FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 00–208]

Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts measures to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities; to establish a framework for the resolution of eligible telecommunications carrier designation requests under section 214(e)(6) of the Telecom Act; and to apply the framework to pending petitions for designation as eligible telecommunications carriers.

DATES: Effective September 5, 2000 except for §§ 54.401(d), 54.403(a)(2), 54.403(a)(3), 54.403(a)(4)(ii), 54.405(b), 54.409(c), 54.411(d), and 54.415(c), which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Twelfth Report and Order and Memorandum Opinion and Order in CC Docket No. 96–45 released on June 30, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Order, we adopt measures to: (1) Promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities; (2) establish a framework for the resolution of eligible telecommunications carrier designation requests under section 214(e)(6) of the Telecom Act; and (3) apply the framework to pending petitions for designation as eligible telecommunications carriers filed by Cellco Partnership d/b/a Bell Atlantic Mobile, Inc., Western Wireless Corporation, Smith Bagley, Inc., and the Cheyenne River Sioux Tribe Telephone Authority.

2. An important goal of the Telecommunications Act of 1996 is to preserve and advance universal service. The 1996 Act provides that ''[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high[-]cost areas, should have access to telecommunications and information services. * * *'' In the Further Notice of Proposed Rulemaking (*FNPRM*), 64 FR 52738 (September 30, 1999), of this proceeding, we sought to identify the impediments to increased telecommunications deployment and subscribership in unserved and underserved regions of our Nation, including tribal lands and insular areas, and proposed particular changes to our universal service rules to overcome these impediments. Although approximately 94 percent of all households in the United States have telephone service today, penetration levels among particular areas and populations are significantly below the national average. For example, only 76.7 percent of rural households earning less than $5,000 have a telephone, and only 47 percent of Indian tribal households on reservations and other tribal lands have a telephone. These statistics demonstrate, most notably, that existing universal service support mechanisms are not adequate to sustain telephone subscribership on tribal lands.

3. Central to the issues addressed in the *FNPRM*, is the notion that basic telecommunications services are a fundamental necessity in modern society. As our society increasingly relies on telecommunications technology for employment and access to public services, such telecommunications services have become a practical necessity. The absence of telecommunications services within a home places its occupants at a disadvantage when seeking to contact, or be contacted by, employers and potential employers. The inability to contact police, fire departments, and medical service providers in an emergency situation may have, and in some areas routinely does have, life-threatening consequences. In geographically remote areas, access to telecommunications services can minimize health and safety risks associated with geographic isolation by providing people access to critical information and services they may need. Basic telecommunications services also may provide a source of access to more advanced services. For example, voice telephone is currently the most common means of household access to the Internet, and the same copper loop used to provide ordinary voice telephone service also may be used for broadband services. Thus, as use of advanced services among the general population increases, those without basic telecommunications services may find themselves falling further behind in a number of ways. In its *Falling Through the Net* report, the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) found that, while ''[o]verall * * * the number of Americans connected to the nation's information infrastructure is soaring,'' the benefits of even basic telecommunications services have not reached certain segments of our population.

4. This Order represents the culmination of an ongoing examination of the issues involved in providing access to telephone service for Indians on reservations. This process began when the Commission convened two meetings in April and July of 1998, which brought Indian tribal leaders and senior representatives from other federal agencies to the Commission to meet with FCC Commissioners and Commission staff. The Commission then organized formal field hearings in January 1999 at the Indian Pueblo Cultural Center in Albuquerque, New Mexico, and in March 1999 at the Gila River Indian Community in Chandler, Arizona, at which Indian tribal leaders, telecommunications service providers, local public officials, and consumer advocates testified on numerous issues, including subscribership levels and the cost of delivering telecommunications services to Indians on tribal lands, as well as jurisdictional and sovereignty issues associated with the provision of telecommunications services on tribal lands. Based on information and analysis provided during these proceedings, the Commission initiated two rulemakings: one proposing changes to our universal service rules to promote deployment of telecommunications infrastructure and subscribership on tribal lands, and the other proposing changes to our wireless service rules to encourage the deployment of wireless service on tribal lands.

5. In this Order, we take the first in a series of steps to address the causes of low subscribership within certain segments of our population. The extent to which telephone penetration levels

fall below the national average on tribal lands underscores the need for immediate Commission action to promote the deployment of telecommunications facilities in tribal areas and to provide the support necessary to increase subscribership in these areas. We adopt measures at this time to promote telecommunications deployment and subscribership for the benefit of those living on federally-recognized American Indian and Alaska Native tribal lands, based on the fact that American Indian and Alaska Native communities, on average, have the lowest reported telephone subscribership levels in the country. Toward this end, we adopt amendments to our universal service rules and provide additional, targeted support under the Commission's low-income programs to create financial incentives for eligible telecommunications carriers to serve, and deploy telecommunications facilities in, areas that previously may have been regarded as high risk and unprofitable. By enhancing tribal communities' access to telecommunications services, the measures we adopt are consistent with our obligations under the historic federal trust relationship between the federal government and federally-recognized Indian tribes to encourage tribal sovereignty and self-governance. Specifically, by enhancing tribal communities' access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, we increase their access to education, commerce, government, and public services. Furthermore, by helping to bridge the physical distances between low-income consumers on tribal lands and the emergency, medical, employment, and other services that they may need, our actions ensure a standard of livability for tribal communities. To ensure their effectiveness in addressing the low subscribership levels on tribal lands, we intend to monitor the impact of the enhanced federal support measures and to adjust the measures as appropriate.

6. In response to the requests of Indian tribal leaders, we have adopted a statement of policy that recognizes the principles of tribal sovereignty and self-government inherent in the relationships between federally-recognized Indian tribes and the federal government. In conjunction with our efforts to adopt policies that further tribal sovereignty and tribal self-determination, we note the Commission's upcoming Indian Telecom Training Initiative, in which the Commission will bring together experts on telecommunications law and technologies to provide information to tribal leaders and other interested parties to promote telecommunications deployment and subscribership on tribal lands.

7. In this Order, we also offer guidance on those circumstances in which the Commission will exercise its authority to designate eligible telecommunications carriers under section 214(e)(6) of the Telecom Act. We conclude that, consistent with the Act and the legislative history of section 214(e) of the Telecom Act, state commissions have the primary responsibility for the designation of eligible telecommunications carriers under section 214(e)(2) of the Telecom Act. We direct carriers seeking designation as an eligible telecommunications carrier for service provided on non-tribal lands to first consult with the state commission, even if the carrier asserts that the state commission lacks jurisdiction. We will act on a section 214(e)(6) of the Telecom Act designation request from a carrier providing service on non-tribal lands only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction.

8. We recognize, however, that a determination as to whether a state commission lacks jurisdiction over carriers serving tribal lands involves a legally complex and fact-specific inquiry, informed by principles of tribal sovereignty, treaties, federal Indian law, and state law. Such jurisdictional ambiguities may unnecessarily delay the designation of carriers on tribal lands. In light of the unique federal trust relationship between the federal government and Indian tribes and the low subscribership levels on tribal lands, we establish a framework designed to streamline the eligibility designation of carriers providing service on tribal lands. Under this framework, carriers seeking a designation of eligibility for service provided on tribal lands may petition the Commission for designation under section 214(e)(6) of the Telecom Act. The Commission will proceed to a determination on the merits of such a petition if the Commission determines that the carrier is not subject to the jurisdiction of a state commission. We apply the framework adopted in this Order to several pending requests for eligible telecommunications carrier designation on tribal and non-tribal lands.

9. We also recognize that excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas. We therefore commit to resolve requests for designation for the provision of service on non-tribal lands that are properly before us pursuant to section 214(e)(6) of the Telecom Act within six months of the date of filing. Similarly, we commit to resolve the merits of a request for designation for the provision of service on tribal lands within six months of our determination that the carrier is not subject to the jurisdiction of a state commission. We encourage state commissions to act accordingly, and resolve designation requests filed pursuant to section 214(e)(2) of the Telecom Act within six months.

II. Low-Income Initiatives To Improve Access to Telecommunications Services and Subscribership on Tribal Lands

A. Definitions of ''Indian Tribe'' and ''Tribal Lands''

10. For purposes of this Order, we define the terms ''Indian tribe,'' ''reservation,'' and ''near reservation'' as those terms are defined in Subpart A of the regulations promulgated by the United States Department of the Interior's Bureau of Indian Affairs (BIA). In light of our decision to adopt rules to benefit low-income individuals living on Indian tribal lands, we use, for purposes of this Order, the definition of ''Indian tribe'' contained in section 20.1(p) of the BIA regulations. That definition includes ''any Indian tribe, band, nation, rancheria, pueblo, colony, or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government for the special programs and services provided by the Secretary [of the Interior] to Indians because of their status as Indians.'' Although there are minor variations between this definition and the statutory definition of ''Indian tribe'' in section 479a(2) and cited in the *FNPRM,* the characteristic common to both definitions that is relevant for our purposes is that both refer to the list of entities compiled and published by the Secretary of the Interior.

11. For purposes of identifying the geographic areas within which the rule amendments set forth will apply, we define the term ''tribal lands'' to include the BIA definitions of ''reservation'' and ''near reservation'' contained in sections 20.1(v) and 20.1(r) of the BIA

regulations, respectively. The term ''reservation'' means ''any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.'' ''Near reservation'' means those areas or communities adjacent or contiguous to reservations that are designated as such by the Department of Interior's Commissioner of Indian Affairs, and whose designations are published in the **Federal Register**.

12. We define the term ''tribal lands'' to include the BIA definitions of ''reservation'' and ''near reservation'' because these definitions appear to encompass the geographic areas in which the Commission may adopt, consistent with principles of Indian sovereignty and the special trust relationship, rule changes to benefit members of federally-recognized Indian tribes. In particular, we agree with commenters who argue that Alaska Native Statistical Areas and other lands conveyed pursuant to the Alaska Native Claims Settlement Act, although not Indian reservations, should be included within the definition of tribal lands insofar as these lands are federally-recognized lands that are inhabited by Alaska Native tribes. The BIA definition of ''near reservation'' includes lands adjacent or contiguous to reservations that generally have been considered tribal lands for purposes of other federal programs targeted to federally-recognized Indian tribes. Again, we conclude that such lands properly should be included within our definition insofar as they are Indian lands on which principles of Indian sovereignty and the special trust relationship apply. To exclude the ''near reservation'' lands designated by the Department of the Interior or lands on which tribal members in Alaska live, in our view, would unfairly penalize tribal members who live in tribal communities, but for historic or other reasons, do not live on an Indian reservation.

13. We believe that using the BIA regulations to define and identify the geographic areas to which our rule amendments will apply offers significant advantages in the ease of its administration. Specifically, the BIA definitions of ''reservation'' and ''near reservation'' provide a widely used and readily verifiable standard by which tribes may establish and carriers may verify the eligibility of individuals who qualify for the targeted assistance made available by this Order. We note that the classification ''on or near a reservation'' is used by BIA in administration of its financial assistance and social services programs for Indian tribes. If BIA or Congress should modify these definitions in the future, we intend such modifications to apply in equal measure to the classifications adopted in this Order without further action on our part. We believe that this action is consistent with our goal of using a widely used and readily verifiable standard for defining these terms.

B. Bases for Commission Action To Increase Subscribership on Tribal Lands

(1) Authority To Take Action To Improve Access to Telecommunications Services and Subscribership on Tribal Lands

14. Section 254(b) of the Telecom Act sets forth the principles that guide the Commission in establishing policies for the preservation and advancement of universal service. Included among these is the principle that ''quality services should be available at just, reasonable, and affordable rates.'' Our authority to take action to remedy the disproportionately lower levels of infrastructure deployment and subscribership prevalent among tribal communities derives from sections 1, 4(i), 201, 205, as well as 254 of the Telecom Act. As discussed, the record before us suggests that the disproportionately lower-than-average subscribership levels on tribal lands are largely due to the lack of access to and/or affordability of telecommunications services in these areas (as compared with cultural or individual preferences that cause individuals to choose not to subscribe). Along with depressed economic conditions and low per capita incomes, commenters have identified the following factors as the primary impediments to subscribership on tribal lands: (1) The cost of basic service in certain areas (as high as $38 per month in some areas); (2) the cost of intrastate toll service (limited local calling areas); (3) inadequate telecommunications infrastructure and the cost of line extensions and facilities deployment in remote, sparsely populated areas; and (4) the lack of competitive service providers offering alternative technologies. We note that no tribal representative in this proceeding has suggested that cultural or personal preference accounts for low subscribership levels within or among particular tribes. Based on the substantial Indian tribal participation in this proceeding and in the Commission's proceedings in WT Docket No. 99–266 and BO Docket No. 99–11, we do not have any evidence to conclude that cultural or personal factors generally explain low subscribership levels on tribal lands.

15. We conclude that the unavailability or unaffordability of telecommunications service on tribal lands is at odds with our statutory goal of ensuring access to such services to ''[c]onsumers in all regions of the Nation, including low-income consumers.'' In addition, the lack of access to affordable telecommunications services on tribal lands is inconsistent with our statutory directive ''to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient Nationwide * * * wire and radio communication service, with adequate facilities at reasonable charges.'' In the *Universal Service Order*, 62 FR 32862 (June 17, 1997) the Commission stated that, where ''necessary and appropriate,'' the Commission, working with an affected state or U.S. territory or possession, will open an inquiry to address instances of low or declining subscribership levels and take such action as is necessary to fulfill the requirements of section 254 of the Telecom Act.

16. Our authority to alter our rules in ways targeted to benefit tribal communities also must be informed by the principles of federal Indian law that arise from the unique trust relationship between the federal government and Indian tribes. That relationship has been characterized as ''unlike that of any other two people in existence,'' and ''marked by peculiar and cardinal distinctions which exist no where else.'' The Supreme Court has repeatedly ''recognized the distinctive obligation of trust incumbent upon the [Federal] Government'' in its dealings with Indian tribes. Moreover, Congress and the courts have recognized the federal government's responsibility to promote self-government among tribal communities as an important facet of the federal trust relationship. In *Morton* v. *Mancari*, for example, the Supreme Court upheld a federal regulation establishing a hiring preference for members of Indian tribes as consistent with the goal of promoting Indian self-government. In that case, the Court noted that ''literally every piece of legislation dealing with Indian tribes and reservations * * * singles out for special treatment a constituency of tribal Indians living on or near reservations.''

17. By enhancing tribal communities' access to telecommunications services, the measures we adopt today are consistent with our federal trust

responsibility to encourage tribal sovereignty and self-governance. Specifically, by enhancing tribal communities' access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, we increase tribal communities' access to education, commerce, government, and public services. Furthermore, by helping to bridge physical distances between low-income individuals living on tribal lands and the emergency, medical, employment, and other services that they may need, our actions further our federal trust responsibility to ensure a standard of livability for members of Indian tribes on tribal lands.

(2) Subscribership Levels on Tribal Lands

18. Section 254(i) of the Telecom Act requires that the Commission and the states ensure that universal service is available at rates that are just, reasonable, and affordable. In the *Universal Service Order*, the Commission adopted the finding of the Joint Board that subscribership levels provide relevant information regarding whether consumers have the means to subscribe to universal service and, thus, represent an important tool in evaluating the affordability of rates. The Commission found that subscribership levels alone, however, do not reveal whether consumers are spending a disproportionate amount of income on telecommunications services or whether paying the rates charged for services imposes a hardship for those who subscribe. The Commission concurred in the recommendation of the Joint Board that a determination of affordability take into consideration both rate levels and non-rate factors, such as consumer income levels, that can be used to assess the financial burden subscribing to universal service places on consumers. The Commission also adopted the Joint Board's finding that the scope of a local calling area ''directly and significantly impacts affordability'' of universal service.

19. Consistent with our statutory goal of preserving and advancing universal service and of ensuring that consumers in all regions of the Nation have access to the services supported by federal universal service support mechanisms, we modify our universal service rules, as set forth, to increase telecommunications infrastructure deployment and subscribership on tribal lands. We take action at this time primarily for the benefit of low-income individuals living on tribal lands, as that term is defined, because of the critically low telephone subscribership levels that are reported in these areas. Specifically, statistics demonstrate that, although approximately 94 percent of all Americans have a telephone, only 47 percent of Indians on reservations and other tribal lands have a telephone. Similarly, an analysis of 1990 Census data found that Indians represent 89 percent of the Nation's population in the one hundred zip codes with the lowest subscribership levels. More recent studies of subscribership levels for individual tribes suggest that subscribership levels for many tribes remain significantly below the national average.

20. Consistent with recent research that demonstrates that telephone penetration correlates directly with income, federal statistics reveal that tribal communities are among the poorest populations in the United States. For example, according to 1990 data published by the Bureau of the Census, the per capita income of Native Americans living on tribal lands was only $4,478, as compared with the $14,420 per capita income in the United States as a whole. At the time of the 1990 Census data collection, almost 51 percent of American Indians residing on reservations and trust lands had incomes below the poverty level, compared to 13 percent of United States residents nationwide with incomes below this level. Unemployment levels for a sample of 48 tribes averaged 42 percent as compared to the national unemployment figure of 4.5 percent. The record before us suggests that there is a correlation between low subscribership levels and low incomes on tribal lands. Indeed, the majority of commenters identify low incomes or impoverishment as the key reason for low subscribership levels on tribal lands.

21. Based on our review of these statistics and the record before us, and consistent with the unique trust relationship between the federal government and members of Indian tribes, we conclude that specific action is needed to address the impediments to subscribership on tribal lands and to ensure affordable access to telecommunications services in these areas. Specifically, the significantly lower-than-average incomes and subscribership levels of members of federally-recognized Indian tribes warrant our immediate action to increase subscribership and improve access to telecommunications on tribal lands.

22. We conclude that the potential benefits to tribal members will only increase by extending to non-Indians living on tribal lands, as well as Indians, the measures we adopt Of this Order. First, we believe that, by increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community the value of the network for tribal members in that community is greatly enhanced. Implicit in our decision to extend the availability of enhanced federal support to all low-income individuals living on tribal lands, is our recognition of the likelihood that non-Indian, low-income households on tribal lands may face the same or similar economic and geographic barriers as those faced by low-income Indian households.

23. Second, we believe that increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community will result in greater incentives for eligible telecommunications carriers to serve in those areas. We anticipate that the availability of enhanced federal support for all low-income individuals living on tribal lands will maximize the number of subscribers in such a community who can afford service and, therefore, make it a more attractive community for carrier investment and deployment of telecommunications infrastructure. As the number of potential subscribers grows in tribal communities, carriers may achieve greater economies of scale and scope when deploying facilities and providing service within a particular community.

24. Finally, we believe that, by extending the availability of enhanced federal support to all low-income individuals residing on tribal lands, carriers will avoid the administrative burden associated with distinguishing between low-income individuals who are members of federally-recognized tribes living on tribal lands and all other low-income individuals living on tribal lands. By reducing the possible administrative burdens associated with implementation of the enhanced federal support, we intend to eliminate a potential disincentive to providing service on tribal lands.

25. At this time, we do not adopt commenters' suggestions to apply the actions taken in this Order more generally to all high-cost areas and all insular areas. Although the record demonstrates that subscribership levels are below the national average in low-income, rural areas and in certain insular areas, the significant degree to which subscribership levels fall below the national average among tribal communities underscores the need for immediate Commission intervention for

the benefit of this population. The record before us does not permit a determination that the factors causing low subscribership on tribal lands are the same factors causing low subscribership among other populations. Indeed, the presence of certain additional factors on tribal lands that may not be present in non-tribal areas, and which appear to create disincentives for carriers to provide service in these areas, suggests that the identical strategy adopted in this Order to boost subscribership levels on tribal lands may not be appropriate for increasing subscribership in other areas. Specifically, the following combination of factors may increase the cost of entry and reduce the profitability of providing service on tribal lands: (1) The lack of basic infrastructure in many tribal communities; (2) a high concentration of low-income individuals with few business subscribers; (3) cultural and language barriers where carriers serving a tribal community may lack familiarity with the Native language and customs of that community; (4) the process of obtaining access to rights-of-way on tribal lands where tribal authorities control such access; and (5) jurisdictional issues that may arise where there are questions concerning whether a state may assert jurisdiction over the provision of telecommunications services on tribal lands.

26. We are concerned that to devise a remedy addressing all low subscribership issues for all unserved or underserved populations simultaneously might unnecessarily delay action on behalf of those who are least served, *i.e.*, tribal communities. We do not believe that we should delay action to benefit those who, based on national statistics and the record before us, comprise the most underserved segment of our population. We will, however, continue to examine and address the causes of low subscribership in other areas and among other populations within the United States and, in conjunction with the release of the 2000 Census data, we will take action as appropriate at that time to address low subscribership among such other populations.

27. Several incumbent local exchange carriers serving tribal communities indicate that subscribership levels among tribal communities within their service territories are higher than the nationwide average penetration rate for Indians on reservations and other tribal lands. These comments do not lead us to alter our conclusion that Commission action is warranted to improve subscribership levels for low-income individuals on tribal lands. As an initial matter, we recognize that penetration levels for particular tribal communities may exceed the 47 percent national average for Indians on tribal lands, just as certain tribes may be below the national average of 47 percent. This fact, however, is not inconsistent with our decision to adopt measures to benefit tribal communities generally because we are targeting our actions to low-income individuals on tribal lands, who we anticipate will have the lowest subscribership levels in these areas. Specifically, because research indicates that there is a correlation between income and subscribership levels, we anticipate that our actions will benefit tribal communities whose subscribership levels, as a function of low average per capita incomes, are closer to, or less than, the 47 percent national average for Indians on reservations.

28. Although we recognize the achievements of rural carriers serving tribal lands in improving subscribership levels in these areas, the fact that carriers employ various methodologies when measuring subscribership levels within their service territories limits the utility of particular statistics beyond the specific service territories. For example, statistics that measure the number or percentage of homes passed within a carrier's total service territory on a reservation do not reveal the number or percentage of households that, notwithstanding the fact that facilities are present, do not subscribe because they cannot afford telephone service. Even where subscribership statistics measure the number or percentage of households within a carrier's territory that have telephone service, those statistics provide no measure of reservation households outside of the carrier's service territory that have access to facilities or take service. Therefore, we conclude that nationwide and regional statistics that measure actual subscribership throughout tribal areas provide a more complete picture than do statistics that measure only the number of homes passed within particular service territories.

C. Enhanced Federal Lifeline and Expanded Link Up Support for Qualifying Low-Income Consumers Living on Tribal Lands

a. Enhanced Lifeline Support for Qualifying Low-Income Consumers Living on Tribal Lands

29. In this Order, we create a fourth tier of federal Lifeline support available to eligible telecommunications carriers serving qualifying low-income individuals living on tribal lands. This fourth tier of federal Lifeline support will consist of up to an additional $25 per month, per primary residential connection for each qualifying low-income individual living on tribal lands. This amount, in conjunction with the first-tier baseline (ranging from $3.50 to $4.35 after July 1, 2000) and $1.75 second-tier ''non-matching'' federal support amounts, will entitle each qualifying low-income consumer on tribal lands to a reduction in its basic local service bill of up to $31.10 per month. In taking this action, we follow the example of states such as New York and require all qualifying low-income individuals on tribal lands to pay a minimum monthly Lifeline rate of $1. As explained further, this enhanced Lifeline support should substantially reduce the Lifeline rate (*i.e.*, the monthly basic service rate) for all qualifying low-income consumers on tribal lands.

30. Consistent with the requirement of § 54.403(a) of our rules, we condition the receipt of this increased federal Lifeline support on carriers passing through the entire fourth-tier support amount to each qualifying low-income individual living on tribal lands by an equivalent reduction in the subscriber's monthly bill for local service. Specifically, we require each eligible telecommunications carrier to certify that it (1) will pass through the fourth-tier federal support amount to its qualifying low-income subscribers, and (2) has received the necessary approval of any non-federal regulatory authority authorized to regulate such carrier's rates that may be required to implement the required rate reduction. As discussed, an eligible telecommunications carrier seeking to receive reimbursement during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000 must make these certifications in a letter filed with the universal service fund Administrator, the Universal Service Administrative Company (USAC), by September 1, 2000. All carriers seeking reimbursement for enhanced Lifeline or Link Up services must make these certifications in the FCC Form 497 (as revised).

31. Our primary goal, in taking this action, is to reduce the monthly cost of telecommunications services for qualifying low-income individuals on tribal lands, so as to encourage those without service to initiate service and better enable those currently subscribed to maintain service. In view of (1) the extraordinarily low average per capita and household incomes in tribal areas,

(2) the excessive toll charges that many subscribers incur as a result of limited local calling areas on tribal lands, (3) the disproportionately low subscribership levels in tribal areas, and (4) the apparent limited awareness of, and participation in, the existing Lifeline program, we conclude that a substantial additional amount of support is needed to have an impact on subscribership. Our conclusion to provide up to an additional $25 for all qualifying low-income individuals living on tribal lands is consistent with the actions of state commissions that have instituted substantial rate reductions for their low-income residents. In each of these cases, substantial additional state funds have been made available to promote subscribership among qualifying low-income consumers in those jurisdictions. Our determination is informed by the experience of these jurisdictions and the increased subscribership levels achieved following their implementation of substantial Lifeline rate reductions. For example, in the four years (1992–1996) immediately following the District of Columbia Public Service Commission's (D.C. Commission) adoption of a $1 Lifeline rate for low-income residents 65 years of age and older and a $3 Lifeline rate for low-income residents under 65 years of age, the District of Columbia's overall subscribership levels increased by more than 4 percent, as compared with a nationwide increase of only 0.1 percent for the same time period. Similarly, while only 8,850 low-income individuals previously lacking telephone service initiated service in New York in the three years preceding the New York Public State Service Commission's adoption of a $1 Lifeline rate, 171,536 low-income individuals initiated service in the three years following adoption of the $1 Lifeline rate, an increase in new Lifeline subscribers of almost 2000 percent.

32. In adopting its $1 Lifeline program for low-income citizens in the District of Columbia, the D.C. Commission determined that a substantial rate reduction, along with the removal of other regulatory restrictions, was needed to stimulate interest among the low-income population generally, given its history of low subscription and in light of the potential importance of phone service, particularly to elderly residents, as a ''Lifeline.'' Subscribership levels on tribal lands, the multitude of obstacles to increasing subscribership on tribal lands, and the critical health and safety function of a telephone to persons in extremely remote locations suggest that tribal populations represent a similarly ''at risk'' population. Just as the D.C. Commission determined that an aggressive regulatory approach was needed to raise the visibility of Lifeline and stimulate interest on the part of residents there, we believe that a similarly aggressive, multi-faceted approach is needed to address the problem of low subscribership on tribal lands.

33. In combination with the ''non-matching'' federal first-tier Lifeline support of up to $4.35 and second-tier support of $1.75 per month per Lifeline customer, the additional $25 in enhanced federal Lifeline support for qualifying low-income individuals living on tribal lands would reduce the cost of the most expensive basic service rates presented on the record (*e.g.*, $38 per month in areas of Alaska and $35 per month on the Wind River Reservation), to less than $10 per month. The record before us indicates that basic local service rates for subscribers living on or near reservations range from $5 to $38 per month, with most subscribers receiving rates of less than $20 per month. Thus, with the enhanced Lifeline support, low-income individuals on tribal lands whose local service rates are $32.10 or less per month would pay a monthly local service rate of $1. The enhanced support also would apply to any monthly mileage or zonal charges imposed as a condition for receiving basic local service. The enhanced support would not apply to state or federal taxes, state or federal universal service fees, or surcharges for 911 service that may appear as line items on a subscriber's bill for local service. By substantially reducing the monthly service costs for all qualifying low-income individuals on tribal lands, we find that the additional targeted Lifeline support provided here should eliminate or diminish the effect of unaffordability for those low-income individuals for whom it may be difficult to maintain telephone service even where facilities are present.

34. By creating this enhanced Lifeline support, we have attempted to reduce to $1 per month the basic service rate for the majority of income-eligible individuals residing on tribal lands. There are, however, some isolated instances where local telephone rates are high enough that, even with the enhanced Lifeline support, monthly service rates will be greater than $1. In addition, there are a myriad of charges, which vary from state to state, that also affect customers' bills, such as taxes, surcharges, and mileage charges. So, while we have taken significant steps toward reducing the monthly local service rates for low-income individuals on tribal lands with this program, we cannot assure each eligible customer that his or her local service bill will be $1 per month.

35. We have ample evidence that customer confusion and lack of awareness of Lifeline discounts have contributed to low subscribership levels on tribal lands. We encourage states to consider ways in which local charges may be simplified, particularly for low-income customers eligible to receive this enhanced Lifeline support, so as to make the Lifeline discounts easier to promote and explain to qualifying customers. We encourage the Joint Board to consider this issue in its review of Lifeline service for all low-income consumers.

36. In determining the appropriate level of enhanced Lifeline support for qualifying low-income individuals on tribal lands, we recognize that low-income individuals on tribal lands may spend a significantly greater percentage of their household income on local and toll services than do most other Americans as a result of the substantial toll charges they incur to place calls within their communities of interest. Based on data compiled by the Bureau of Labor Statistics, we observe that expenditures for residential local and toll telephone services comprise approximately two percent of the average U.S. household's annual expenditures. Assuming average local service charges of approximately $20 per month and toll charges of as much as $126 per month, a tribal member may spend as much as $1,752 per year on local and long distance telephone service. Assuming an average household income of $12,459 per year, a tribal household could spend approximately 14 percent of its annual income on telephone service. Given that an annual household income of $12,459 is unlikely to result in any savings, we assume that all or most of this amount is dedicated to household expenditures.

37. Even if we were to use the lowest local service charge on the record of $5 per month and assume intrastate toll charges of only $42 per month (or one-third of the $126 toll charge figure cited), total telephone services, excluding taxes and other charges, would cost $47 per month, or $564 per year. A tribal household earning $12,459 per year would spend, in this example, approximately 5 percent of its annual income on telephone service. Thus, in comparison to the two percent of household expenditures dedicated to telecommunications services in the average U.S. household, it appears that

tribal members on average commit a substantially greater percentage of household resources to pay for the same services.

38. Finally, we are mindful that a low-income individual currently receiving and paying for service without enhanced support will, upon adoption of these rules, receive a discounted rate for the same service, when that individual arguably could continue to pay the current rate without any enhancement. Nonetheless, we believe that our decision is consistent with our responsibility to ensure that our actions do not expand the federal universal service support mechanisms beyond that required to achieve our statutory mandate to preserve and advance universal service. As we noted in the *Universal Service Order*, however, the fact that an individual is connected to the network does not, in itself, reveal whether that individual is spending a disproportionate amount of income on telecommunications services. We have carefully examined the facts before us and structured the enhanced Lifeline support in a manner that is precisely targeted to provide qualifying low-income individuals with access to telecommunications services and to increase subscribership on tribal lands. Given that: (1) tribal members appear to spend a significantly higher proportion of their incomes on telecommunications services than do other Americans; (2) low-income tribal members' services may be more likely to be disconnected; (3) beneficiaries of enhanced support must be income eligible; and (4) qualifying individuals can use only as much support as is needed to cover the cost of the individuals' basic service rate less $1, we are persuaded that the level of support provided here does not exceed that required to preserve and advance universal service.

39. We also believe that our adoption of enhanced Lifeline support will encourage: (1) Eligible telecommunications carriers to construct telecommunications facilities on tribal lands that currently lack such facilities; (2) new entrants offering alternative technologies to seek eligible telecommunications carrier status to serve tribal lands; and (3) tribes, eligible telecommunications carriers, and states to address impediments to increased penetration that are caused by limited local calling areas. We discuss each of these in greater detail.

40. *Infrastructure Development.* By providing carriers with a predictable and secure revenue source, the enhanced Lifeline support just discussed, in conjunction with the expanded support that we provide under the Link Up program, is designed to create incentives for eligible telecommunications carriers to deploy telecommunications facilities in areas that previously may have been regarded as high risk and unprofitable. We note that, unlike in urban areas where there may be a greater concentration of both residential and business customers, carriers may need additional incentives to serve tribal lands that, due to their extreme geographic remoteness, are sparsely populated and have few businesses. In addition, given that the financial resources available to many tribal communities may be insufficient to support the development of telecommunications infrastructure, we anticipate that the enhanced Lifeline and expanded Link Up support will encourage such development by carriers. In particular, the additional support may enhance the ability of eligible telecommunications carriers to attract financing to support facilities construction in unserved tribal areas. Similarly, it may encourage the deployment of such infrastructure by helping carriers to achieve economies of scale by aggregating demand for, and use of, a common telecommunications infrastructure by qualifying low-income individuals living on tribal lands.

41. The enhanced Lifeline and Link Up support adopted here also may help to foster principles of tribal sovereignty and tribal self-determination in two respects. First, the availability of enhanced federal support may provide additional incentives for tribes that wish to establish tribally-owned carriers to do so by diminishing the financial risk associated with providing service to low-income customers on tribal lands. Second, to the extent that tribal leaders can aggregate service requests of large numbers of qualifying individuals eligible for enhanced support, they may have more control in choosing the carriers serving their communities and increased bargaining power in their negotiations with carriers seeking to provide universal service on tribal lands.

42. To the extent that the cost to extend facilities, due to the geographic remoteness of a location or other geographic characteristics, is extraordinarily high, we recognize that the level of support provided here, in combination with existing levels of universal service high-cost support, may not always be sufficient to attract the necessary facilities investment. Accordingly, although we anticipate that the measures adopted in this Order will address a significant number of the obstacles to subscribership on tribal lands identified on the record before us, we anticipate that additional regulatory steps may be necessary to encourage the deployment of facilities in areas where the cost of deployment is extraordinarily high. We will address these issues, in consultation with the Joint Board, when we consider reform of the rural high cost mechanism, and implementation of section 214(e)(3) of the Telecom Act. For this reason, we do not adopt additional measures at this time to address the problem of inadequate facilities deployment in the most geographically remote tribal areas.

43. *Competitive Service Providers.* By providing additional federal support targeted to low-income individuals on tribal lands, without regard to the specific technology used to provide the supported telecommunications services, we recognize that different technologies may offer solutions to address low subscribership levels on tribal lands. For example, commenters have suggested that wireless service may represent a cost-effective alternative to wireline service in sparsely populated, remote locations where the cost of line extensions is prohibitively expensive. Moreover, as we discuss further, a wireless eligible telecommunications carrier service offering that features an expanded local calling area along with a predetermined number of calls or minutes of calling within a tribal member's community of interest, may represent a solution to the problem of limited local calling areas and excessive toll charges in tribal areas. The enhanced Lifeline support adopted in this Order is competitively neutral because any carrier, including a wireless carrier, that receives designation as an eligible telecommunications carrier and is permitted by tribal authorities to serve on tribal lands may provide enhanced Lifeline service to qualifying low-income individuals on tribal lands.

44. *Limited Local Calling Areas.* As noted, because the boundaries of local calling areas for wireline carriers are established by the states, we recognize that we do not have the authority to address the problem of limited local calling areas directly. We find, however, that the enhanced Lifeline support may help to alleviate the financial burden of the excessive toll charges that low-income individuals on tribal lands incur when their local calling area does not encompass their community of interest. First, the availability of enhanced Lifeline support, by reducing local service rates by as much as $25 per month, effectively ''frees up'' money formerly dedicated to local service charges that a subscriber now may apply to the subscriber's toll charges. Second, the enhanced Lifeline support may spur

competitive entry by non-wireline carriers whose calling plans offer an expanded local calling area. Finally, our decision to increase the level of Lifeline support to reduce basic local service rates for qualified, low-income individuals on tribal lands may encourage states to expand local calling areas for subscribers whose local calling area does not encompass their community of interest. Specifically, in instances where the entire federal Lifeline support amount (up to $31.10 where no state matching funds are provided) is not needed to offset a subscriber's local service rate because the rate is less than this amount, the additional remaining support may provide states with incentives to examine and, where appropriate, expand local calling areas on tribal lands. By reducing the financial burden associated with excessive toll charges and by reducing the number of calls subject to toll charges, we conclude that the actions we take today will help low-income individuals on tribal lands to maintain their access to telephone service.

45. We decline at this time to adopt other proposals included in the *FNPRM* for offsetting the cost of intrastate toll service, based on our expectation that the measures adopted in this Order, although not providing support directly for intrastate toll charges, nevertheless will help to alleviate some of the burden associated with high intrastate toll charges on tribal lands. Because we find that the provision of federal support to offset the cost of intrastate toll service would expand upon the definition of supported services in section 254(c) of the Telecom Act, and would raise issues of competitive neutrality to the extent that interexchange carriers would not be eligible to receive such enhanced Lifeline support, we do not adopt our proposal to support intrastate toll service. We ask the Joint Board, in connection with its upcoming review of the definition of supported services, to issue a recommendation as to whether the Commission should include intrastate or interstate toll services or expanded area service within the list of supported services on tribal lands or in other areas. Finally, in recognition of the states' traditional jurisdiction and expertise in determining the appropriate size and scope of local calling areas, we concur in the view expressed by NTIA and other parties that counsel against our direct involvement in this area.

b. Expanded Link Up

46. In this Order, we provide up to $100 of federal support under the Link Up program to reduce the initial connection charges and line extension charges of qualifying low-income individuals on tribal lands. Thus, in addition to the currently available Link Up support amount, *i.e.*, half of the first $60 of a qualifying subscriber's initial connection charges up to a maximum of $30, we will provide up to an additional $70 of federal Link Up support to cover 100 percent of the remaining charges associated with initiating service between $60 and $130, for a total maximum support amount of $100 per qualifying low-income subscriber. Adoption of this measure will provide up to $100 in federal Link Up support to qualifying low-income individuals on tribal lands with initial connection or line extension costs of $130 or more. Based on information and comment on the record pertaining to the costs associated with initiating service in many tribal areas, we conclude that the existing $30 maximum level of Link Up support is, in many cases, far short of the support amount needed to offset such charges. A recent study of American Indian and Alaska Native tribal communities on tribal lands found that average household telephone installation charges for responding tribes was $78. We note that all parties who commented on the appropriate amount by which to increase the level of Link Up support recommend an increase in the maximum level of support to $100 and that no party opposes this amount or proposes an alternative amount.

47. As proposed in the *FNPRM*, we also expand the types of charges covered by the Link Up program to include any standard charges imposed on qualifying low-income individuals on tribal lands as a condition of initiating service, including both line extension and initial connection charges, up to the $100 maximum. Although the Link Up program traditionally has operated only to reduce qualifying consumers' initial connection or initial installation charges (*e.g.*, switch activation fees), we conclude that the expanded Link Up support also should apply to reduce facilities-based charges associated with the extension of lines or construction of facilities needed to initiate service to a qualifying low-income individual on tribal lands. We take this action in recognition of the fact that many low-income individuals on tribal lands face as a result of their remote locations certain supplementary charges for the installation of new lines and the initiation of service, in addition to the typical switch activation fees. For example, on Pueblo Picuris, in New Mexico, qualifying low-income consumers are charged an initial connection charge of approximately $130 per consumer and other consumers are charged approximately $160 per consumer, $113 of which represents a zonal charge to cover the cost of expanding the capacity of existing facilities located near that community. To the extent that parties have identified line extension and construction costs as obstacles to subscribership on tribal lands, this measure is designed to increase subscribership among qualifying low-income individuals by minimizing certain of these up-front costs. In addition, we conclude that several of the justifications supporting our adoption of enhanced Lifeline support also support our adoption of expanded Link Up support. Specifically, by adopting the expanded Link Up support, we intend to create incentives for (1) eligible telecommunications carriers to construct telecommunications facilities on tribal lands that currently lack such facilities; and (2) new entrants offering alternative technologies to seek eligible telecommunications carrier status to serve tribal lands.

48. We note that the expanded Link Up support for qualifying low-income individuals living on tribal lands is competitively neutral in that it will apply to any eligible telecommunications carrier's standard charges for initiating service to qualifying consumers on tribal lands. For example, the expanded Link Up support may be used to offset the charge associated with ''activating service'' for an eligible telecommunications carrier that offers satellite telephone service. We further note, however, that the expanded Link Up support cannot be applied to customer premises equipment, *i.e.*, equipment that falls on the customer side of the network interface device boundary between customer and network facilities. We adopt this limitation in light of the fact that the federal universal service support mechanisms generally support only the cost of facilities falling on the network side of the demarcation point and because the Commission's definition of supported services does not include customer premises equipment or inside wiring. Expanded Link Up support would be available for qualifying consumers on tribal lands to offset charges for facilities that are necessary to enable a non-wireline eligible telecommunications carrier to provide service to the demarcation point. For example, if the provision of

a fixed wireless or satellite service required the installation of a receiver on the roof of a subscriber's premises to bring service to a demarcation point, *i.e.*, a network interface device, expanded Link Up support could be used to offset the cost of installing such facilities. To the extent that a non-wireline carrier can isolate costs associated with the portion of a handset that receives wireless signals, we conclude that those costs would be covered as costs on the network side of the network interface device.

49. With respect to GTE's concern that the use of expanded Link Up support to cover line extension costs may not provide sufficient funding, we note that, as discussed, where the cost to extend facilities to a low-income individual's residence is extraordinarily high, additional regulatory action may be necessary to encourage the deployment of facilities in such areas. To the extent that extraordinarily high costs pose a barrier to service in certain tribal areas, we will examine those issues in a future order implementing section 214(e)(3) of the Telecom Act and in connection with our consideration of the Joint Board's recommendations regarding high-cost universal service reform for rural carriers. We likewise are not dissuaded by GTE's concern that the expanded Link Up support will encourage inefficient investment in telecommunications infrastructure. We do not anticipate that the expanded Link Up support will encourage inefficient investment in telecommunications infrastructure because: (1) Support for line extension or other construction costs is capped at $100 per qualifying low-income individual on tribal lands; (2) the line extension or other construction costs in many tribal areas will exceed the maximum amount covered under the expanded Link Up support; and (3) carriers therefore may have to absorb certain costs in excess of the maximum expanded Link Up support amount in order to induce low-income individuals to initiate service,. Moreover, to the extent that a competitive eligible telecommunications carrier offering an alternative to wireline technology can extend service to a remote tribal area at a substantially lower cost than a wireline carrier, we believe that it is a more economically efficient use of federal universal service funds to create incentives, in the first instance, for the lower-cost provider to provide the service.

50. Our decision to apply the expanded Link Up support exclusively to low-income individuals living on tribal lands at this time and further examine whether to extend this approach to other unserved populations, is consistent with Bell Atlantic's suggestion that we adopt a means-tested approach to funding line extensions and, before adopting such an approach, resolve whether it should be applied to other unserved areas. With respect to Bell Atlantic's further suggestion that we resolve, prior to taking action, how much of an increase in expanded Link Up support is needed to have a significant impact on penetration, we note that the actions we take are necessarily based on our best estimates of how much support is needed to impact subscribership levels. We intend that the measures we adopt in this Order and their impact on subscribership levels will be subject to ongoing examination and possible refinement as may be appropriate.

c. Implementation Issues Associated With Rule Changes To Provide Enhanced Lifeline Support and Expanded Link Up Support to Low-Income Consumers on Tribal Lands

51. We anticipate that carriers may require additional time, beyond the effective date of this Order, to implement the tariff and billing system changes that may be necessary for eligible telecommunications carriers to offer the enhanced Lifeline and expanded Link Up services we adopt in this Order. Accordingly, we have determined to extend until October 1, 2000 the date by which eligible telecommunications carriers must comply with the new rule § 54.403(a)(4) and § 54.411(a)(3) adopted in this Order. An eligible telecommunications carrier serving tribal lands must make available, upon request by a qualifying low-income individual living on tribal lands, the enhanced Lifeline and Link Up services adopted in this Order by no later than October 1, 2000. Although we encourage eligible telecommunications carriers to implement the necessary changes and offer the expanded Lifeline and Link Up services prior to this date where possible, we believe that this date gives carriers sufficient time to comply with these rule amendments. Because we find significant public interest in not delaying the benefits of these rules beyond that required to enable carriers to comply with them without undue burden, we decline to extend the deadline for their implementation beyond October 1, 2000.

52. In order to receive reimbursement during the calendar year 2000 for enhanced Lifeline and expanded Link Up services provided during the fourth quarter 2000, an eligible telecommunications carrier must submit to USAC by no later than September 1, 2000, a letter from a corporate officer of the carrier containing the following information and certifications: (1) An estimate of (a) the number of eligible low-income subscribers in each of the carrier's study areas that the carrier projects will receive non-enhanced federal Lifeline or Link Up discounts in the fourth quarter of 2000 (*i.e.*, number of eligible subscribers on non-tribal lands), and (b) the number of eligible low-income subscribers in each of the carrier's study areas that the carrier projects will receive enhanced Lifeline or expanded Link Up discounts in the fourth quarter of 2000 as a result of actions taken in this Order (*i.e.*, number of eligible subscribers on tribal lands); (2) a statement of the corporate officer that the estimates provided are based on the good-faith estimate of the corporate officer; (3) the carrier's monthly undiscounted service rates for subscribers eligible to receive enhanced Lifeline support; (4) the monthly amount of additional support for each low-income subscriber who the carrier projects will be eligible for enhanced Lifeline support; (5) the number of low-income individuals on tribal lands for whom the carrier expects to initiate service in the fourth quarter of 2000 and the number of other low-income individuals for whom the carrier expects to initiate service in the fourth quarter of 2000; (6) the amount charged to initiate service for low-income subscribers on tribal lands and the amount charged to initiate service for other low-income subscribers; (7) an estimate of total federal Lifeline and Link Up support that the carrier anticipates it will require in the fourth quarter of 2000; (8) a certification that the carrier will pass through all federal Lifeline support amounts to its qualifying low-income subscribers; (9) a certification that the carrier has received the necessary approval of any non-federal regulatory authority (*e.g.*, a state commission or tribal regulatory authority) that is authorized to regulate such carrier's rates that may be necessary to implement the required rate reduction; and (10) a certification that the carrier is publicizing the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for these services.

53. We emphasize that all eligible telecommunications carriers, including those that do not submit to USAC by September 1, 2000 the letter described, are required to make available the Lifeline and Link Up discounts adopted in this Order to all qualifying low-

income consumers not later than October 1, 2000. We also remind all eligible telecommunications carriers that, as a condition for receiving federal Lifeline or Link Up support payments from USAC, they must submit to USAC at regular intervals an FCC Form 497. We direct the Common Carrier Bureau and USAC to revise the FCC Form 497 Lifeline Worksheet as necessary to implement the decisions and rule changes adopted in this Order. We delegate to the Common Carrier Bureau the authority to modify the FCC Form 497, along with any other forms that may be required to implement the decisions in this Order.

d. Expanded Lifeline and Link Up Qualification Criteria for Low-Income Consumers on Tribal Lands

54. We amend § 54.409(b) of our rules to enable qualifying low-income individuals living on tribal lands within a state that *does not* provide intrastate matching funds under the Lifeline program (either for the benefit of the state's population generally or tribal members specifically), to qualify for Lifeline and Linkup support by certifying their participation in certain alternative means-tested assistance programs. Specifically, we expand the federal default qualification criteria for eligibility for Lifeline and Link Up assistance, as set forth in § 54.409(b), to permit low-income individuals living on tribal lands to establish their income eligibility by certifying their participation in one of the following federal assistance programs: (1) BIA general assistance; (2) Temporary Assistance for Needy Families (TANF) tribally-administered block grant program; (3) Head Start Programs (under income qualifying eligibility provision only); or (4) National School Lunch Program (free meals program only). Given that the household income thresholds for these newly added programs range from 100–130 percent of the federal poverty level or incorporate state-determined poverty thresholds, we conclude these income thresholds are consistent with those associated with the programs included in our current federal default list.

55. We take this action based on evidence on the record before us that the existing federal qualification criteria governing eligibility under the Commission's Lifeline and Link Up programs, to the extent that these criteria do not include low-income programs specifically targeted to Indians, serve as a barrier to participation in the Lifeline and Link Up programs by low-income members of Indian tribes. A low-income tribal member effectively may be excluded from participation in Lifeline and Link Up in instances where that individual receives assistance or benefits under a program other than one of the programs listed in § 54.409(b) of our rules. For example, a low-income tribal member who receives cash assistance benefits under the BIA general assistance program, but receives no assistance or benefits under any of the means-tested programs listed in § 54.409(b) of the Commission's rules, would not be eligible today to receive Lifeline and Link Up support by virtue of the individual's non-participation in any of the low-income programs listed under § 54.409(b). Accordingly, we have expanded the list of programs contained in § 54.409 to include means-tested programs in which, according to commenters, low-income tribal members are more likely to participate and, therefore, represent more suitable income proxies for low-income tribal members.

56. We also make available the expanded eligibility criteria enumerated to all low-income individuals living on tribal lands. This action is consistent with our rationale discussed for extending the benefits of the enhanced Lifeline and expanded Link Up support to all qualifying low-income individuals on tribal lands, as opposed to limiting these benefits solely to qualifying low-income tribal members on tribal lands. We believe that, by increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community the value of the network for tribal members in that community is greatly enhanced. We also anticipate that reducing barriers to participation in the Commission's Lifeline and Link Up programs for all low-income individuals residing on tribal lands will help to increase the number of subscribers in a tribal community who can afford service and, thereby, provide greater incentive for carriers to invest and deploy telecommunications infrastructure on tribal lands. In addition, making the identical set of eligibility criteria available to all low-income individuals on tribal lands should make it administratively less burdensome for an eligible telecommunications carrier serving tribal lands to provide Lifeline and Link Up services in those areas. In particular, we believe that it will be less burdensome for a carrier to verify the income eligibility of all potential Lifeline and Link Up subscribers in a tribal area using the same set of eligibility criteria.

57. We decline to expand our federal default qualification criteria to include participation in services provided by the Indian Health Service of the U.S. Department of Health and Human Services given that such services are available to Indian tribal members generally, rather than exclusively to low-income tribal members, and therefore are inappropriate qualification criteria for our purposes. In addition to proposing the addition of certain of the means-tested programs that we adopt here, one commenter suggests that we include the Low Income Home Energy Assistance Program (LIHEAP), Aid to Families with Dependent Children (AFDC), and Tribal Work Experience Program (TWEP). We note that LIHEAP is included currently in the federal default qualification criteria listed in § 54.409(b) of our rules. In light of our understanding that TANF has superseded the AFDC program, we do not include the AFDC program, but we do include the tribally-administered TANF block grant program. In addition, we do not include TWEP insofar as it appears that participation in BIA general assistance is a prerequisite to participation in TWEP and, given that our expanded default qualification criteria now include participation in the BIA general assistance program, TWEP participants need only certify their participation in the BIA general assistance program.

58. At this time, we also do not adopt a qualification procedure by which low-income individuals on tribal lands could establish their income eligibility by self-certifying that their income is below a particular level, such as that set by the Federal Poverty Guidelines, as one commenter has suggested. Because we believe, however, that this approach may reach more low-income consumers, including low-income tribal members, than the current method of conditioning eligibility on participation in particular low-income assistance programs, we will further examine, in consultation with the Joint Board, possible revisions to § 54.409 of the Commission's rules to provide for self-certification based solely on income level.

59. For qualifying low-income individuals who live on tribal lands in states that *do* provide intrastate matching funds under the Lifeline program and therefore are subject to state-created eligibility criteria, we adopt the suggestion of the Wisconsin Public Service Commission and revise our eligibility guidelines under § 54.409(a). Specifically, in addition to establishing qualification criteria under § 54.409(a) that are based ''solely on income or factors directly related to income,'' we conclude that a state containing any tribal lands also must

ensure that its qualification criteria are reasonably designed to apply to low-income tribal populations within that state. We conclude that this modification to § 54.409(a) is preferable to an alternative approach under which we would require states to adopt the identical expanded qualification criteria as those adopted for purposes of the federal default qualification criteria. Our decision today will give a state whose eligibility criteria inadvertently exclude low-income tribal populations impetus to take corrective action, while giving the state flexibility to adopt eligibility criteria best-suited to the tribal populations within that state. Consistent with the Joint Board's goal of increasing low-income subscribership and ensuring that the availability of Lifeline and Link Up is not limited to particular populations, we conclude that this approach will help to ensure that all qualifying residents on tribal lands will receive the intended benefits of the federal Lifeline and Link Up programs.

60. We will permit, however, a low-income individual who lives on tribal lands and who is excluded from participation in the Lifeline and Link Up programs because the individual is not enrolled in any of the programs listed in a state's qualification criteria to qualify for *federal* Lifeline and Link Up support by certifying his or her eligibility under one of the means-tested programs listed in § 54.409, as revised herein. We conclude that this action is necessary to hasten the process of bringing telecommunications services to unserved and underserved tribal lands and in recognition of the time needed for states to revise their qualification criteria where those criteria limit participation in Lifeline and Link Up to individuals who receive benefits under one or more low-income assistance programs in which low-income tribal members typically do not participate. For example, in a state where Lifeline and Link Up eligibility hinges on enrollment in the Medicaid program, a low-income tribal member who receives health services through the Indian Health Services and does not participate in Medicaid would not be eligible for Lifeline and Link Up support (state or federal) in that state by virtue of that state's qualification criteria. This measure recognizes the unique barriers facing low-income tribal members living on tribal lands who may have been excluded inadvertently from participation in Lifeline and Link Up as a result of a state's qualification criteria. This action is consistent with the Commission's statement in the *Universal Service Order* that, where a state provides matching funds under the Lifeline program, the state's qualification criteria should apply. Conversely, if a low-income individual living on tribal lands is excluded from participation in the Lifeline and Link Up programs because that individual participates in none of the programs used as income proxies in a state's qualification criteria and such individual agrees to forgo state matching funds, then we find that the justification for applying state qualification criteria in that circumstance no longer applies.

D. Requiring Eligible Telecommunications Carriers To Publicize the Availability of Lifeline and Link Up Support

61. In codifying section 214(e)(1)(B) of the Telecom Act, Congress recognized that merely providing a service is not enough to ensure that the needed support is received. Rather, it imposed an obligation to advertise the availability of the supported services and the charges for those services. There is evidence in the record that the lack of information concerning the availability of Lifeline and Link Up services contributes to low penetration rates. We are concerned that eligible telecommunications carriers are not advertising the availability of Lifeline and Link Up services or, if they are, that such efforts are not reasonably designed to reach those likely to qualify for the service. Based on the apparent lack of awareness of the availability of Lifeline and Link Up services in many rural, low-income communities and to remove any confusion concerning eligible telecommunications carriers' obligation to publicize the availability of these services, we conclude that this obligation should be codified in our rules.

62. We recognize, as pointed out by United Utilities, Inc. (UUI), the limitations of traditional advertising media in promoting awareness of low-income support mechanisms within particular low-income populations. Specifically, UUI, a Native-owned eligible telecommunications carrier serving ''predominantly Alaskan native villages,'' describes how it achieved significant increases in both penetration rates and Lifeline subscribership through an intensive outreach effort in 26 native villages. As part of its outreach effort, UUI waived ''service order and hook-up fees,'' identified and contacted each household that did not have service, and often spoke in its customers' Native language to inform them of the Lifeline program and toll blocking. According to UUI, as a result of this effort, the household penetration level in these 26 villages increased by 4.9 percent, and Lifeline subscribership increased from 395 to 1,263 subscribers. In its comments, UUI states that:

> [R]egional advertising media generate very limited results, as does the placing locally of posters. Placing ads in regional publications and placing posters can be ineffective when carriers do not make special efforts, as did UUI, to contact low income households in person, to speak to them in their own language, and to adequately explain the Lifeline program and toll blocking options. UUI would take the position that a lack of information does * * * contribute to the significantly low penetration rates on tribal lands.

We commend these efforts and encourage other carriers to undertake similar efforts to comply with the rule amendments that we adopt in this Order.

63. We amend § 54.405 and § 54.411 of our rules to require eligible telecommunications carriers to publicize the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services. We emphasize that these rule amendments shall apply to all eligible telecommunications carriers and not merely to those serving tribal lands. We take this action based on evidence in the record that the lack of awareness of the Lifeline and Link Up programs contributes to low penetration rates and to eliminate any confusion concerning eligible telecommunications carriers' obligation to publicize the availability of these services.

64. We recognize that a method that is reasonably designed to reach qualifying low-income subscribers in one location may not be effective in reaching qualifying low-income subscribers in another location. For that reason, we do not prescribe in this Order specific, uniform methods by which eligible telecommunications carriers must publicize the availability of Lifeline and Link Up support. We do, however, require an eligible telecommunications carrier to identify communities with the lowest subscribership levels within its service territory and make appropriate efforts to reach qualifying individuals within those communities. For example, we would expect a carrier to take into consideration the cultural and linguistic characteristics of low-income communities within its service territory as well as the efficacy of particular methods in reaching the greatest number of qualifying low-income individuals within those communities. In addition, we require an eligible telecommunications carrier to provide

to qualifying low-income individuals, through whatever public awareness method it selects, consumer information on the availability of toll blocking and toll limitation services for the purpose of enabling the subscriber to control the amount of toll charges that he or she may incur.

65. If we determine that eligible telecommunications carriers are not adopting methods reasonably designed to reach qualifying low-income individuals, additional action may be needed to increase public awareness among such individuals. To that end, we may address in a Further Notice of Proposed Rulemaking more specific methods by which eligible telecommunications carriers must publicize the availability of Lifeline and Link Up services. Finally, we note that the Commission's upcoming Indian telecommunications training initiative will be devoted, in part, to familiarizing carriers and tribal representatives with the Lifeline and Link Up programs generally, and the changes made to those programs by this Order, in particular.

E. Lifeline Jurisdictional Issues

66. *State Approval Requirement for Second-Tier Support.* We modify § 54.403(a) of our rules to make second-tier federal Lifeline support available to an eligible telecommunications carrier that is not subject to state rate regulation on the condition that the carrier certifies that it: (1) Will pass through the second-tier $1.75 federal support amount to its qualifying low-income subscribers, and (2) has received the necessary approval of any non-federal regulatory authority that is authorized to regulate such carrier's rates that may be required to implement the required rate reduction (*e.g.,* a tribal regulatory authority). To the extent that an eligible telecommunications carrier is not subject to rate regulation by any non-federal regulatory authority, then the carrier need only certify for this purpose that it: (1) will pass through the second-tier $1.75 federal support amount to its qualifying low-income subscribers, and (2) is not subject to rate regulation by any non-federal regulatory authority. As discussed, an eligible telecommunications carrier seeking to receive reimbursement during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000 must make these certifications in a letter filed with USAC by September 1, 2000. All carriers seeking reimbursement for enhanced Lifeline or Link Up services must make these certifications in the FCC Form 497 (as revised).

67. By eliminating the need for eligible telecommunications carriers not subject to state rate regulation to obtain state action or seek a Commission waiver in order to receive second-tier federal Lifeline support, this revision to § 54.403(a) of our rules ensures that no category of carriers is subjected to more burdensome administrative requirements than are imposed on all other eligible telecommunications carriers seeking second-tier federal Lifeline support. We conclude that this amendment maintains appropriate deference to tribal regulatory authorities because second-tier support will not be disbursed where a tribal regulatory authority that regulates the rates of an eligible telecommunications carrier does not permit an equivalent reduction in consumers' bills. In addition, by requiring eligible telecommunications carriers to certify that they are not subject to state rate regulation before we make available second-tier federal Lifeline support, this result is consistent with our overall deference to the states in areas of traditional state ratemaking.

68. *Third-Tier Lifeline Support.* In light of our determination to provide enhanced federal Lifeline support of up to $25 for low-income individuals living on tribal lands through the creation of a fourth tier of the Lifeline program, we do not adopt our proposal in the *FNPRM* to provide the third tier of federal Lifeline support to carriers serving tribal lands where no intrastate matching funds are provided. In granting a temporary waiver of the matching requirement for third-tier federal Lifeline support in the *Gila River Order,* the Bureau was aware that, absent a waiver, a tribal carrier not subject to the jurisdiction of a state commission, such as Gila River Telecommunications, Inc., could receive only first-tier Lifeline support in the amount of $3.50 per qualifying low-income subscriber. Central to the Bureau's determination to grant a temporary waiver of the second-tier state approval requirement and the third-tier state matching requirement, was the recognition that, in light of the ''low penetration and income levels on reservations,'' providing tribal carriers with only $3.50 per qualifying low-income subscriber was inconsistent with the ''Commission's policy of fostering access to the public telephone network for those most in need.''

69. We note that, because we modify the state approval requirement of § 54.403(a) for the provision of second-tier Lifeline support and adopt enhanced Lifeline support for qualifying low-income individuals, eligible telecommunications carriers will be entitled to receive nonmatching federal support of up to $31.10 per month, per qualifying low-income subscriber. We conclude that it is not necessary to waive the third-tier state matching requirement because we anticipate the enhanced Lifeline amount of $31.10 per month per qualifying low income subscriber will constitute a sufficient level of support, even on tribal lands where no intrastate support is generated. We further believe that the enhanced Lifeline will increase qualifying low-income individuals' access to the public telephone network more effectively than would our proposal in the *FNPRM* to waive the third-tier matching requirement, which would yield a maximum additional level of support of only $1.75 per qualifying subscriber. Given that all parties who commented on this issue supported our proposal to waive the third-tier state matching requirement in § 54.403(a) as a means to direct additional federal Lifeline support to low-income individuals on tribal lands, we conclude that our decision to accomplish this result through the creation of a fourth tier of the Lifeline program, in lieu of waiving the third-tier state matching requirement, is not inconsistent with the comments addressing this issue.

70. We revise § 54.403(a), however, to permit a carrier that is not subject to state rate regulation to satisfy the third-tier intrastate matching requirement of § 54.403(a) by generating its own matching funds, independently of the actions of the state in which it operates. Although we recognize that many tribes and tribal carriers may not have adequate resources to generate the matching funds necessary to receive third-tier federal support, we find that the level of nonmatching federal Lifeline support that will be available for qualifying low-income individuals on tribal lands provides an adequate level of support. If a tribe or a carrier, including a wireless carrier, that is not subject to state rate regulation nevertheless wishes to provide matching funds in order to receive third-tier federal Lifeline support and reduce local rates further, we do not want to preclude such a result. Accordingly, we modify § 54.403(a) of our rules to provide third-tier federal Lifeline support, up to a maximum of $1.75 per qualifying low-income customer as calculated in § 54.403(a), to an eligible telecommunications carrier that certifies that it: (1) Is not subject to state rate regulation, and (2) will pass through the total amount of third-tier support (intrastate and federal) to its qualifying low-income subscribers by an

equivalent reduction in those subscribers' monthly bill for local telephone service. As discussed, an eligible telecommunications carrier seeking to receive reimbursement during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000 must make these certifications in a letter filed with USAC by September 1, 2000. All carriers seeking reimbursement for enhanced Lifeline or Link Up services must make these certifications in the FCC Form 497 (as revised).

71. By maintaining the matching requirement of § 54.403(a) as a condition for receiving third-tier federal Lifeline support, we leave undisturbed a primary goal underlying the Commission's adoption of third-tier support, namely, the creation of an incentive for states (or tribal authorities, tribal carriers, or wireless carriers, as the case may be) to reduce local rates even further. In the *Universal Service Order,* the Commission determined that $5.25 represented a sufficient level of baseline federal Lifeline support. The Commission established the additional third tier of federal Lifeline support, which entitles an eligible telecommunications carrier to receive up to $1.75 of federal Lifeline support per qualifying low-income consumer in a state that generates support from the intrastate jurisdiction, in order to preserve states' incentive to reduce local rates beyond that achieved under the first and second tiers of Lifeline support, as deemed appropriate by the state. Accordingly, a carrier that is not subject to state rate regulation, but that certifies that it will pass through to its qualifying low-income subscribers a rate reduction equivalent to both the intrastate and federal third-tier support amounts, will be entitled to receive third-tier federal Lifeline support. For the foregoing reasons, however, we maintain the matching requirement of § 54.403(a) as a condition for receiving third-tier federal Lifeline support.

72. *Filing of Federal Lifeline Plan.* Finally, we observe that § 54.401(d) of the Commission's rules currently does not apply to an eligible telecommunications carrier that is not subject to the rate regulatory authority of a state commission. That section directs a state commission to file, or requires a state commission to direct an eligible telecommunications carrier to file, with USAC information demonstrating that the carrier's Lifeline plan meets the requirements of Subpart E of the Commission's rules. We amend § 54.401(d) to require eligible telecommunications carriers not subject to the rate regulatory authority of a state commission to file with USAC information demonstrating that the carrier's Lifeline plan meets the requirements of Subpart E of the Commission's rules.

III. Designating Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of The Telecom Act

A. Discussion

(1) Scope of Section 214(e)(6) of the Telecom Act

73. *State Commission Designation of Eligible Telecommunications Carriers.* In light of the statutory framework and legislative history, we conclude that Congress, in enacting section 214(e)(6) of the Telecom Act, did not intend to alter the basic framework of section 214(e) of the Telecom Act, which gives the state commissions the principal role in designating eligible telecommunications carriers under section 214(e)(2) of the Telecom Act. This interpretation of section 214(e) of the Telecom Act is consistent with the legislative history, which indicates that section 214(e)(6) of the Telecom Act is not intended to ''restrict or expand the existing jurisdiction of State commissions over any common carrier,'' but is intended to provide a means for the designation of a carrier over which a state commission lacks jurisdiction.

74. We conclude that section 214(e)(6) of the Telecom Act requires the Commission to conduct a designation proceeding in instances where the relevant state commission lacks, for whatever reason, the authority to perform the designation. We are guided by the statutory framework, legislative history, and the record before us, to conclude that the threshold question in determining whether the Commission may exercise its authority under section 214(e)(6) of the Telecom Act is whether the state commission lacks jurisdiction over the carrier, for any reason. We agree with commenters who suggest that the inquiry should include, but not be limited to, whether a state commission lacks jurisdiction over the particular service or geographic area. The determination as to whether a state commission lacks jurisdiction over a particular carrier is a fact-specific inquiry that may depend on interpretations of federal, state, and tribal law where appropriate.

75. *Jurisdiction Over Carriers Serving Tribal Lands.* We are not persuaded by claims that the exercise of our authority under section 214(e)(6) of the Telecom Act is limited to designations of eligibility sought by tribally-owned carriers serving tribal lands. We conclude that neither the language of section 214(e)(6) of the Telecom Act nor its legislative history provides any indication that it applies only to tribally-owned carriers serving tribal lands. Section 214(e)(6) of the Telecom Act applies to any carrier ''not subject to the jurisdiction of a state commission.'' Moreover, the legislative history supports this interpretation. In sum, we agree with those commenters who contend that the legislative history of section 214(e)(6) of the Telecom Act makes clear that, although the class of carriers to be covered by section 214(e)(6) of the Telecom Act was dominated by tribally-owned carriers, it was not restricted to them.

76. Nor do we find persuasive claims that the Commission generally has authority to make all eligible telecommunications carrier determinations over carriers providing telecommunications service on tribal lands. We do not believe that Congress intended the Commission to use section 214(e)(6) of the Telecom Act to usurp the role of a state commission that has jurisdiction over a carrier providing service on tribal lands. On the contrary, in adopting section 214(e)(6) of the Telecom Act, Congress recognized that some state commissions had asserted jurisdiction over tribal lands. Congress also acknowledged pending jurisdictional disputes between states and tribes and made clear that the adoption of section 214(e)(6) of the Telecom Act was not ''intended to impact litigation regarding jurisdiction between State and federally-recognized tribal entities.''

77. As discussed, the Commission's authority under section 214(e)(6) of the Telecom Act applies only when a carrier is not subject to the jurisdiction of a state commission. The determination as to whether a carrier providing service on tribal lands is subject to the jurisdiction of a state commission is a complicated and intensely fact-specific legal inquiry informed by principles of tribal sovereignty and requiring the interpretation of treaties, and federal Indian law and state law. Such determinations usually consider whether state regulation is preempted by federal regulation, whether state regulation is consistent with tribal sovereignty and self-determination, and whether the tribe has consented to state jurisdiction, either in treaties or otherwise. The inquiry as to whether a state commission has authority to regulate the provision of telecommunications service on tribal lands is a particularized one, and thus specific to each state and the facts and circumstances surrounding the provision of the service. As the U.S.

Supreme Court has stated, ''there is no rigid rule by which to resolve the question whether a particular state law may be applied to an Indian reservation or to tribal members.''

78. *Jurisdiction Over Particular Services.* We further conclude that the technology used to provide the telecommunications service does not *per se* determine whether the state commission or this Commission has jurisdiction over the carrier for purposes of designating the carrier as eligible to receive federal universal service support. Specifically, we conclude that the provision of service by terrestrial wireless or satellite carrier does not *per se* place the carrier outside the parameters of the state commission designation authority under section 214(e)(2) of the Telecom Act. We believe that if Congress had intended to exempt particular services from the state commission designation process, it would have expressly done so in section 214(e) of the Telecom Act. We therefore agree with NTIA that there is nothing in the statute or the legislative history to support the notion that, by enacting section 214(e)(6) of the Telecom Act, Congress intended to remove from the state commissions the primary responsibility for designating wireless or satellite carriers as eligible telecommunications carriers.

79. We further conclude that state commission designation of a Commercial Mobile Radio Service (CMRS) provider pursuant to section 214(e)(2) of the Telecom Act does not constitute entry regulation in violation of section 332(c)(3) of the Telecom Act. Section 332(c)(3) of the Telecom Act bars state and local rate and entry regulation of CMRS providers, but allows the states to regulate ''other terms and conditions of service.'' Section 332(c)(3) of the Telecom Act prohibits direct state regulation of entry by CMRS providers (*e.g.,* a regulation that requires the CMRS provider to obtain a certificate of public convenience and necessity from the state prior to providing service), but a regulation does not necessarily run afoul of section 332(c)(3) of the Telecom Act solely because it may make it more difficult for some carriers to offer service. We conclude that the prohibition on ''entry'' regulation in section 332(c)(3) of the Telecom Act does not prohibit states from designating CMRS providers as eligible telecommunications carriers because such designation relates to a carrier's right to receive federal universal service support, rather than a carrier's legal right to do business in a state. We need not decide for present purposes whether, or under what conditions, a particular state's eligible telecommunications carrier designation process as applied to a CMRS provider might constitute impermissible entry regulation, rather than permissible regulation of terms and conditions of service. Moreover, this conclusion does not affect our ability to determine whether a state commission's designation process or denial of eligibility may constitute a barrier to entry under section 253 of the Telecom Act.

80. We note that several states have already issued orders addressing designation requests from wireless carriers. We encourage states to move forward expeditiously to resolve pending requests in a pro-competitive manner designed to preserve and advance universal service.

(2) Section 214(e)(6) of the Telecom Act Designation Process for Carriers Serving Non-Tribal Lands

81. As discussed, the threshold question for determining whether the Commission may exercise its authority to designate a carrier as an eligible telecommunications carrier under section 214(e)(6) of the Telecom Act is whether the state commission lacks jurisdiction over the carrier, for any reason. Section 214(e) of the Telecom Act does not, however, define the circumstances under which a state commission may lack jurisdiction, nor does it address whether such jurisdictional determinations should be made by the state commission or this Commission. We conclude that carriers seeking designation from this Commission under section 214(e)(6) of the Telecom Act for service provided on non-tribal lands must first consult with the relevant state regulatory commission on the issue of whether the state commission has jurisdiction to designate the carrier, even if the carrier asserts that the state commission lacks jurisdiction over the carrier. In so doing, we note that jurisdictional challenges relating to the authority of the state commission to designate certain carriers or classes of carriers on non-tribal lands derive almost exclusively from interpretations of state law.

82. While a carrier may believe state law to preclude the state commission from exercising jurisdiction over the carrier for purposes of designation under section 214(e)(2) of the Telecom Act, we conclude, as a matter of federal-state comity, that the carrier should first consult with the state commission to give the state commission an opportunity to interpret state law. We conclude that state commissions should be allowed a specific opportunity to address and resolve issues involving a state commission's authority under state law to regulate certain carriers or classes of carriers. Only in those instances where a carrier provides the Commission with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation will we consider section 214(e)(6) of the Telecom Act designation requests from carriers serving non-tribal lands. We conclude that an ''affirmative statement'' of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier. Each carrier should consult with the state commission to receive such a notification, rather than relying on notifications that may have been provided to similarly situated carriers.

83. We are concerned, however, that excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas. We believe it is unreasonable to expect prospective entrants to enter a high-cost market and provide service in competition with an incumbent carrier that is receiving support, without knowing whether they are eligible to receive support. If new entrants do not have the same opportunity to receive universal service support as the incumbent, such carriers may be unable to provide service and compete with the incumbent in high-cost areas. As the Commission has previously concluded, competitively neutral access to such support is critical to ensuring that all Americans, including those that live in high-cost areas, have access to affordable telecommunications services. We are therefore concerned that indefinite delays in the designation process will thwart the intent of Congress, in section 254 of the Telecom Act, to promote competition and universal service to high-cost areas. Accordingly, we commit to resolve, within six months of the date filed at the Commission, all designation requests for non-tribal lands that are properly before us pursuant to section 214(e)(6) of the Telecom Act. We also strongly encourage state commissions to resolve designation requests filed under section 214(e)(2) of the Telecom Act in the same time frame.

(3) Section 214(e)(6) of the Telecom Act Designation Process for Carriers Serving Tribal Lands

84. In this section, we establish a framework designed to streamline the

process for eligibility designation of carriers providing service on tribal lands. As discussed in greater detail, we conclude that carriers seeking eligibility designations for service provided on tribal lands may petition this Commission under section 214(e)(6) of the Telecom Act for a determination of whether the carrier is subject to the state commission's jurisdiction and, in instances where the state lacks jurisdiction, a decision on the merits of the designation request. Under this framework, a carrier seeking an eligibility designation for service provided on tribal lands will avoid any costs and delays associated with resolving the threshold jurisdictional determination in a state designation proceeding and possible court appeal of that state jurisdictional decision. Moreover, this framework will provide a safe harbor for carriers unwilling to have the jurisdictional question resolved by a state commission. This streamlined designation process for carriers serving tribal lands is intended to facilitate the expeditious resolution of such requests so as to increase the availability of affordable telecommunications services to tribal lands, while preserving the state commissions' jurisdiction consistent with federal, tribal, and state law. We believe that this process will balance carefully the principles of tribal sovereignty and the demonstrated need for access to affordable telecommunications services on tribal lands, against the appropriate exercise of state jurisdiction over carriers operating on such lands.

85. As discussed, we conclude that section 214(e)(6) of the Telecom Act directs the Commission to perform the eligibility designation in instances where the carrier is not subject to the jurisdiction of a state commission. Neither section 214(e)(2) of the Telecom Act nor section 214(e)(6) of the Telecom Act, however, address how such jurisdictional determinations should be made or by which commission. In the absence of specific guidance in the statute as to how such jurisdictional determinations should be made, we conclude that this Commission may resolve the threshold question of whether a carrier seeking eligibility designation for service provided on tribal lands is subject to the jurisdiction of the state commission. This conclusion is consistent with the execution of our duty to preserve and advance universal service under section 254 of the Telecom Act, principles of tribal sovereignty, and the unique federal trust relationship between Indians tribes and the federal government.

86. We recognize that a determination as to whether a state commission lacks jurisdiction over a carrier providing service on tribal lands is a legally complex inquiry extending beyond interpretations of state law to principles of tribal sovereignty, federal Indian law, and treaties. Evaluating the extent to which a state commission has jurisdiction over activities conducted on tribal lands, whether by members or non-members of a tribe, will involve questions of whether state regulation is preempted by federal regulation, whether state regulation is consistent with tribal sovereignty and self-determination, and whether a tribe has consented to state jurisdiction in treaties or otherwise. Thus, we find that such jurisdictional determinations, which will involve an analysis of principles of tribal sovereignty, federal Indian law, treaties, and state law, may be appropriately performed by this Commission.

87. The jurisdictional ambiguities associated with the question of whether a state may designate a carrier serving tribal lands may unnecessarily delay the provision of affordable services in high-cost areas. We intend this framework to facilitate the designation of carriers eligible to receive federal universal service support for service provided on tribal lands by permitting such carriers to seek resolution of the jurisdictional issue directly from this Commission. Absent this framework, the designation of such carriers as eligible to receive federal universal service support may be otherwise unnecessarily delayed pending resolution of the jurisdictional question, or potentially prevented entirely in those instances where the tribal authority will not support the carrier's submission to state commission jurisdiction.

88. Moreover, in establishing this framework for the designation of eligible telecommunications carriers serving tribal lands, we are guided by our recognition of, and respect for, principles of tribal sovereignty and self-determination. As described in the Commission's *Indian Policy Statement*, we acknowledge the principles of tribal sovereignty and self-government and the unique trust relationship between the Indian tribes and the federal government. We are mindful that the federal trust doctrine imposes on federal agencies a fiduciary duty to conduct their authority in matters affecting Indian tribes in a manner that protects the interest of the tribes. We are also mindful that federal rules and policies should therefore be interpreted in a manner that comports with tribal sovereignty and the federal policy of empowering tribal independence.

89. In light of our obligation to preserve and advance universal service under section 254 of the Telecom Act, principles of tribal sovereignty and self-determination, and our unique federal trust responsibility, we adopt the following framework for resolution of designation requests under section 214(e)(6) of the Telecom Act for carriers serving tribal lands. We conclude that a carrier seeking a designation of eligibility to receive federal universal service support for telecommunications service provided on tribal lands may petition the Commission for designation under section 214(e)(6) of the Telecom Act, without first seeking designation from the appropriate state commission. The petitioner must set forth in its petition the basis for its assertion that it is not subject to the state commission's jurisdiction, and bears the burden of proving that assertion. The petitioner must provide copies of its petition to the appropriate state commission at the time of filing with the Commission. The Commission will release, and publish in the **Federal Register**, a public notice establishing a pleading cycle for comments on the petition. The Commission will also send the public notice announcing the comment and reply dates to the affected state commission by overnight express mail to ensure that the state commission is notified of the notice and comment period.

90. Based on the evidence presented in the record, the Commission shall make a determination as to whether the carrier has sufficiently demonstrated that it is not subject to the state commission's jurisdiction. In the event the Commission determines that the state commission lacks jurisdiction to make the designation and the petition is properly before the Commission under section 214(e)(6) of the Telecom Act, the Commission will decide the merits of the request within six months of release of an order resolving the jurisdictional issue. If the carrier fails to meet its burden of proof that it is not subject to the state commission's jurisdiction, the Commission will dismiss the request and direct the carrier to seek designation from the appropriate state commission. In such cases, we urge state commissions to act within a similar time frame (*i.e.*, six months) to resolve such requests as expeditiously as possible.

91. We emphasize that a carrier seeking a section 214(e)(6) of the Telecom Act designation for service provided on tribal lands must bear the

burden of demonstrating that it is not subject to the state commission's jurisdiction. As discussed, we reject the contention that section 214(e)(6) of the Telecom Act provides the Commission with the blanket authority to make all eligible telecommunications carrier designations over carriers providing service on tribal lands. In so doing, we recognize that the issue of whether a state commission may exercise jurisdiction over a carrier providing service on tribal lands is a particularized inquiry guided by principles of tribal sovereignty, federal Indian law, and treaties, as well as state law. Therefore, carriers seeking an eligibility designation from this Commission for the provision of service on tribal lands should provide fact-specific support demonstrating that the carrier is not subject to the state commission's jurisdiction for the provision of service on tribal lands. Such support should include any relevant case law, statutes, and treaties. We emphasize that this is a strict burden and that generalized assertions regarding the state commission's lack of jurisdiction will not suffice to confer jurisdiction on this Commission under section 214(e)(6) of the Telecom Act. We would also find informative any statements and analyses the tribal authority might provide regarding the petitioner's request for designation and the state commission's exercise of jurisdiction. For example, carriers may include with their petitions a letter from the appropriate tribal authority addressing the jurisdictional question or the merits of the designation request.

92. We decline to place on the affected state commission the burden of proving that it has jurisdiction over a particular carrier. To do so would suggest that state commission bear the burden of overcoming a general presumption that states do not have jurisdiction over carriers providing service on tribal lands. Such a presumption is inconsistent with our determination that the issue of whether a state commission lacks jurisdiction over a carrier providing service on tribal lands is a particularized inquiry, and thus specific to each state and the facts and circumstances surrounding the provision of the service.

93. We strongly encourage the participation of the affected state commissions and tribal authorities in this process. The determination of whether a particular carrier is subject to the state commission's jurisdiction for service provided on tribal lands is one that will be greatly informed by the participation of the tribes and state commission or other state officials. Based on our experience to date with section 214(e)(6) of the Telecom Act, we believe that there will be some state commissions that will not object to the Commission's designation of carriers serving tribal lands as eligible to receive federal universal service support. We look forward to working with the state commissions, tribal authorities, and members of industry to resolve these jurisdictional questions, and ultimately the designation requests, in an expeditious manner. To that end, we seek comment in a Further Notice of Proposed Rulemaking on additional measures that may be implemented to further facilitate the designation process for the provision of service on tribal lands.

94. We emphasize, however, that this process is limited in several respects. First, a carrier may avail itself of this process only to seek a designation of eligibility to receive federal universal service support for service provided on *tribal lands.* Petitioners seeking an eligibility designation under section 214(e)(6) of the Telecom Act for service provided on tribal lands must accurately describe the specific geographic areas they wish to serve, and must demonstrate that such areas satisfy the definition of tribal lands we adopt in this Order. As discussed, the federal government has a unique trust responsibility with respect to members of federally-recognized tribes. In addition, the determination of jurisdiction over a carrier serving tribal lands is an inquiry that will extend beyond questions of state law, and will be informed by principles of tribal sovereignty, federal law, and treaties. Thus, it is appropriate and reasonable that the Commission, in executing its statutory obligation to preserve and advance universal service, should determine whether a carrier seeking an eligibility designation for services provided on tribal lands is subject to the state commission's jurisdiction.

95. Second, a carrier may only avail itself of this process when it has not initiated a designation proceeding before the affected state commission. In order to avoid the potential for ''forum-shopping'' and the costs and confusion caused by a duplication of efforts between this Commission and state commissions, we will not make a jurisdictional determination under section 214(e)(6) of the Telecom Act if the affected state commission has initiated a proceeding in response to a designation request under section 214(e)(2) of the Telecom Act. Nothing we adopt today affects the ability of a state commission to make an eligible telecommunications carrier designation for a carrier serving tribal lands, where jurisdiction may otherwise be in dispute among the parties.

96. Finally, any determination made by this Commission pursuant to section 214(e)(6) of the Telecom Act relates only to a carrier's eligibility to receive *federal* universal service support for the provision of service on tribal lands. We emphasize that the Commission's determination of whether a particular carrier is subject to the state commission's jurisdiction for service provided on tribal lands is limited to the state commission's ability to designate the carrier as eligible to receive federal universal service support.

B. Pending Requests for Designation Pursuant to Section 214(e)(6) of the Telecom Act

(1) Cellco Petition for Designation as an Eligible Telecommunications Carrier for Maryland and Delaware

97. *Discussion.* Consistent with the Maryland Commission's request and our conclusions concerning the role state commissions play in the designation of carriers under section 214(e) of the Telecom Act, we dismiss without prejudice Cellco's request for designation of eligible telecommunications carrier status for service provided in Maryland. Although we do not reach the merits of the Cellco request for designation in Delaware in this Order, we conclude that the Delaware Commission's comments in this proceeding provide a sufficient basis for the exercise of our jurisdiction to consider the merits of the request for designation under section 214(e)(6) of the Telecom Act. We will discuss each of the requests in greater detail.

98. *Maryland Request.* At the request of the Maryland Commission, we dismiss Cellco's request for designation as an eligible telecommunications carrier in Maryland. In a letter to the Commission on April 18, 2000, the Maryland Commission stated its intent to assert jurisdiction over CMRS providers, including Cellco, for purposes of making eligible telecommunications carrier designations in Maryland. We are not persuaded by Cellco's statement that it has ''informally confirmed with the professional staffs of the Maryland and Delaware commissions that these statutory exclusions are complete exclusions from the commissions' jurisdiction.'' We emphasize that carriers seeking a designation from this Commission for service provided on non-tribal lands must provide to us an affirmative statement from the state commission or a court of competent

jurisdiction that the carrier is not subject to the state commission's jurisdiction for purposes of eligible carrier designation.

99. We decline Cellco's invitation that we should interpret the relevant state law to conclude that it is not subject to the state commission's jurisdiction. We note that, while Cellco has cited provisions of applicable state law in both Delaware and Maryland to support its contention that the state regulatory commission has no designation authority over wireless carriers, we believe that, as a matter of federal-state comity, such interpretations are better performed by the affected state commissions. As this case demonstrates, in the absence of explicit state guidance in the form of an affirmative statement from the state commission or a court of competent jurisdiction regarding the interpretation of its state law, premature intervention by the Commission may lead to confusion and duplication of efforts with the state commission, and an improper exercise of our jurisdiction under section 214(e)(6) of the Telecom Act.

100. Should Cellco challenge the Maryland Commission's exercise of authority under section 214(e)(2) of the Telecom Act, resolution of the jurisdictional issue may be obtained either through the state commission proceeding or in a judicial proceeding. Should the state commission or courts ultimately determine that Cellco is not subject to the state commission's jurisdiction for purposes of the eligibility designation, the Commission will assume the designation responsibility under section 214(e)(6) of the Telecom Act upon request. We reiterate our expectation that state commissions will act as expeditiously as possible on requests for designation. Should Cellco submit to the Maryland Commission a request for designation under section 214(e)(2) of the Telecom Act, we strongly encourage the Maryland Commission to resolve this request within six months of the filing date.

101. *Delaware Request.* With regard to Cellco's request for designation as an eligible telecommunications carrier for service provided in Delaware, we conclude that the statements contained in comments filed by the Delaware Commission are sufficient to warrant our assertion of jurisdiction under section 214(e)(6) of the Telecom Act. In its comments, the Delaware Commission confirms that the Delaware General Assembly has, for almost two decades, withheld from the Delaware Commission jurisdiction over cellular service or other mobile radio services. Specifically, the Delaware Commission cites to Delaware law stating that it ''shall have no jurisdiction over the operation of telephone service provided by cellular technology or by domestic public land mobile radio service or over the rates to be charged for such service or over property, property rights, equipment or facilities employed in such service.'' According to the Delaware Commission, it has consistently taken the position that it has not been granted regulatory jurisdiction over any aspect of telephone service provided by mobile, and now fixed, cellular wireless technology. The Delaware Commission states that it does not currently exercise any form of supervisory jurisdiction over wireless CMRS providers, including Cellco, and acknowledges that this Commission, not the Delaware Commission, ''must be the entity to * * * supervise and enforce the proper application of such support by Cellco.''

102. Consistent with the framework adopted in this Order, we conclude that we have jurisdiction to consider Cellco's request for designation as an eligible telecommunications carrier for services provided in Delaware. As a result, we will address Cellco's Delaware request for designation as an eligible telecommunications carrier within six months from the release date of this Order.

(2) Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for Wyoming

103. *Discussion.* Consistent with the framework adopted in this Order, we conclude that we have the authority under section 214(e)(6) of the Telecom Act to consider this petition. We commend the Wyoming Commission for its resolution of the threshold jurisdictional question, and encourage other state commissions to resolve such issues as expeditiously as possible. As with the Cellco Delaware request, we will promptly decide the merits of Western Wireless' request for designation in Wyoming within six months from the release date of this Order.

(3) Western Wireless Petition To Be Designated as an Eligible Telecommunications Carrier for the Crow Reservation in Montana

104. *Discussion.* Consistent with the framework we adopt in this Order, we will resolve the threshold question of whether Western Wireless is subject to the jurisdiction of the Montana Commission for purposes of determining eligibility for federal support for services provided on the Crow Reservation. As discussed, we have concluded that section 214(e)(6) of the Telecom Act does not provide the Commission with the *per se* authority to designate carriers based solely on the provision of service on tribal lands. As noted, determinations as to whether a state commission lacks jurisdiction over carriers serving tribal lands involves a fact-specific inquiry informed by principles of tribal sovereignty, treaties, state law, and federal Indian law. Consistent with the discussion, we conclude that Western Wireless should bear the burden of demonstrating that it is not subject to the jurisdiction of the Montana Commission for purposes of an eligibility designation for services provided on the Crow Reservation.

105. Consistent with the framework we establish and to permit Western Wireless a full and fair opportunity to present a case consistent with the guidance we give in this Order, we will reopen the record in this proceeding to allow Western Wireless an opportunity to supplement its claim that the Montana Commission lacks jurisdiction to make the designation for service provided on the Crow Reservation. Western Wireless shall notify the Commission in writing within 15 days of release of this Order whether it wishes to supplement the record consistent with the determinations in this Order. If Western Wireless chooses to supplement the record, it shall do so within 30 days of the date it notifies the Commission of its intent to do so. It shall also provide copies of the supplemental filing to the Montana Commission at the time of its filing with the Commission. In any event, the Commission will release, and publish in the **Federal Register**, a public notice announcing that the Montana Commission, and any other interested party, shall have 30 days to respond to Western Wireless' original petition and/or supplemental filing. To ensure that the Montana Commission receives prompt notification of the 30-day period, the Commission shall also send to the Montana Commission, by overnight express mail, the public notice announcing the comment cycle deadline. Should the Commission determine, on the basis of the record developed, that the Montana Commission does not have authority to perform the eligibility designation for Western Wireless' service provided on the Crow Reservation, the Commission will exercise its authority under section 214(e)(6) of the Telecom Act to decide the merits of the request within six

months after release of an order resolving the jurisdictional issue.

(4) Smith Bagley Petition To Be Designated as an Eligible Telecommunications Carrier in Arizona and New Mexico

106. *Discussion.* Consistent with the framework we adopt in this Order for the designation of carriers serving tribal lands, we dismiss without prejudice Smith Bagley's section 214(e)(6) of the Telecom Act request for designation as an eligible telecommunications carrier for tribal lands in Arizona and New Mexico. Both the Arizona and New Mexico Commissions are currently considering section 214(e)(2) of the Telecom Act requests for designation filed by Smith Bagley prior to the date of their filing with this Commission. As we concluded, in order to avoid the possibility of forum-shopping and the costs and confusion caused by a duplication of efforts between this Commission and state commissions, we decline to address a designation request under section 214(e)(6) of the Telecom Act if a request for eligible telecommunications carrier designation is pending at the state commission.

107. Accordingly, we dismiss without prejudice Smith Bagley's request for designation under section 214(e)(6) of the Telecom Act to permit the Arizona and New Mexico Commissions to complete their proceedings on the merits of Smith Bagley's pending requests. We request, however, that both state commissions act expeditiously in consideration of Smith Bagley's designation requests. We note that those requests have now been pending for over one year. As we have discussed, we are concerned that unreasonable delays in acting upon designation requests will hinder the availability of affordable telecommunications services in high-cost areas. We therefore strongly encourage the Arizona and New Mexico Commissions to resolve Smith Bagley's pending requests for designation as soon as possible.

(5) Cheyenne River Sioux Tribe Telephone Authority Petition for Designation as an Eligible Telecommunications Carrier

108. *Discussion.* In accordance with our conclusion that section 214(e)(6) of the Telecom Act requires the Commission to designate an eligible telecommunications carrier only when the state lacks jurisdiction under section 214(e)(2) of the Telecom Act, we dismiss Cheyenne Telephone Authority's petition without prejudice. We find no reason before us to disturb the South Dakota Commission's designation of the Cheyenne Telephone Authority as an eligible telecommunications carrier. In addition, we note that this conclusion is consistent with our prior statement that, ''[a]ny carrier that is able to be or has already been designated as an eligible telecommunications carrier by a state commission is not required to receive such designation from the Commission.''

109. In reaching this conclusion we note that, as with the case of the Cheyenne Telephone Authority, many tribes may have ongoing jurisdictional disputes with state commissions. We are hopeful that our decision not to disturb the finding of the state commission in this instance will encourage state commissions and tribes to move forward with the designation process for determining eligibility for federal universal service support despite disagreements relating to the state's exercise of jurisdiction over carriers providing service on tribal lands. We believe that to disturb a state commission's prior determination that a particular carrier is eligible for federal universal service support would have the unintended effect of forcing the tribal authority to choose between delaying its designation request pending a lengthy resolution of disputed jurisdictional issues or conceding jurisdiction to the state commission for other purposes in order to be eligible for federal universal service support.

IV. Procedural Matters

A. Paperwork Reduction Act

110. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA, and will go into effect upon announcement in the **Federal Register** of OMB approval.

B. Final Regulatory Flexibility Analysis

111. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *FNPRM*. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

(1) Need for and Objectives of this Report and Order and the Rules Adopted Herein

112. The Commission issues this Twelfth Report and Order (Order) as a part of its implementation of the Act's mandate that ''[c]onsumers in all regions of the Nation * * * have access to telecommunications and information services * * *.'' This Order implements that mandate by enhancing Lifeline and LinkUp support for low-income individuals living on tribal lands, as defined herein. This Order also outlines the process the Commission will follow in designating telecommunications carriers as eligible telecommunications carriers under section 214(e) of the Telecom Act for the purposes of receiving universal service support under section 254(e) of the Telecom Act. Our objective is to fulfill section 254 of the Telecom Act's mandate that ''all regions of the Nation * * * have access to telecommunications'' with respect to tribal lands, which have the lowest reported subscribership levels for telecommunications in the Nation.

(2) Summary of Significant Issues Raised by Public Comments in Response to the IRFA

113. We received no comments directly in response to the IRFA in this proceeding. Some comments generally addressed small business issues, but these issues are not a part of this present Order.

(3) Description and Estimate of the Number of Small Entities to Which Rules Will Apply

114. 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 new rules. The RFA generally 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. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. And finally, ''small governmental jurisdiction'' generally

means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. In this Order, the Commission stated that the new rules will affect all providers of interstate telecommunications and interstate telecommunications services. We further describe and estimate the number of small business concerns that may be affected by the rules adopted in this Order.

115. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

116. The most reliable source of information regarding the total numbers of common carriers and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

117. We have included small incumbent LECs in this present RFA analysis. As noted, 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.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

118. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules in this Order.

119. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules in this Order.

120. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service 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), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers that may be affected by the decisions and rule changes adopted in this Order.

121. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater

precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules in this Order.

122. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies. To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions. According to our most recent TRS data, 808 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 808 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the decisions and rules adopted in this Order.

123. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks 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 less than $40 million 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 its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by 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. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

124. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a ''small entity'' in the context of 800 MHz SMR has been approved by the SBA, and approval for the 900 MHz SMR definition has been sought. The rules may 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 less than $15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and rules in this Order.

125. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the order and order on reconsideration includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and rules in this Order.

126. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

127. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, 62 FR 1004 (April 3, 1997), we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area

Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67 percent of the Regional licenses, and 54 percent of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses. As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

128. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

129. *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). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

130. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, 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 entities under the SBA definition.

131. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

132. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules in this Order includes these eight entities.

133. *Multipoint Distribution Systems (MDS).* The Commission has defined ''small entity'' for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.

134. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the decisions and rules in this Order.

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

135. In this Order, we adopt revisions to Part 54 that enhance universal service support for low-income individuals living on tribal lands, that remove certain administrative burdens that have prevented carriers not subject to state rate regulation, such as many tribal carriers, from providing certain tiers of Lifeline service to qualifying low-income consumers, and that clarify how the Commission will proceed under section 214(e) of the Telecom Act in the designation of eligible telecommunications carriers.

136. With respect to our rules enhancing Lifeline and Link-Up assistance on tribal lands, carriers will be required to ascertain applicant eligibility for these forms of low-income universal service support. Ascertainment of applicant eligibility will entail determining whether a particular applicant is (1) a low-income applicant, under the criteria for income eligibility set forth; and (2) living on or near a reservation. This Order also clarifies and elaborates on carrier obligations to publicize the availability of Lifeline and Link-Up assistance, although no new carrier obligations are imposed. Furthermore, this Order changes the requirements placed upon carriers for the provision of second-tier and third-tier Lifeline support. A carrier not subject to state rate regulation may now obtain second-tier Lifeline support provided it certifies to the Administrator that it will pass through the full amount of any second-tier support it receives to qualifying low income subscribers, and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction. Such a carrier also may now obtain third-tier Lifeline support provided that the carrier or a tribe provides the local matching funds necessary to receive third-tier federal Lifeline support. Finally, because carriers are required to make low-income assistance available to qualifying customers, the rules and

decisions in this Order expanding the level and types of support available to any carrier's customers will require that carrier to make such expanded support available to its qualifying customers.

137. Our clarification of how the Commission will proceed under section 214(e) of the Telecom Act in the designation of eligible telecommunications carriers will impose no additional reporting, recordkeeping, or other compliance requirements on carriers seeking eligible telecommunications carrier designation for the provision of service on tribal lands, but instead should diminish some carriers' legal costs by setting forth guidelines for carriers seeking such designation from the Commission. A state government, however, seeking to preserve a claim of its jurisdiction over any carrier seeking such designation from the Commission, will have to indicate to the Commission its jurisdictional claim in order for the Commission to refrain from entertaining such a designation proceeding until the state makes a final determination on its jurisdiction over that carrier.

(5) Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

138. With respect to our rules enhancing Lifeline and LinkUp assistance on tribal lands, we emphasize that most of the information carriers will be required to examine in order to determine applicant eligibility are already collected pursuant to other federal programs for Indians and for low-income individuals, and are readily available. For example, BIA maintains and regularly publishes in the **Federal Register** lists of those areas in the Nation which fall under BIA's definition of ''reservation'' or are considered ''near reservation.'' Moreover, carriers are already required to determine applicants' income eligibility under the existing Lifeline and LinkUp support mechanisms; this Order modifies those eligibility criteria merely by providing certain additional means-tested programs that low-income individuals living on tribal lands may use to establish their income eligibility. In order to apply these new eligibility criteria, carriers will not be required to make *de novo* evaluations of subscriber eligibility. Rather, carriers will only need to consult the decisions regarding particular applicants' low-income status already made by other government entities. Thus, the inquiry carriers will have to make to determine whether an applicant for the low-income support adopted in this Order meets the income eligibility requirement should not be substantially different from the inquiry carriers must already make for the Commission's existing low-income support mechanisms. Furthermore, our clarification of carrier obligations to publicize the availability of Lifeline and Link-Up assistance does not expand existing obligations or create additional ones; rather, this Order clarifies existing obligations under section 214(e) of the Telecom Act and our previous Orders. Additionally, the certifications required by our new rules for second and third tier Lifeline support impose at most a minimal burden on carriers seeking to obtain such support. Finally, to the extent the rules and decisions adopted in this Order require carriers to change their operations in order to deliver expanded support to qualifying customers, for example by changing their billing systems, we have some indication that the costs of making such modifications, if any, are minimal. Furthermore, to the extent the rules and decisions adopted in this Order entail any such costs, they also provide substantial financial benefits, by providing carriers with guaranteed revenue streams in place of billings subject to the risks of non-collection. We conclude that, in general, the compliance requirements entailed by the low-income support mechanisms adopted in this Order are not of a scope or magnitude substantially different from the compliance requirements entailed by our existing low-income support mechanisms.

139. With respect to our clarification of how the Commission will proceed under section 214(e) of the Telecom Act in the designation of eligible telecommunications carriers we conclude that the cost to a state government of filing with the Commission a statement asserting jurisdiction over any carrier seeking such designation for the provision of service to tribal lands, in order for the Commission to refrain from acting on the designation petition until the state makes a final determination regarding its jurisdiction over that carrier, will be minimal. Furthermore, because such filings would be made by the authorized state government body, rather than a local governing authority, it is doubtful that any government authority making such a filing with the Commission would be considered a small entity.

(6) Report to Congress

140. The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

C. Effective Date of Final Rules

141. Pursuant to 5 U.S.C. 553(d), the rules and rule changes adopted herein shall take effect thirty (30) days after their publication in the **Federal Register**.

V. Ordering Clauses

142. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, this Report and Order, Memorandum Opinion and Order is adopted. The collections of information contained within this Order are contingent upon approval by the Office of Management and Budget. The Commission will publish a notice announcing the effective date of the collections of information.

143. It is further ordered that part 54 of the Commission's rules, is amended, effective thirty (30) days after the publication of this Report and Order, Memorandum Opinion and Order in the **Federal Register**.

144. It is further ordered that Cellco's Petition for Designation as an Eligible Telecommunications Carrier is dismissed without prejudice to the extent that it seeks designation for service in Maryland.

145. It is further ordered that Smith Bagley's Petition for Designation as an Eligible Telecommunications Carrier is dismissed without prejudice.

146. It is further ordered that the record in Western Wireless' Petition for Designation as an Eligible Telecommunications Carrier on the Crow Reservation shall be reopened as discussed herein.

147. It is further ordered that Cheyenne River Sioux Tribe Telephone Authority's Petition for Designation as an Eligible Telecommunications Carrier is dismissed without prejudice.

148. It is further ordered that authority is delagated to the Chief of the Common Carrier Bureau pursuant to § 0.291 of the Commission rules, to modify, or require the filing of, any forms that are necessary to implement the decisions and rules adopted in this Order.

149. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory

Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 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), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.400 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(a) *Qualifying low-income consumer.* A ''qualifying low-income consumer'' is a consumer who meets the qualifications for Lifeline, as specified in § 54.409.

* * * * *

(e) *Eligible resident of Tribal lands.* An ''eligible resident of Tribal lands'' is a ''qualifying low-income consumer,'' as defined in paragraph (a) of this section, living on or near a reservation, as defined in 25 CFR 20.1(r) and 20.1(v).

3. Amend § 54.401 by revising paragraph (d) to read as follows:

§ 54.401 Lifeline defined.

* * * * *

(d) The state commission shall file or require the eligible telecommunications carrier to file information with the Administrator demonstrating that the carrier's Lifeline plan meets the criteria set forth in this subpart and stating the number of qualifying low-income consumers and the amount of state assistance. Eligible telecommunications carriers not subject to state commission jurisdiction also shall make such a filing with the Administrator. Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier's Lifeline plan satisfies the criteria set out in this subpart.

4. Amend § 54.403 by revising paragraphs (a)(2) and (a)(3), adding a new paragraph (a)(4), and revising paragraph (b) to read as follows:

§ 54.403 Lifeline support amount.

(a) The federal Lifeline support amount for all eligible telecommunications carriers shall equal:

* * * * *

(2) *Tier Two.* Additional federal Lifeline support in the amount of $1.75 per month will be made available to the eligible telecommunications carrier providing Lifeline service to the qualifying low-income consumer, if that carrier certifies to the Administrator that it will pass through the full amount of Tier-Two support to its qualifying, low-income consumers and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(3) *Tier Three.* Additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month in federal support, will be made available to the carrier providing Lifeline service to a qualifying low-income consumer if the carrier certifies to the Administrator that it will pass through the full amount of Tier-Three support to its qualifying low-income consumers and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(4) *Tier Four.* Additional federal Lifeline support of up to $25 per month will be made available to a eligible telecommunications carrier providing Lifeline service to an eligible resident of Tribal lands, as defined in § 54.400(e), to the extent that:

(i) This amount does not bring the basic local residential rate (including any mileage, zonal, or other non-discretionary charges associated with basic residential service) below $1 per month per qualifying low-income subscribers; and

(ii) The eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tier-Four amount to qualifying eligible residents of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(b) For a qualifying low-income consumer who is not an eligible resident of Tribal lands, as defined in § 54.400(e), the federal Lifeline support amount shall not exceed $3.50 plus the tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service, as determined in accordance with § 69.104 or § 69.152(d) and (q) of this chapter, whichever is applicable. For an eligible resident of Tribal lands, the federal Lifeline support amount shall not exceed $28.50 plus that same End User Common Line charge. Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier-One federal Lifeline support to waive the federal End-User Common Line charges for Lifeline consumers. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in § 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.

5. Revise § 54.405 to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

All eligible telecommunications carriers shall:

(a) Make available Lifeline service, as defined in § 54.401, to qualifying low-income consumers, and

(b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

6. Amend § 54.409 by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 54.409 Consumer qualification for Lifeline.

(a) To qualify to receive Lifeline service in a state that mandates state Lifeline support, a consumer must meet the eligibility criteria established by the state commission for such support. The state commission shall establish narrowly targeted qualification criteria that are based solely on income or factors directly related to income. A state containing geographic areas included in the definition of ''reservation'' and ''near reservation,'' as defined in 25 CFR 20.1(r) and 20.1(v), must ensure that its qualification criteria are reasonably designed to apply to low-income individuals living in such areas.

(b) To qualify to receive Lifeline service in a state that does not mandate state Lifeline support, a consumer must participate in one of the following federal assistance programs: Medicaid;

food stamps; Supplemental Security Income; federal public housing assistance; and Low-Income Home Energy Assistance Program. In a state that does not mandate state Lifeline support, each eligible telecommunications carrier providing Lifeline service to a qualifying, low-income consumer must obtain that consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from one of the programs listed in this paragraph and identifying the program or programs from which that consumer receives benefits. On the same document, a qualifying low-income consumer also must agree to notify the carrier if that consumer ceases to participate in the program or programs.

(c) Notwithstanding paragraphs (a) and (b) of this section, an individual living on a reservation or near a reservation, as defined in 25 CFR 20.1(r) and 20.1(v), shall qualify to receive Tiers One, Two, and Four Lifeline service if the individual participates in one of the following federal assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those meeting its income qualifying standard); or National School Lunch Program's free lunch program. Such qualifying low-income consumer shall also qualify for Tier-Three Lifeline support, if the carrier offering the Lifeline service is not subject to the regulation of the state and provides carrier-matching funds, as described in § 54.403(a)(3). To receive Lifeline support under this paragraph for the eligible resident of Tribal lands, the eligible telecommunications carrier offering the Lifeline service to such consumer must obtain the consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from at least one of the programs mentioned in this paragraph or paragraph (b) of this section, and lives on or near a reservation, as defined in 25 CFR 20.1(r)and 20.1(v). In addition to identifying in that document the program or programs from which that consumer receives benefits, an eligible resident of Tribal lands also must agree to notify the carrier if that consumer ceases to participate in the program or programs.

7. Amend § 54.411 by adding new paragraphs (a)(3) and (d) and revising paragraph (b) to read as follows:

§ 54.411 Link Up program defined.

(a) * * *

(3) For an eligible resident of Tribal lands, a reduction of up to $70, in addition to the reduction in paragraph (a)(1) of this section, to cover 100 percent of the charges between $60 and $130 assessed for commencing telecommunications service at the principal place of residence of the eligible resident of Tribal lands. For purposes of this paragraph, charges assessed for commencing telecommunications services shall include any charges that the carrier customarily assesses to connect subscribers to the network, including facilities-based charges associated with the extension of lines or construction of facilities needed to initiate service. The reduction shall not apply to charges assessed for facilities or equipment that fall on the customer side of demarcation point, as defined in § 68.3 of this chapter.

(b) A qualifying low-income consumer may choose one or both of the programs set forth in paragraphs (a)(1) and (a)(2) of this section. An eligible resident of Tribal lands may participate in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

* * * * *

(d) An eligible telecommunications carrier shall publicize the availability of Link Up support in a manner reasonably designed to reach those likely to qualify for the support.

8. Revise § 54.415 to read as follows:

§ 54.415 Consumer qualification for Link Up.

(a) In a state that mandates state Lifeline support, the consumer qualification criteria for Link Up shall be the same as the criteria that the state established for Lifeline qualification in accord with § 54.409(a).

(b) In a state that does not mandate state Lifeline support, the consumer qualification criteria for Link Up shall be the criteria set forth in § 54.409(b).

(c) Notwithstanding paragraphs (a) and (b) of this section, an eligible resident of Tribal lands, as defined in § 54.400(e), shall qualify to receive Link Up support.

§ 54.417 [Removed]

9. Remove § 54.417.

[FR Doc. 00–19611 Filed 8–2–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 073100A]

Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for arrowtooth flounder in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of arrowtooth flounder in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 31, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907 596 7228

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2000 TAC of arrowtooth flounder for the Western Regulatory Area was established as 5,000 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for arrowtooth flounder in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,900 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting