D. Accurate, Legible, and Consistent Maps*

75. *Background.* Under the Commission's rules, a rural incumbent LEC electing to disaggregate and target high-cost support must submit to USAC "maps which precisely identify the boundaries of the designated disaggregation zones of support within the incumbent LEC's study area." In the *Rural Task Force Order*, the

Commission explained that “the integrity and flow of information to competitors is central to ensuring that support is distributed in a competitively neutral manner.” The Commission further stated that, “in order to ensure portability and predictability in the delivery of support,” it would require rural incumbent LECs to “submit to USAC maps in which the boundaries of the designated disaggregation zones of support are clearly specified.” USAC was directed to make those maps available for public inspection by competitors and other interested parties. Some commenters indicate that the maps filed by rural incumbent LECs pursuant to § 54.315(f)(1) and the information available through USAC are of varying quality and utility. Others suggest that improved quality and reliability of maps submitted by incumbent LECs would allow for better targeting of support.

76. In response to the concerns raised by commenters, the Joint Board recommended that the Commission direct USAC to develop standards for the submission of any maps that ETCs are required to submit to USAC under the Commission’s rules in a uniform, electronic format. The Joint Board contended that the development of such standards would promote the integrity and flow of information to competitive ETCs by increasing the accuracy, consistency, and usefulness of maps submitted to USAC and that, as the universal service administrator, USAC is the appropriate entity to develop such standards.

77. *Discussion.* We agree with the Joint Board and commenters and find that accurate, legible and consistent maps would promote the integrity and flow of information to competitive ETCs by increasing the accuracy, consistency, and usefulness of maps submitted to USAC. Among other things, accurate and legible maps will assist in the ETC designation process and ensure that high-cost support is targeted to the appropriate service areas. Accordingly, we direct USAC, in accordance with direction from the Wireline Competition Bureau, to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission’s rules.

#### *E. Support to Newly Designated ETCs*

78. *Background.* Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.” Once a carrier is designated as an ETC, additional requirements also must be satisfied

before a carrier can begin receiving high-cost universal service support. In particular, § 254(e) requires that support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”

79. To implement this statutory provision, the Commission adopted an annual certification requirement. Specifically, §§ 54.313 and 54.314 of the Commission’s rules provide that state commissions must file an annual certification with USAC and with the Commission stating that all high-cost support received by carriers within the state will be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.” In instances where carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and to USAC that federal high-cost support will be used in a manner consistent with § 254(e). Sections 54.313 and 54.314 also provide that certifications must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year. If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter. The Commission established this schedule to allow USAC sufficient time to process § 254(e) certifications and to calculate estimated high-cost demand amounts for submission to the Commission.

80. Under the Commission’s current certification rules, the timing of a carrier’s ETC designation may cause it to miss a certification filing deadline. As a result, a recently designated ETC’s support may not begin to be disbursed until well after the ETC’s designation date. For example, if a carrier is designated as an ETC on December 20, and the state commission with jurisdiction over the carrier files a certification on behalf of the ETC on January 15, that carrier will not begin to receive support until the third quarter of that year—more than six months after the carrier was designated an ETC. Therefore, although the Commission’s rules provide a mechanism for certifications to be filed on a quarterly basis, payment of high-cost support for recently designated ETCs under this schedule may be delayed until well after the initial certification is made. Consequently, newly designated ETCs that have missed the Commission’s certification filing deadlines due to the

timing of their ETC designation date have been granted waivers of the certification filing deadlines.

81. Under § 54.307(d) of the Commission’s rules, as a prerequisite for universal service high-cost support, ETCs serving both rural and non-rural service areas must also file the number of working loops and other related data for the customers they serve in the incumbent’s service area. To ensure that the interval between the submission of data and receipt of support is as short as possible in rural carrier study areas, the Commission requires that ETCs submit such line count data on a quarterly basis. Therefore, under the quarterly schedule established by the Commission, line count data are due on July 31, September 30, December 30, and March 30 of each year. Consistent with § 54.307(c) of the Commission’s rules, under its administration of the high-cost program, USAC bases its quarterly support payments on these quarterly line count data submissions. For ETCs designated in areas served by rural incumbent LECs, line count data submitted on March 30 are used to target support for the third and fourth quarters of each year, line count data filed on September 30 are used to target support for the first quarter of the filing year, and line count data filed on December 30 are used to target support for the second quarter of the filing year. For ETCs designated in areas served by non-rural incumbent LECs, line counts filed on March 30 are used for third quarter support, line counts filed on July 31 are used for fourth quarter support, line counts filed on September 30 are used for first quarter support, and line counts filed on December 30 are used for second quarter support.

82. Under the filing schedules described above, carriers that receive a late ETC designation may miss quarterly filing deadlines that could affect USAC’s cost estimates for the relevant quarter. Also, an ETC receiving a late designation that did not file quarterly line counts in anticipation of its ETC designation could suffer significant delay in receipt of support. In light of the delay in support that can be caused by ETC designations occurring after line count certification filing deadlines, we sought comment in the *ETC Designation NPRM*, 69 FR 40839, July 7, 2004, on whether to amend our rules to allow newly designated ETCs to begin receiving high-cost support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier’s ETC designation date.

83. *Discussion.* We conclude that in order to provide universal service

support to newly designated ETCs on a timely basis, ETCs shall be eligible for support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier's ETC designation date. As suggested by commenters, including USAC, revising the certification and line count deadline rules will enable customers of newly designated ETCs to begin to receive the benefits of universal service support as of the ETC's designation date. Additionally, this modification will eliminate the need for carriers to seek waivers of filing deadline rules in order to receive support on a timely basis. At the same time, for administrative efficiency and predictability, we must impose some time limits so that USAC can accurately calculate total high-cost support payments. Therefore, a newly-designated ETC's certification and line-count data must be filed within 60 days of its initial ETC designation from the state commission or Commission. If the newly designated ETC does not file within 60 days of the carrier's ETC designation date, the ETC will not receive support retroactively to its ETC designation date, but only on a going-forward basis. We note that although USAC supports this revision, it has indicated that such funding should not flow to a newly designated ETC until its line count data are included in USAC's quarterly demand projections. In order to avoid any administrative burdens associated with processing payments to a newly designated ETC, we agree that USAC shall distribute support only after the required line count data are available in USAC's quarterly demand projections. As a result, unless a carrier has filed its data with USAC in advance of its ETC designation date, a carrier might have to wait an additional quarter before it begins receiving support.

#### F. Accepting Untimely Filed Certifications for Interstate Access Support

84. *Background.* Section 54.809(c) of the Commission's rules states that in order for an ETC to receive Interstate Access Support (IAS), the ETC must file an annual certification on the date that it first files line count information and thereafter on June 30 of each year. As a result, the current rule prohibits an otherwise eligible carrier from receiving IAS for as much as a year if it misses the annual certification deadline. In the *MAG Order*, 66 FR 59719, November 30, 2001, the Commission determined that a carrier that untimely files its annual certification for Interstate Common Line Support (ICLS) would not be eligible for support until the second calendar

quarter after the certification is filed. For example, if a carrier untimely files its required annual June 30 certification on July 15, it will be eligible to receive ICLS support beginning January 1 of the following year. Therefore, the *MAG Order* establishes a supplemental certified filing process that prevents an ETC from losing ICLS for an entire year if it misses the June 30 certification deadline. In the *ETC Designation NPRM*, the Commission proposed adopting a similar supplemental process for accepting untimely certifications for the receipt of IAS.

85. *Discussion.* We adopt the proposal in the *ETC Designation NPRM* that establishes a procedure for accepting untimely filed certifications for IAS. We conclude that allowing an ETC that misses the June 30 certification deadline to receive IAS support following the filing of the untimely certification will not unduly harm a carrier that files an annual certification late and will eliminate the need for a carrier to seek a waiver of the filing certification deadlines rules. At the same time, by not allowing a carrier to receive IAS support for the entire year, the carrier still has the incentive to file the certification on a timely basis in order to not interrupt its receipt of IAS support. We, therefore, adopt a quarterly certification schedule to accommodate late filings. Specifically, a price cap LEC or competitive ETC that misses the June 30 annual IAS certification deadline shall receive support pursuant to the following schedule: (1) carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year; (2) carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year; and (3) carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.

## II. Procedural Matters

### A. Regulatory Flexibility Analysis

86. As required by the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for the *Report and Order*, set forth at Appendix C.

### B. Congressional Review Act

87. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order* to the Chief Counsel

for Advocacy of the Small Business Administration. A copy of the *Report and Order* (or summaries thereof) will also be published in the **Federal Register**.

### C. Paperwork Reduction Act

88. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

### D. Filing Procedures

89. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments not later than 60 days after publication of this *Report and Order* in the **Federal Register** and may file reply comments not later than 90 days after publication of this *Report and Order* in the **Federal Register**. In order to facilitate review of comments and reply comments, parties should include the name of the filing party and the date of the filing on all pleadings. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

90. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at <http://www.fcc.gov/e-file/email.html>.

91. Parties that choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or

overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts

Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

92. Commercial overnight mail (other than U.S. Postal Service Express Mail

and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

If you are sending this type of document or using this delivery method . . .	It should be addressed for delivery to . . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m.).
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.).
United States Postal Service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554.

93. Parties who choose to file by paper should also submit their comments on diskette. These diskettes, plus one paper copy, should be submitted to: Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications, at the filing window at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case WC Docket No. 02-60, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CYB402, Washington, DC 20554 (see alternative addresses above for delivery by hand or messenger).

94. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, BCPI, Portals II, 445 12th Street SW., CY-B402, Washington, DC 20554 (see alternative addresses above for delivery by hand or messenger) (telephone 202-488-5300; facsimile 202-488-5563) or via e-mail at [FCC@BCPIweb.com](mailto:FCC@BCPIweb.com).

95. Written comments by the public on the proposed and/or modified information collections are due on the same day as comments on this *Report and Order*, i.e., on or before July 25, 2005. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before July 25, 2005. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [jbherman@fcc.gov](mailto:jbherman@fcc.gov), and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to [JThornton@omb.eop.gov](mailto:JThornton@omb.eop.gov).

96. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, BCPI, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail [FCC@BCPIweb.com](mailto:FCC@BCPIweb.com).

#### E. Further Information

97. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This *Report and Order* can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/cob/universalservice/highcost>.

#### Final Regulatory Flexibility Analysis (FRFA)

98. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the notice of proposed rulemaking to which this *Report and Order* responds. The Commission sought written public comment on the Federal-State Joint Board's (Joint Board) recommendations in the *Recommended Decision*, including comment on the IRFA incorporated in that proceeding. The comments we have received discuss only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### F. Need for, and Objective of, This Report and Order

99. This *Report and Order* addresses the minimum requirements that a telecommunications carrier must meet in order to be designated as an "eligible telecommunications carrier" or "ETC," and thus eligible to receive federal universal service support. Specifically, consistent with the recommendations of the Joint Board, this *Report and Order* adopts additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act). In addition, for states that exercise jurisdiction over ETC designations pursuant to section 214(e)(2) of the Act, as recommended by the Joint Board, this *Report and Order* encourages such state commissions to consider these requirements when examining whether an ETC should be designated. The application of these additional requirements by the Commission and state commissions should allow for a more predictable ETC

designation process. In addition, because the additional requirements in this *Report and Order* create a more rigorous ETC designation process, their application by the Commission and state commissions will support the long-term sustainability of the universal service fund.

100. In considering whether carriers have satisfied their burden of proof necessary for ETC designation, this *Report and Order* now requires that applicants: (1) Provide five-year plans demonstrating how high-cost universal service support will be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout their proposed designated service areas; (2) demonstrate their ability to remain functional in emergency situations; (3) abide by service quality standards, such as the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service; (4) offer local usage plans comparable to those offered by the incumbent LEC in the areas for which they seek designation; and (5) acknowledge that the Commission may require them to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area. In addition, these additional requirements are made applicable to all ETCs previously designated by the Commission and therefore, such ETCs are required to submit evidence demonstrating how they comply with this new ETC designation framework by October 1, 2006. This *Report and Order*, however, does not adopt the Joint Board's recommendation to evaluate whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area because the Commission concludes the objective of these criterion will be achieved through the other requirements adopted in this *Report and Order*.

101. In this *Report and Order*, the Commission also sets forth its analytical framework for determining whether or not the public interest would be served by an applicant's designation as an ETC. The Commission finds that, under the statute, an applicant should only be designated as an ETC where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier. The Commission clarifies that its public interest analysis for ETC designations for which it has jurisdiction pursuant to section 214(e)(6) of the Act will review many of the same factors in areas served

by non-rural and rural incumbent LECs, although the Commission recognizes that the outcome of the analysis might vary depending on whether the area is served by a rural or non-rural carrier. In addition, as part of its public interest analysis, the Commission will examine the potential for creamskimming effects in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC. The Commission also encourages states to apply the Commission's analysis because it believes such application will assist them in determining whether or not the public interest would be served by designating a carrier as an ETC.

102. In addition, in this *Report and Order*, the Commission strengthens its reporting requirements for ETCs in order to ensure that high-cost universal service support continues to be used for its intended purposes. Specifically, each ETC designated by the Commission must provide on an annual basis: (1) Progress updates on its five-year service quality improvement plan, including maps detailing progress towards meeting its five-year improvement plan in every wire center for which designation was received, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why any network improvement targets have not been met; (2) detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future; and (3) how many requests for service from potential customers were unfulfilled for the past year and the number of complaints per 1,000 handsets or lines. These annual reporting requirements are required for all ETCs designated by the Commission. Similar to the ETC designation requirements adopted above, the Commission, in this *Report and Order*, encourages states to require these reports to be filed by all ETCs over which they possess jurisdiction.

103. The Commission, however, does not adopt the recommendation of the Joint Board to control growth of the high-cost universal service fund by limiting the scope of high-cost support to a single connection that provides access to the public telephone network. Section 634 of the 2005 Consolidated Appropriations Act prohibits the Commission from utilizing appropriated funds to "modify, amend, or change" its

rules or regulations to implement this recommendation.

104. In this *Report and Order*, the Commission also agrees with the Joint Board's recommendation that changes are not warranted in its rules concerning procedures for redefinition of service areas served by rural incumbent LECs. In addition, in this *Report and Order*, the Commission grants several petitions for redefinition of rural incumbent LEC service areas. Moreover, the Commission directs the Universal Service Administrative Company (USAC) to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules. The Commission also modifies its annual certification and line count filing deadlines so that newly designated ETCs are permitted to file that data within sixty days of their ETC designation date in order to allow high-cost support to be distributed as of the date of ETC designation. In addition, the Commission modifies the quarterly certification schedule for the receipt of interstate access support (IAS) so that price cap local exchange carriers and/or competitive ETCs that miss the June 30 annual IAS certification deadline may file their certification thereafter in order to receive IAS support in the second calendar quarter after the certification is filed. Finally, the Commission declines to define mobile wireless customer location in terms of "place of primary use," as defined by the Mobile Telecommunications Sourcing Act (MTSA), for universal service purposes.

#### *G. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

105. No comments were filed directly in response to the IRFA in this proceeding. The Commission has nonetheless considered the potential significant economic impact of the rules on small entities and, as discussed below, has concluded that the rules adopted may impose some economic burden on small entities that are designated as ETCs.

#### *H. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

106. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business"

has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one 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 Small Business Administration (SBA).

107. We have included ETCs that may meet the definition of "small business" in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and is not dominant in its field of operation."

108. *Incumbent Local Exchange Carriers* (Incumbent LECs). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this FRFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

109. *Wireline Carriers and Service Providers* (Wired Telecommunications Carriers). The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

110. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers*. Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to recent data,

there are 1,310 incumbent LECs, 563 CAPs, 281 IXCs, 21 OSPs, 613 payphone providers and 772 resellers. Of these, an estimated 1,025 incumbent LECs, 472 CAPs, 254 IXCs, 20 OSPs, 609 payphone providers, and 740 resellers have 1,500 or fewer employees. In addition, an estimated 285 incumbent LECs, 91 CAPs, 27 IXCs, 1 OSP, 4 payphone providers, and 32 resellers, alone or in combination with affiliates, have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, most incumbent LECs, IXCs, CAPs, OSPs, payphone providers and resellers are small entities that may be affected by the decisions and rules adopted in this *Report and Order*.

111. *Wireless Service Providers*. The SBA has size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees. According to *Trends in Telephone Report* data, 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 reported that they have 1,500 or fewer employees and 442 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, we estimate that most wireless service providers are small entities that may be affected by the rules adopted herein.

112. *Cellular Radio Telephone Service*. The Commission has not developed a definition of small entities specifically applicable to cellular licensees. Therefore, the applicable definition of a small entity is the SBA definition applicable to radiotelephone companies, which provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The size data provided by SBA do not enable us to make a meaningful estimate of the number of cellular providers that are small entities because it combines all radiotelephone companies with 500 or more employees. We therefore have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms operating during 1992 had 1,000 or more employees.

Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder would be small businesses under the SBA definition.

113. There are presently 1,758 cellular licenses. However, the number of cellular licensees is not known, since a single cellular licensee may own several licenses. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 732 or fewer small cellular service carriers that may be affected by the rules, herein adopted.

114. *Broadband Personal Communications Service* (PCS). The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small businesses." Based on this information, we conclude

that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, we estimate that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

115. *Narrowband PCS*. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*, 65 FR 35875, June 6, 2000. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

116. *Specialized Mobile Radio (SMR)*. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the three previous calendar years, respectively. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of "small entity" and "very small entity" have been

approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, we estimate that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

117. *Rural Radiotelephone Service*. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). For purposes of this IRFA, we will use the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

118. *Air-Ground Radiotelephone Service*. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

### *I. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

119. *Reporting and Recordkeeping*. The Commission requires all ETCs over which it possesses jurisdiction, including ETCs designated by the Commission prior to this *Report and Order*, to submit annually certain information regarding their networks and their use of universal service funds. These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation so that universal service funds are used for their intended purposes. This information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, as part of the carrier's certification that the universal service funds are being used consistent with the Act.

120. Every ETC designated by the Commission must submit the following information on an annual basis: progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets; an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

(1) Detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of § 4.5 of the *Outage Reporting Order*). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) The date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

(2) The number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail

how it attempted to provide service to those potential customers;

(3) The number of complaints per 1,000 handsets or lines;

(4) Certification that the ETC is complying with applicable service quality standards and consumer protection rules, *e.g.*, the CTIA Consumer Code for Wireless Service;

(5) Certification that the ETC is able to function in emergency situations;

(6) Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(7) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

#### *J. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

121. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

122. The Commission concludes in this *Report and Order* that the above reporting regulations are reasonable and consistent with the public interest and the Act. In particular, these reporting requirements will further the Commission's goal of ensuring that ETCs satisfy their obligations under section 214(e) of the Act to provide supported services throughout their designated service areas. In addition, the Commission concludes that any administrative burdens placed on carriers as a result of this *Report and Order* are outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended. These reporting requirements also will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.

123. The Commission has considered the above alternatives when establishing these reporting requirements. For example, to simplify and consolidate the administrative burdens that may be associated with annual reports concerning outages, the Commission modeled its outage reporting requirements after the Commission's reporting requirements concerning outages adopted in the *Outage Reporting Order*. As a result, many ETCs may be able to file the same or similar information instead of having to compile and submit new outage data. In addition, the Commission has not imposed financial reporting requirements on ETCs because it believes any such requirements are unwarranted in light of the other commitments and reporting requirements adopted in this *Report and Order*. Moreover, the Commission has only required annual certifications, instead of actual data submissions, for certain of its reporting requirements, such as local usage plans, functionality in emergency situations, and compliance with consumer protection standards. Such certifications ensure compliance with section 254 of the Act without imposing data submissions that would impose significant administrative burdens on small entities that may not possess the resources to compile and submit such information on an annual basis.

#### *K. Report to Congress*

124. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

#### **VI. Ordering Clauses**

125. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 254, and 403, this *Report and Order* is adopted.

126. Part 54 of the Commission's rules, 47 CFR part 54, is amended as set forth effective June 24, 2005, except that the requirements subject to the Paperwork Reduction Act are not effective until approved by Office of Management and Budget. The Commission will publish a document in

the **Federal Register** announcing the effective date of the requirements.

127. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, 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.

128. The Universal Service Administrative Company shall to develop standards for the submission of any maps that eligible telecommunications carriers are required to submit to the Universal Service Administrative Company under the Commission's rules, to the extent discussed herein.

129. The petition for redefinition filed by the Colorado Public Utilities Commission, on August 12, 2002, is granted, to the extent discussed herein.

130. The petition for redefinition filed by the Colorado Public Utilities Commission, on May 30, 2003, is granted, to the extent discussed herein.

131. The petition for redefinition filed by RCC Minnesota, Inc, on June 24, 2003, is granted, to the extent discussed herein.

132. The petition for redefinition filed by the Minnesota Public Utilities Commission, on August 7, 2003, is granted, to the extent discussed herein.

133. The petition for redefinition filed by ALLTEL Communications, Inc., on November 21, 2003, is granted, to the extent discussed herein.

134. The petition for redefinition filed by ALLTEL Communications, Inc., on December 17, 2003, is granted, to the extent discussed herein.

135. The petition for redefinition filed by CTC Telecom, Inc., on June 30, 2004, is granted, to the extent discussed herein.

136. The petition for redefinition filed by American Cellular Corporation, on July 16, 2004, is granted, to the extent discussed herein.

137. The petition for redefinition filed by RCC Minnesota, Inc. and Wireless Alliance, LLC, on August 27, 2004, is granted, to the extent discussed herein.

#### **List of Subjects in 47 CFR Part 54**

Communications common carriers, Health facilities, Infants and children, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch**,  
*Secretary*.

#### **Final Rules**

■ Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 54—UNIVERSAL SERVICE**

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

**Authority:** 47 U.S.C. 1, 4(i), 4(j), 201–205, 214, 245 and 403 unless otherwise noted.

■ 2. Section 54.202 is added to read as follows:

**§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.**

(a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

(1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

(B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

- (1) Modifying or replacing the requesting customer's equipment;
- (2) Deploying a roof-mounted antenna or other equipment;
- (3) Adjusting the nearest cell tower;
- (4) Adjusting network or customer facilities;
- (5) Reselling services from another carrier's facilities to provide service; or
- (6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

(5) Certify that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) Any common carrier that has been designated under section 214(e)(6) as an eligible telecommunications carrier or that has submitted its application for designation under section 214(e)(6) before the effective date of these rules must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under § 54.209.

(c) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest. In doing so, the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its creamskimming analysis, the Commission shall consider other factors, such as disaggregation of

support pursuant to § 54.315 by the incumbent local exchange carrier.

(d) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an eligible telecommunications carrier on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by overnight express mail.

■ 3. Section 54.209 is added to read as follows:

**§ 54.209 Annual reporting requirements for designated eligible telecommunications carriers.**

(a) A common carrier designated under section 214(e)(6) as an eligible telecommunications carrier shall provide:

(1) A progress report on its five-year service quality improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;

(2) Detailed information on any outage, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

(i) At least ten percent of the end users served in a designated service area; or

(ii) A 911 special facility, as defined in 47 CFR 4.5(e).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

(A) The date and time of onset of the outage;

(B) A brief description of the outage and its resolution;

(C) The particular services affected;

(D) The geographic areas affected by the outage;

(E) Steps taken to prevent a similar situation in the future; and

(F) The number of customers affected.

(3) The number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers, as set forth in § 54.202(a)(1)(i);

(4) The number of complaints per 1,000 handsets or lines;

(5) Certification that it is complying with applicable service quality standards and consumer protection rules;

(6) Certification that the carrier is able to function in emergency situations as set forth in § 54.201(a)(2);

(7) Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) *Filing deadlines.* In order for a common carrier designated under section 214(e)(6) to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information in paragraph (a) no later than October 1, 2006, and thereafter annually by October 1 of each year. Eligible telecommunications carriers that file their reports after the October 1 deadline shall receive support pursuant to the following schedule:

(1) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the second, third and fourth quarters of the subsequent year.

(2) Eligible telecommunication carriers that file no later than April 1 of the subsequent year shall receive support for the third and fourth quarters of the subsequent year.

(3) Eligible telecommunication carriers that file no later than July 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

■ 4. Section 54.307 is amended by adding paragraph (d) to read as follows:

**§ 54.307 Support to a competitive eligible telecommunications carrier.**

\* \* \* \* \*

(d) *Newly designated eligible telecommunications carriers.*

Notwithstanding the deadlines in paragraph (c) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an

eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it submits the data required pursuant to paragraph (b) of this section within 60 days of that effective date. Thereafter, the eligible telecommunications carrier must submit the data required in paragraph (b) of this section pursuant to the schedule in paragraph (c) of this section.

■ 5. Section 54.313 is amended by adding paragraph (d)(3)(vi) to read as follows:

**§ 54.313 State certification of support for non-rural carriers.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(vi) *Newly designated eligible telecommunications carriers.*

Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to § 54.309 or § 54.311, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section.

■ 6. Section 54.314 is amended by adding paragraph (d)(6) to read as follows:

**§ 54.314 State certification of support for rural carriers.**

\* \* \* \* \*

(d) \* \* \*

(6) *Newly designated eligible telecommunications carriers.*

Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to §§ 54.301, 54.305, or § 54.307 or part 36 subpart F of this chapter, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this

section must be submitted pursuant to the schedule in paragraph (d) of this section.

■ 7. Section 54.809 is amended by revising paragraph (c) to read as follows:

**§ 54.809 Carrier certification.**

\* \* \* \* \*

(c) *Filing deadlines.* In order for a price cap local exchange carrier or an eligible telecommunications carrier serving lines in the service area of a price cap local exchange carrier to receive interstate access universal service support, such carrier shall file an annual certification, as described in paragraph (b) of this section, on the date that it first files its line count information pursuant to § 54.802, and thereafter on June 30 of each year. Such carrier that files its line count information after the June 30 deadline shall receive support pursuant to the following schedule:

(1) Carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year.

(2) Carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year.

(3) Carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

[CC Docket No. 98-170 and CG Docket No. 04-208; FCC 05-55]

**Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission concludes that Commercial Mobile Radio Service (CMRS) carriers should no longer be exempt from the Commission's rule requiring that billing descriptions be brief, clear, non-misleading and in plain language. In addition, the Commission puts CMRS carriers on notice that it intends to review complaints regarding unclear or misleading billing descriptions, and