

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Federal-State Joint Board on
Universal Service:
Promoting Deployment and
Subscribership in Unserved
and Underserved Areas, Including
Tribal and Insular Areas
CC Docket No. 96-45

FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioner Furchtgott-Roth approving in part, dissenting in part, and
issuing a statement; Commissioner Tristani issuing a statement.

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## I. INTRODUCTION

1. An important goal of the Telecommunications Act of 1996<sup>1</sup> is to preserve and advance universal service in a competitive telecommunications environment.<sup>2</sup> The 1996 Act mandates that “consumers in all regions of the Nation, including low-income consumers and

<sup>1</sup> See Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act), amending the Communications Act of 1934, 47 U.S.C. § 151, *et seq.*, (the Act).

<sup>2</sup> 47 U.S.C. § 254(b).

those in rural, insular, and high[-] cost areas, should have access to telecommunications and information services . . . .”<sup>3</sup> Congress also directed that the support mechanisms employed by the Commission for this task should be “specific, predictable and sufficient.”<sup>4</sup> Through decisions adopted over the past two years, the Commission has been striving to ensure that federal universal service support mechanisms for high-cost areas, low-income consumers, schools and libraries, and rural health care providers, enable consumers to obtain telecommunications services that would otherwise be prohibitively expensive.<sup>5</sup>

2. The absence of telecommunications service in a home puts its occupants at a tremendous disadvantage in today’s society. Parents cannot be reached when urgent situations arise at school. Job seekers cannot offer prospective employers a quick and convenient means of communication. People in immediate need of emergency services cannot contact police departments, fire departments, or medical providers. In short, telephone service provides a vital link between individuals and society as a whole. Given the importance of telephone service in modern society, it is imperative that the Commission take swift and decisive action to promote the deployment of facilities to unserved and underserved areas and to provide the support necessary to increase subscribership in these areas.

3. The Commission took additional steps in the Thirteenth Order on Reconsideration toward realizing Congress’s goal of bringing telecommunications services to all regions of the nation.<sup>6</sup> Specifically, in consultation with the Federal-State Joint Board on Universal Service (Joint Board), we adopted the framework for a new, forward-looking high-cost support mechanism for non-rural carriers.<sup>7</sup> This new high-cost support mechanism is intended to ensure

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<sup>3</sup> 47 U.S.C. § 254(b)(3).

<sup>4</sup> 47 U.S.C. § 254(b)(5). *See also* 47 U.S.C. § 254(d).

<sup>5</sup> *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking and Order Establishing a Joint Board, 11 FCC Rcd 18092 (1996) (*May 1996 Notice*); Recommended Decision, 12 FCC Rcd 87 (Jt. Bd. 1996) (*First Recommended Decision*); Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (1997), as corrected by Errata, CC Docket No. 96-45 (rel. June 4, 1997) (*First Report and Order*); Order on Reconsideration, 12 FCC Rcd 10095 (1997); Second Order on Reconsideration, 12 FCC Rcd 18400 (1997); Third Order on Reconsideration, 12 FCC Rcd 22801 (1997); Fourth Order on Reconsideration, 13 FCC Rcd 2372 (1997); Fifth Order on Reconsideration, 13 FCC Rcd 14915 (1998); Order and Order on Reconsideration, 13 FCC Rcd 13749 (1997); Second Recommended Decision, 13 FCC Rcd 24744 (1998); Sixth Order on Reconsideration, 13 FCC Rcd 22908 (1998); Seventh Order on Reconsideration, 13 FCC Rcd 19397 (1998); Eighth Order on Reconsideration, 13 FCC Rcd 25058 (1998); Ninth Order on Reconsideration, 14 FCC Rcd 377 (1998); Tenth Order on Reconsideration, FCC 99-46 (rel. Apr. 2, 1999); Eleventh Order on Reconsideration, FCC 99-49 (rel. May 28, 1999); Twelfth Order on Reconsideration, FCC 99-121 (rel. May 28, 1999); Thirteenth Order on Reconsideration, FCC 99-119 (rel. May 28, 1999); *affirmed in part, remanded in part and reversed in part, Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir. Jul. 30, 1999).

<sup>6</sup> *Thirteenth Order on Reconsideration*, *supra* n. 5.

<sup>7</sup> This new support mechanism has a two-part methodology that considers both the relative costs of providing supported services and the states’ ability to support those costs using their own resources. *Thirteenth Order on Reconsideration*, FCC 99-119 at paras. 47-78. In the first step of the methodology, the costs incurred by a non-rural carrier to provide supported services are estimated using a single national model based on forward-looking costs. *Thirteenth Order on Reconsideration*, FCC 99-119 at paras. 49-54. Those costs are then compared to a national cost benchmark to determine which areas have costs that exceed the benchmark, and are therefore in need of support. *Thirteenth Order on Reconsideration*, FCC 99-119 at paras. 61-62. In the second step of the methodology, the state’s ability to achieve reasonably comparable rates using its own resources is estimated by multiplying a fixed dollar amount by the number of lines served by non-rural carriers in the state. *Thirteenth Order on Reconsideration*, FCC

that high-cost areas receive support that is specific, predictable, and sufficient, even as local competition develops. Moreover, we believe that the forward-looking methodology, as opposed to a methodology based on book costs, will encourage efficient entry and investment in high-cost areas because forward-looking costs drive market decisions.

4. In addition to adopting the methodology for the new high-cost support mechanism for non-rural carriers, the Thirteenth Order on Reconsideration also sought comment on certain issues regarding the implementation of the new mechanism.<sup>8</sup> The Commission intends to resolve these implementation issues in the fall of 1999, so that the new high-cost support mechanism will begin providing support to non-rural carriers beginning on January 1, 2000.<sup>9</sup> In addition, the Commission reaffirmed its intention that rural carriers<sup>10</sup> will receive support based on the forward-looking costs of providing supported services, but not before January 1, 2001, and only after further review by the Commission, the Joint Board, and a Rural Task Force appointed by the Joint Board.<sup>11</sup> In the meantime, rural carriers will continue to receive high-cost support based on the existing mechanism until the Commission adopts an appropriate forward-looking mechanism for determining rural support.<sup>12</sup>

5. The Commission has also recognized that, despite the steps it had taken to achieve the universal service goals of the 1996 Act, some areas of the nation remain unserved or

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99-119 at paras. 63-66. The federal support mechanism will provide support for costs that exceed both the national benchmark and the individual state's resources to support those costs. *Thirteenth Order on Reconsideration*, FCC 99-119 at paras. 11, 65-66.

<sup>8</sup> *Thirteenth Order on Reconsideration*, FCC 99-119 at para. 95.

<sup>9</sup> *Thirteenth Order on Reconsideration*, FCC 99-119 at para. 19.

<sup>10</sup> *Thirteenth Order on Reconsideration*, FCC 99-119 at para. 3. Section 3(37) of the 1996 Act defines a Rural Telephone Company as a local exchange carrier operating entity to the extent that such entity –

(A) provides common carrier service to any local exchange study area that does not include either –

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

<sup>11</sup> *Thirteenth Order on Reconsideration*, FCC 99-119 at paras. 21, 129. See also *First Report and Order*, 12 FCC Rcd at 8889, 8910, 8917-18; *Federal-State Joint Board on Universal Service Announces the Creation of a Rural Task Force, Solicits Nominations for Membership on Rural Task Force*, Public Notice, FCC 97J-1 (rel. Sept. 17, 1997).

<sup>12</sup> The existing high-cost support mechanism provides increasing amounts of support based on the percentage by which a carrier's loop costs exceed the national average cost per loop, beginning with loop costs greater than 115 percent of the national average cost per loop. See 47 C.F.R. §§ 36.631(c), (d); *Thirteenth Order on Reconsideration*, FCC 99-119 at para. 98. The existing mechanism provides support only for loop costs, while the new forward-looking mechanism for non-rural carriers provides support based on the estimated cost of all components of the network necessary to provide supported services.

inadequately served.<sup>13</sup> In the *First Report and Order*, the Commission stated that it would revisit certain issues pertaining to the availability of service in unserved areas<sup>14</sup> and universal service support in insular areas.<sup>15</sup> In its *Second Recommended Decision*, the Joint Board recommended that the special needs of unserved areas be investigated and subjected to a more comprehensive evaluation in a separate proceeding.<sup>16</sup> Telephone penetration rates among low-income consumers, and in insular, high-cost, and tribal lands lag behind the penetration rates in the rest of the country.<sup>17</sup> Indeed, while approximately 94.2 percent of all households in the United States have telephone service today,<sup>18</sup> subscribership levels for very low income households (78.3 percent),<sup>19</sup> insular areas,<sup>20</sup> certain high-cost areas,<sup>21</sup> and tribal lands (46.6 percent),<sup>22</sup> are significantly lower than the national average. The Commission has stated that these low penetration rates are largely the result of “income disparity, compounded by the unique challenges these areas face by virtue of their location.”<sup>23</sup>

6. The Commission has been particularly concerned that Indians<sup>24</sup> on reservations, in comparison to other Americans, have less access even to basic telecommunications services. In

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<sup>13</sup> *Thirteenth Order on Reconsideration*, FCC 99-119 at paras. 91-92.

<sup>14</sup> *First Report and Order*, 12 FCC Rcd at 8885-8886.

<sup>15</sup> *First Report and Order*, 12 FCC Rcd at 8897, 9109, and 9137.

<sup>16</sup> *Second Recommended Decision*, 13 FCC Rcd at 24764.

<sup>17</sup> For recent data concerning which American households have access to wireline telephones, computers and the Internet, see *Falling Through the Net: Defining the Digital Divide*, National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce (July 1999) (concluding, among other things, that where a person lives can greatly influence the likelihood of telephone ownership). The full report, additional charts, and links to the original Census data and survey instruments are available on NTIA's website: <http://www.ntia.doc.gov>.

<sup>18</sup> *Telephone Subscribership in the United States*, Report, Table 1 (Com. Car. Bur., rel. Feb 18, 1999).

<sup>19</sup> *Telephone Subscribership in the United States*, Report, Table 4 (households with annual income under \$5,000).

<sup>20</sup> Telephone subscribership in Puerto Rico, for example, is 72 percent. *First Report and Order*, 12 FCC Rcd at 8843, n.281.

<sup>21</sup> Telephone subscribership in the territory served by the Dell Telephone Cooperative in Texas, for example, is only about 82.8 percent. The penetration rate derived from the 1990 census. At that time, the Dell Telephone Cooperative was the company with the highest per-loop costs in the nation.

<sup>22</sup> See *Housing of American Indians on Reservations – Equipment and Fuels*, Statistical Brief, Bureau of the Census, SB/95, April 1995 at 2 (based on 1990 Census data).

<sup>23</sup> *First Report and Order*, 12 FCC Rcd at 8839.

<sup>24</sup> In this Notice, we refer to "Indians" and "Indian tribes." See The Federally Recognized Indian Tribe List Act of 1994 (Indian Tribe Act), Pub. L. 103-454, 108 Stat. 4791 (1994). The term "Indian" shall include "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. . . . Eskimos and other aboriginal peoples of Alaska shall be considered Indians." 25 U.S.C. § 479. The term "Indian tribe" means "any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe." 25 U.S.C. § 479a(2). The Secretary of the Interior is required to publish in the Federal Register an annual list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 U.S.C. § 479a-1.

1998, the Commission began formally examining its relationship with Indian tribes and the unique issues involved in providing access to telephone service for Indians on reservations. As a first step, Commissioners and staff met with many tribal leaders and other Indian representatives to obtain their input. In meetings on April 30, 1998, and July 7, 1998, Commissioners and staff heard from a variety of tribal leaders, tribal telephone company representatives, academics, government personnel, and others with experience and expertise in the deployment of telecommunications services on reservations.<sup>25</sup> Experts discussed problems ranging from geographic isolation to lack of information to economic barriers. These meetings provided an unprecedented opportunity for the Commission to hear about the variety of interrelated obstacles that have resulted in the lowest penetration rates in the country.<sup>26</sup> Following these meetings, several of the experts returned in the fall of 1998, to provide a tutorial on Indian law for Commission staff.

7. Based on this informal dialogue with experts, the Commission determined that it would conduct public hearings to explore further the reasons for the lack of telephone service and to determine what specific actions the Commission could take that would improve access to telephone service on Indian reservations. The hearings, entitled “Overcoming Obstacles to Telephone Service for Indians on Reservations,” BO Docket No. 99-11, provided an opportunity to obtain formal testimony and comments on the range of problems the Commission had begun to identify. The first field hearing was held on January 29, 1999 at the Indian Pueblo Cultural Center in Albuquerque, New Mexico.<sup>27</sup> The second field hearing was held on March 23, 1999 at the Gila River Indian Community in Chandler, Arizona.<sup>28</sup> Each hearing consisted of three panels representing tribal authorities and tribal telephone companies, industry, and government and consumer groups.<sup>29</sup> The Commission heard extensive testimony on issues including the costs of delivering services to remote areas having very low population densities; the impact of the size and extent of local calling areas on affordability of service; the quality of telephone service on reservations; the complexities of governmental jurisdiction and sovereignty issues; and the effects on telephone service of low incomes and high unemployment on reservations. Transcripts of the hearings and comments filed by interested parties are available on the

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<sup>25</sup> For a list of participants, see Appendix A.

<sup>26</sup> In addition, in July 1998, Commissioner Gloria Tristani and Amy Zoslov, Chief, Auctions Division, Wireless Telecommunications Bureau, spoke at a three day National Native American Telecommunications Workshop in Albuquerque, New Mexico (*NNAT Workshop*). The transcript of the workshop is available via the Internet: <http://aises.uthscsa.edu/~yawakie/Proceedings/Proceedings.html>.

<sup>27</sup> Federal Communications Commission Will Hold a Series of Public Hearings on Telephone Service for Indians on Reservations and Seeks Comment from the General Public on All Testimony and Other Evidence Presented Therein; *Public Notice*, BO Docket No. 99-11, DA 99-201 (OCBO rel. Jan. 21, 1999) (*Overcoming Obstacles Proceeding: Albuquerque Hearing*).

<sup>28</sup> FCC to Hold Second Public Hearing in Series on Telephone Service for Indians on Reservations; Set for March 23 in Chandler, Arizona, *Public Notice*, BO Docket No. 99-11, DA 99-430 (OCBO rel. Mar. 2, 1999) (*Overcoming Obstacles Proceeding: Arizona Hearing*); Deadline Extended Until June 28, 1999 for Comments on Overcoming Obstacles to Telephone Service for Indians on Reservations, *Public Notice*, BO Docket No. 99-11, DA 99-1010 (OCBO rel. May 27, 1999) (*Overcoming Obstacles Proceeding*).

<sup>29</sup> For a list of participants, see Appendix B.

Commission's website.<sup>30</sup> Comments filed in BO Docket Number 99-11 will be incorporated, where relevant, into the record of this proceeding.

8. Further, in connection with each of the field hearings, Commissioners and staff made site visits to Indian reservations and tribally-owned telephone companies. These included visits to the Rosebud Reservation, the Santa Domingo, Jemez, and Picuris Pueblos, and to Saddleback Communications, the Gila River Telephone Company, the Salt River Pima-Maricopa Reservation, the Navajo Nation, the Hopi Reservation, and the Havasupai Reservation. These site visits provided an opportunity for Commissioners and staff to observe firsthand the state of telephone service in these reservations and pueblos and to hear directly from tribal members about their experiences. For example, Commissioners and staff visited the home of an elderly couple who could not afford the cost of installing a telephone in their home. The husband of the couple explained that he was suffering from a chronic illness, but was unable to reach the hospital or his doctor by telephone to schedule medical appointments and discuss his treatment. During another site visit, a tribal member stated that a relative had died during a medical emergency when his family was unable to call an ambulance in time when critical medical attention was needed. In addition, the trips to Saddleback Communications and the Gila River Telephone Company enabled Commission staff to view the successful operations of some tribally-owned telephone companies.

9. In this Further Notice of Proposed Rulemaking (Further Notice), the Commission addresses the unique issues that may limit telecommunications deployment and subscribership in the unserved or underserved regions of our Nation, including on tribal lands and in insular areas. In particular, the Commission seeks comment on current levels of deployment and subscribership in unserved, tribal and insular areas, including penetration rates, availability of telecommunications services, and possible impediments to increased deployment and penetration. With respect to tribal areas, the Commission seeks comment on issues that may be affecting the availability of universal service in tribal areas, including the assignment of jurisdiction, designation of eligible telecommunications carriers, and possible modifications to federal high-cost and low-income support mechanisms that may be necessary to promote deployment and subscribership in these areas. In particular, the Commission seeks comment on the possibility of allowing carriers to establish separate tribal study areas, raising the cap on the high-cost fund to allow for growth based on separate tribal study areas, and revisions to its Lifeline rules. In a companion Notice of Proposed Rulemaking we are adopting today, we seek comment on the potential of wireless technology to provide basic telephone service to tribal lands.<sup>31</sup>

10. With respect to unserved areas, the Commission seeks further comment regarding the implementation of section 214(e)(3) of the Act, which permits the Commission or state commissions to order a carrier to provide service to an unserved community, including the possibility of adopting a competitive bidding mechanism to identify the carrier or carriers best able to serve an unserved area. The Commission also seeks comment on possible modifications to the federal low-income and rural health care support mechanisms in underserved areas,

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<sup>30</sup> [http://www.fcc.gov/Panel\\_Discussions/Teleservice\\_reservations/](http://www.fcc.gov/Panel_Discussions/Teleservice_reservations/). See Appendix C for a list of parties filing comments BO Docket No. 99-11.

<sup>31</sup> *Extending Wireless Service to Tribal Lands*, Notice of Proposed Rulemaking, WT Docket No. 99-266, FCC 99-205, (adopted Aug. 5, 1999).

including tribal and insular areas, including the possibility of expanding LinkUp to include facilities based charges, and providing support for intrastate toll-calling and rural health care infrastructure. The Commission seeks comment on rule changes designed to enhance the availability of support for rural health care providers in insular areas, including determining the urban rate and the nearest large city. Through these efforts, we seek to ensure that unserved and underserved areas have access to telecommunications services. With respect to tribal lands, we also seek to ensure that our efforts are consistent with principles of tribal sovereignty, the federal trust relationship, and support for tribal self-determination.

## II. CURRENT LEVELS OF DEPLOYMENT AND SUBSCRIBERSHIP

11. In this section, we seek to gain a better understanding of the characteristics of unserved and underserved areas, including insular and tribal lands, which by their very nature are difficult to assess. We also seek comment on specific factors preventing deployment of telecommunications services in unserved areas and causing unusually low subscribership rates in underserved areas. We seek to determine which of these factors are common among rural, insular, high-cost, and tribal lands, and which are unique to specific types of areas. We ask commenters to support their comments with empirical evidence, in addition to anecdotal evidence, to the extent possible.

### A. Penetration Rates

12. The Industry Analysis Division of the Common Carrier Bureau publishes a Subscribership Report three times per year.<sup>32</sup> The data in this report is based on the Current Population Survey (CPS), conducted monthly by the Census Bureau to keep track of the unemployment rate and other socio-economic conditions. The survey, however, is based on information from only 50,000 households nationwide and does not identify geographic areas with fewer than 100,000 people. Because many unserved, tribal and insular areas fall below this population threshold, the CPS cannot be used to estimate penetration rates for these areas. In addition, this data does not include areas of the United States that are not states, including Puerto Rico and the Virgin Islands. The long form of the decennial census, which is delivered to millions of households, contains a question about telephone subscribership. As a result, the census data can be used to estimate telephone penetration for smaller geographic areas. This data, however, is collected only every ten years and it takes the Census Bureau one year to compile results.

13. We seek detailed information, to the extent that it is available, on penetration rates in high-cost areas, insular areas, tribal lands, and any other areas considered to be underserved. By the term penetration rate, we mean the percentage of households within a specified area that have telephone service in the housing unit.<sup>33</sup> We seek this information on a national level, on a state-by-state or territory-by-territory level, and on an area-by-area level. To the extent possible, we encourage commenters to provide the following additional information in each of the areas, and on each of the levels, where they measure penetration rates: (1) total population; (2) population density; (3) average annual income; and (4) average unemployment rate. We also ask that

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<sup>32</sup> *Telephone Subscribership in the United States*, Report, Table 1 (Com. Car. Bur., rel. Feb 18, 1999).

<sup>33</sup> A housing unit is a place in which a household resides.



commenters briefly explain the methods by which they gather their data (*e.g.*, census data, statistical sampling, etc.). We also seek comment on the difficulty of getting such information, such as the difficulty of mapping a telephone service territory onto the census territories (such as census block groups) because the boundaries may not always coincide, and questions concerning the definitions of the terms “household” and “telephone service.”

## B. Availability and Cost of Telecommunications Services

14. In each of the areas, and on each of the levels described above in section II.A above, we seek to determine the nature of the telecommunications services available and the costs of such services. In particular, we seek comment on the extent to which these areas receive the following service, if any: basic telephone service, services included within the definition of universal service,<sup>34</sup> and/or advanced telecommunications services.<sup>35</sup> We also seek comment on whether any carrier is providing the following services and the approximate number of households served by each service: wireline, wireless, Basic Exchange Telecommunications Radio Systems (BETRS),<sup>36</sup> or other telecommunications services; cable television; direct broadcast satellite service; other satellite services that provide voice and data, such as those provided through VSAT networks; Internet service; and electric service. In addition, we seek comment on the monthly rate for each of these services. With specific regard to basic telephone service, we seek comment on the average monthly bill for local service, local toll service, and long-distance service.

15. To the extent that underserved, high-cost, insular, and/or tribal lands have basic telephone service, we seek comment on whether the local calling area includes the nearest metropolitan area or other area where the nearest medical, government, cultural or entertainment facilities exist, *i.e.*, the “community of interest.” For unserved areas, and in particular tribal lands, we also seek comment to determine whether these areas fall within the designated service area of existing carriers, regardless of whether such carriers are providing service to the area.

16. We seek comment on the extent to which existing facilities currently used to provide other services (*e.g.*, radio broadcast towers, cable television plant, electrical poles and satellite infrastructure) could be adapted to provide the services included within the definition of

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<sup>34</sup> The following services or functionalities are supported by federal universal service support mechanisms: single-party service; voice grade access to the public switched network; DTMF signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income consumers. 47 C.F.R. § 54.101(a). *See First Report and Order*, 12 FCC Rcd at 8809.

<sup>35</sup> Section 706(b) of the Act defines “advanced telecommunications capability” as “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.” 47 U.S.C. §706(b). The Commission defined “broadband” as having the capability of supporting a bandwidth in excess of 200 kbps in the last mile, both from the provider to the consumer and from the consumer to the provider. *See An Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1998*, Report on Advanced Telecommunications Capability, CC Docket No. 98-146, FCC 99-5 (rel. Feb. 2, 1999) at para. 20.

<sup>36</sup> BETRS is a two-way channel wireless service used to provide basic exchange service to remote rural areas of the country. *Basic Exchange Telecommunications Radio Service*, Report and Order, CC Docket No. 86-495, 3 FCC Rcd 214 (1988). *See* 47 C.F.R. §§ 22.99, 22.725, 22.727.

universal service.<sup>37</sup> We also seek comment on whether specific services included within the definition of universal service could not be provided via these facilities. We seek comment on the extent to which facilities used to provide telecommunications service to customers outside the unserved or underserved areas exist adjacent to or nearby the unserved or underserved areas. In particular, we seek comment on whether railroad tracks, or towers used for the placement of antennas, are found in these adjacent areas. We seek comment on what role the Commission might play in encouraging the use of these other facilities to provide service in underserved areas. For example, we seek comment on whether the Commission, or some other entity, should develop a database to maintain information about facilities that could be used to provide service in currently unserved or underserved areas, including tribal lands and insular areas.

17. We also seek comment on the possible shared use of existing federal telecommunications infrastructure, facilities or other resources, including government rights-of-way, to provide service in unserved or underserved areas, including tribal and insular areas. We seek comment on whether federal telecommunications resources could be made available in the short term to serve as connecting backbone infrastructure for health and safety telecommunications in unserved areas. We encourage federal entities with government owned telecommunications resources, particularly the Bureau of Indian Affairs, to comment on this issue.

18. Individuals from Indian communities, state agencies and the telecommunications industry have commented that satellite and terrestrial wireless systems may represent practical and cost-effective alternatives for providing service in unserved areas, including tribal lands.<sup>38</sup> In the pending 2 GHz proceeding, which proposes policies and rules for licensing and operation of the 2 GHz mobile satellite service (MSS) systems in the United States,<sup>39</sup> the Commission sought comment on incentives and policies to encourage provision of satellite services to unserved, rural, insular or economically isolated areas.<sup>40</sup> The commenters generally support the Commission's tentative conclusion that satellites represent an excellent technology for providing basic and advanced telecommunications services to unserved areas, including tribal lands.<sup>41</sup> Several commenters stated that the Commission should take positive steps to encourage access to Universal Service Funds by satellite operators or service providers. Several commenters also requested that the Commission should identify express and implicit regulatory provisions that

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<sup>37</sup> See n. 34, *supra*.

<sup>38</sup> See e. g., *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Gene DeJordy, Executive Director, Western Wireless, p. 94 (currently serves 23 Indian reservations); *Overcoming Obstacles Proceeding: Arizona Hearing*, Testimony of Carl Artman, Airadigm Communications, Inc., p. 100 (Oneida tribe invested in its own wireless communications because of its lower cost of deployment and maintenance when compared to wireline); *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Francis Mike, Navajo Communications Company, p. 84-89 (discussing the use of satellite services as a solution to meet Indian telecommunications needs)

<sup>39</sup> In the Matter of The Establishment of Policies and Service Rules for The Mobile Satellite Service in The 2 GHz Band, IB Docket No. 99-81, RM-9328, Notice of Proposed Rulemaking, FCC 99-50, para. 95 (rel. March 25, 1999) (*2 GHz Proceeding*).

<sup>40</sup> *Id.* at para. 95.

<sup>41</sup> See *2 GHz Proceeding*: Comments of Boeing at 16-18, Celsat at 28-29, Constellation at 27-28, Globalstar at 44-46, ICO at 19-21, ICO USA Service Group (BT NA, Hughes, Telmex, and TRW) at 44-46, Iridium at 41-43, MCHI at 26, and SIA at 2-3.

may prevent satellite providers from seeking universal support subsidies and reform those provisions, or forbear from imposing these provision, so that MSS providers can fully participate in the Universal Service Support initiative.<sup>42</sup>

19. Satellite networks, used either on a stand alone basis or in combination with a terrestrial wireless network, may offer a cost advantage over wireline or other alternatives in remote areas where a limited population may not provide the economies of scale to support the deployment of wireline or other networks for each community.<sup>43</sup> Because satellites have large coverage areas, and in many cases, can reach an entire nation, satellite providers may achieve greater economies of scale in serving isolated areas since the costs of deployment could be spread across a number of communities.<sup>44</sup> The basic build-out required to obtain satellite service is for earth stations to transmit and receive satellite signals.<sup>45</sup> We seek comment on why satellite or terrestrial wireless systems have not been used more extensively to serve these areas.<sup>46</sup> Specifically, we seek comments regarding the particular characteristics of satellite or terrestrial wireless systems that render these technologies suited for serving unserved areas, the costs associated with deployment, the availability of federal universal service support, and any other impediments to deployment. To the extent that costs deter satellite and terrestrial wireless deployment, we seek comment on what actions the Commission should take to support the establishment and maintenance of satellite and terrestrial wireless services.<sup>47</sup> We ask parties to comment on whether specific aspect of our universal service rules may deter both current and

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<sup>42</sup> See *2 GHz Proceeding*: Comments of Globalstar at 44-46 and MCHI at 26; reply comments of ICO USA Service Group 44-46.

<sup>43</sup> See, e.g., *Overcoming Obstacles Proceeding*: Comments of Skybridge L.L.C., at p. 4 (“[t]he geographic and economic considerations that make service to reservations unattractive to terrestrial networks...are not an issue for providers of satellite telecommunications. . . .”)

<sup>44</sup> See, e.g., *Overcoming Obstacles Proceeding*: Comments of ICO Global Communications (Holding) Limited, at p. 3 (suggesting that with satellite service, incremental costs of adding additional subscribers in high-cost areas is low).

<sup>45</sup> We note that American Mobile Satellite Corporation, a GSO MSS licensee, is providing service to a police force in the Navajo Nation and to the remote community of Tortilla Flat, Arizona, and that General Communications, Inc., an earth station operator, provides voice and private line services to fifty rural Alaskan Bush communities.

<sup>46</sup> See, e.g., *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of George Arthur, Council Delegate, Navajo Nation, p. 43 (satellite services are too expensive for use in resolving Indian telecommunication needs). We note that in a companion Notice of Proposed Rulemaking adopted today, we are seeking comment on: (1) whether certain changes to Commission rules would provide greater incentives for existing wireless and satellite licensees to extend service to tribal lands and other unserved areas; and (2) ways the Commission might encourage deployment of wireless and satellite-based telecommunications service to tribal lands and other unserved areas through the Commission's development and licensing of new wireless and satellite services. See *Extending Wireless Service to Tribal Lands*, Notice of Proposed Rulemaking, WT Docket No. 99-266, FCC 99-205, (adopted Aug. 5, 1999).

<sup>47</sup> Several commenters to the *Overcoming Obstacles Proceeding* expressed concern over lack of access to universal service funds. See, e.g., Comments of the Cellular Telecommunications Industry Association (June 28, 1999) at p. 1 (“For wireless carriers, the most significant obstacle to offering basic telecommunications service is the Commission’s present implementation of Universal Service support mechanisms”); *Overcoming Obstacles Proceeding: Arizona Hearing*, Testimony of Richard Watkins, Smith Bagley, Inc., p. 111 (“[U]niversal service support [must be] made available to wireless carriers”). See also, *Overcoming Obstacles Proceeding: Arizona Hearing*, Testimony of Jim Irvin, Commissioner Chairman, Arizona Corporation Commission, p. 143-151.

future satellite services providers from providing service to rural, insular, and other unserved communities, and what specific steps the Commission can undertake to encourage the use of universal service support by satellite service providers. We also seek comment on any other actions the Commission should take to encourage the deployment of the most cost-effective, practical solution in these geographically extreme areas.

### **C. Impediments to Increased Penetration**

20. An important step in increasing low penetration in unserved or underserved high-cost, insular, and tribal lands is understanding the impediments to higher penetration rates. Accordingly, in this section, we seek comment on the nature of such impediments. To facilitate discussion, we have divided this issue into the categories described below. These categories are not intended to be exhaustive, however, and we encourage commenters to discuss any additional impediments to increased penetration that they are able to identify.

21. In addition to identifying impediments to increased penetration rates, we also ask commenters to discuss potential solutions for overcoming those impediments. We do not reach tentative conclusions on any of the proposals discussed below. Instead, we seek comment on the need for the Commission to address the specific concerns set forth below and the costs and benefits of the proposals discussed. We seek comment on how the Commission should measure its success in satisfying the mandate in the 1996 Act that consumers in all regions of the nation have access to telecommunications services.<sup>48</sup> We seek comment on what measure we could use, other than penetration rates, to evaluate our success in achieving this goal.

#### **1. Demographic Factors**

22. In section II.A above, we ask commenters to supply data for high-cost, insular, and tribal lands regarding: (1) total population; (2) population density; (3) average annual income; and (4) average unemployment rate. Bureau of Census data indicates that income and education levels greatly affect telephone penetration rates and that geographic location can also make a difference.<sup>49</sup> In this section, we seek specific comments on how these demographic factors affect penetration rates. For example, do income levels have a greater effect on penetration rates than population density? Do the combined effects of low income and low population density have an exponential effect on penetration rates? We seek comment on whether other demographic factors significantly affect penetration rates in high-cost, insular, and tribal lands, *e.g.*, education levels.

#### **2. Geographic Factors**

23. One of the more obvious explanations for low penetration rates in high-cost, insular, and tribal lands is that these areas are unusually expensive to serve. Distance appears to be one reason line extension charges are so high. During the New Mexico and Arizona Field Hearings, several tribes testified about the remoteness of their locations and the challenges that remote

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<sup>48</sup> See 47 U.S.C. § 254(b)(3).

<sup>49</sup> Falling Through the Net II: New Data on the Digital Divide, National Telecommunications and Information, U.S. Department of Commerce (July 1998) at 2-3. This report may be found at <http://www.ntia.doc.gov/ntiahome/net2/falling.html>.

locations presented in terms of telecommunications services.<sup>50</sup> For example, in 1997, the Navajo Communications Company issued 72 line extension charge estimates that averaged more than \$40,000, including eight over \$100,000 and one over \$157,000.<sup>51</sup> The cost for installation of a line on the Salt River Pima-Maricopa Indian Community (located in the heart of metropolitan Phoenix) is \$5,000.<sup>52</sup> We seek comment on the general terrain, including the existence of mountains, plains, swamps, water, plateaus, canyons, etc., that create challenges in providing telecommunications services. We also seek comment on the extent to which the absence of necessary infrastructure, for example roads or electrical capacity, constitutes a barrier to deployment in rural, insular, high-cost, and tribal lands<sup>53</sup>.

### 3. *Financial Factors*

24. We seek comment on whether difficulties in obtaining access to financing limits the ability of carriers to provide service in unserved or underserved rural, insular, high-cost, and tribal lands. We seek comment on any specific provisions in loan agreements that serve to deter deployment in these areas. We also seek comment on any measures the Commission could take that would diminish the risks faced by investors and would enhance the ability of carriers to attract financing necessary to provide service in unserved or underserved rural, insular, high-cost, and tribal lands. We also seek comment on the availability and utility of existing programs that may provide funding and assistance to carriers seeking to provide telecommunications service in unserved areas and underserved areas, including tribal and insular areas,<sup>54</sup> including whether the availability of existing sources of funding and assistance is adequately publicized.<sup>55</sup>

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<sup>50</sup> See *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Arnold Cassador, President Jicarilla Apache Tribe, p. 49 (because of remote location many people are without access to telephone service); Testimony of Anthony Lucio, Councilman, Zuni Pueblo, p. 62 (Zuni is the farthest of the 19 pueblos); Testimony of George Arthur, Council Delegate, Navajo Nation, at p. 1 (implementing a telecommunications network on a remote and expansive reservation presents challenges).

<sup>51</sup> See Navajo Communications Company, response to Arizona Corporation Commission Data Request, ACC Docket No. T-2115-97-640 (Unserved Areas), Jun. 19, 1998 at attachment B (placed on the record of CC Docket No. 96-45); *Overcoming Obstacles Proceeding: Arizona Hearing*, Testimony of James Irvin, Commissioner Chairman, Arizona Corporation Commission, p. 147.

<sup>52</sup> *Overcoming Obstacles Proceeding*, Testimony of Ivan Makil, President, Salt River Pima-Maricopa Indian Community, p. 1. For a discussion of Rural Utility Services programs, see *Overcoming Obstacles Proceeding: Arizona Hearing*, Testimony of Christopher McLean, Deputy Administrator, Rural Utility Service, p. 18-26; see also Testimony of Madonna Peltier Yawakie, Minnesota American Indian Science and Engineering Society, p. 154-157.

<sup>53</sup> See *Assessment of Technology Infrastructure in Native Communities, Final Report, July 1999*, College of Engineering, New Mexico State University, Research sponsored by the Economic Development Administration, U.S. Department of Commerce, at p. 20 (*Assessment of Infrastructure*) (placed on the record of CC Docket No. 96-45).

<sup>54</sup> See *Native Networking: Telecommunications and Information Technology and Indian Country*; Benton Foundation (April 1999) at pages 20-39. This Report is available on the Internet at [http://www.benton.org/Library/Native/\\*](http://www.benton.org/Library/Native/*).

<sup>55</sup> See *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Anthony Lucio, Councilman, Zuni Pueblo, p. 63.

#### 4. Cultural Factors

25. We seek comment on the extent to which cultural values or lifestyle preferences deter consumer interest in subscribing to telecommunications services in unserved or underserved areas.<sup>56</sup> For example, we seek comment on whether concerns about cultural preservation, religion, identity, and values may affect the willingness of tribal authorities to allow or promote the availability of telecommunications services in their communities.<sup>57</sup> Similarly, we seek comment on whether there are a significant number of individuals that simply do not want telecommunications services because of personal lifestyle choices. We also seek comment on the extent to which carriers justify the lack of deployment in unserved or underserved rural, insular, high-cost, and tribal lands based on concerns for cultural preservation and whether these concerns are legitimate. In addition, we seek comment on whether the Commission's efforts to promote deployment and subscribership in unserved and underserved areas should be constrained by the cultural choices expressed by tribal authorities or other local leadership.

#### 5. Regulatory Factors

26. In this section, we seek comment on impediments imposed by various laws, regulations or practices that may deter carriers from providing service to unserved or underserved areas, including federal, state, tribal or insular authorities.

27. *Federal Regulatory Impediments.* We seek comment on the current process for obtaining access to rights-of-way on tribal lands and to what extent this process deters carriers from providing service on tribal lands.<sup>58</sup> Under the Right-of-Way Act of 1948, there are three critical components for obtaining rights-of-way over tribal land: (1) the Secretary of the Interior through the Bureau of Indian Affairs must grant the easement for the right-of-way;<sup>59</sup> (2) compensation of not less than fair market value, as determined by the Secretary, plus severance damages must be paid to the property owner;<sup>60</sup> and (3) tribal consent must be obtained.<sup>61</sup> The first of these requires a service provider to undergo environmental assessments and secure cultural and archaeological clearances from the Bureau of Indian Affairs.<sup>62</sup> The second

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<sup>56</sup> See *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Stanley Pino, All Indians Pueblo Council; Office of Technology Assessment, United States Congress, *Telecommunication Technology and Native Americans: Opportunities and Challenges*, OTA-ITC-621 (Washington, DC: U.S. Government Printing Office, August, 1995).

<sup>57</sup> See, e.g., *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Eagle Rael, Governor, Picuris Pueblo, p. 58 (describing reluctance to bury telephone cables near ceremonial sites). Madonna Peltier Yawakie specifically refutes the position that Indians, because of cultural concerns, fail to use telephones or are communal in their use of telephones. See *Overcoming Obstacles Proceeding*, Testimony of Madonna Peltier Yawakie, at p. 1.

<sup>58</sup> See, e.g., *Overcoming Obstacles Proceeding*, Testimony of George Arthur, Navajo Nation; Parker Sando, "Right of Way and Easement Practices," presented at AISES National Native American Telecommunications Workshop, July 28-30, 1998, Albuquerque, New Mexico, workshop transcript at 5-4 (*NNAT Workshop Transcript*).

<sup>59</sup> 25 U.S.C. § 323 (1998).

<sup>60</sup> 25 U.S.C. § 325 (1998).

<sup>61</sup> 25 U.S.C. § 324 (1998).

<sup>62</sup> Raymond Etcitty, "Right of Way and Easement Practices," *NNAT Workshop Transcript*, p. 5-1.

component requires the service provider to obtain the standard appraisal it would for any easement but under standards set by Bureau of Indian Affairs.<sup>63</sup> Finally, the service provider must also meet any conditions imposed by the particular tribe because the tribe has the ultimate authority to accept or reject the right-of-way. Carriers have indicated that this process is a significant barrier to entry.<sup>64</sup> Tribal authorities have expressed concern about the ability of carriers to use existing rights-of-way to establish new terrestrial networks without obtaining the consent of the tribal authority.<sup>65</sup> In addition, carriers and tribal authorities appear to have concerns concerning appropriate compensation for use of rights-of-way in tribal lands.<sup>66</sup> To the extent rights-of-way management issues pose a barrier to entry on tribal lands,<sup>67</sup> we seek comment on what role, if any, the Commission could play in addressing these issues.<sup>68</sup>

28. We also seek comment on whether any aspect of our universal service rules deters carriers from providing service to unserved and underserved areas. For example, does the definition of supported services deter terrestrial wireless or satellite service providers from providing services in these areas? In our ongoing proceeding to reform the high-cost universal service support mechanism for non-rural carriers, several parties representing rural carriers have filed comments asking that we adjust or eliminate the cap on the high-cost loop fund to coincide with the anticipated transition of non-rural carriers to a new forward-looking support mechanism on January 1, 2000.<sup>69</sup> We observe that the cap on the existing high-cost fund properly allows for

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<sup>63</sup> Steve Campbell, "Right of Way and Easement Practices," *NNAT Workshop Transcript*, p. 5-4.

<sup>64</sup> See, e.g., *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Francis Mike, Navajo Communications, p. 87 ("very long, difficult, and expensive Bureau of Indian Affairs and Navajo Nation right-of-way processes"); Testimony of Arthur Martinez, Western New Mexico Telephone Company, p. 92 ("permit process is tedious and in many cases can take up to a year to complete"); Testimony of Gene DeJordy, Western Wireless, p. 96; Testimony of Aloa Stevens, Citizens Communications, p. 94; Testimony of Richard Watkins, Smith Bagley, p. 115; see also *Overcoming Obstacles Proceeding: Comments of US West Communications, Inc.* at p. 5.

<sup>65</sup> See, e.g., *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of George Arthur, Navajo Nation, p. 43.

<sup>66</sup> See *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Francis Mike, Navajo Communications, p. 87 ("exorbitant fees for right-of-way acquisition"); Testimony of George Arthur, Navajo Nation, p. 43 ("[the carrier] ... utilized the New Mexico transportation highway right of ways ... [to] avoid having to deal with the Navajo Nation."); Testimony of Gene DeJordy, Western Wireless, p. 96 ("An additional problem ... is the placement and operation of antenna towers."); Testimony of Linda Lovejoy, New Mexico Public Regulations Commission, p. 115 ("[T]here are many obstacles ... [o]ne of these is ... right-of-way from the tribal authorities and federal agencies.") See also *Overcoming Obstacles Proceeding: Comments of US West Communications, Inc.*, at p. 5 ("tribes resisted requests ... and quoted exorbitant fees for [rights-of-way].")

<sup>67</sup> See generally, *Overcoming Obstacles Proceeding: Response to Questionnaire filed by Governor Mary Thomas, Gila River Indian Community*, pp. 4, 6.

<sup>68</sup> See, e.g., *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 99-217, FCC 99-141 (rel. July 7, 1999).

<sup>69</sup> In our ongoing proceeding to reform the high-cost universal service support mechanism for non-rural carriers, several parties representing rural carriers have filed comments asking that we adjust or eliminate the cap on the high-cost loop fund to coincide with the anticipated transition of non-rural carriers to a new forward-looking support mechanism on January 1, 2000. See *Federal-State Joint Board on Universal Service*, CC Docket No 96-45, *Access Charge Reform*, CC Docket No. 96-262, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, FCC 99-119 (rel. May 28, 1999); Rural Telephone Coalition comments at 16-21 (filed July 23, 1999); Western Alliance comments at 4-7 (filed July 23, 1999).

growth based on the rate of growth in the total number of working loops nationwide. We also observe that carriers do invest in facilities in an amount greater than that which is supported through federal universal service support mechanisms.<sup>70</sup> We seek comment regarding the extent to which the interim cap on the high-cost fund is a factor contributing to the lack of deployment in unserved areas, including tribal and insular areas.

29. We comment on whether existing LATA<sup>71</sup> boundaries prevent calls from unserved or underserved areas, including tribal lands, to the nearest metropolitan area or community of interest from being included in local service. We seek comment on any other federal rules or Commission regulations which may deter carriers from providing service to unserved or underserved areas. We also observe that issues specific to wireless providers will be addressed in a separate proceeding.<sup>72</sup>

30. *State Regulations.* We also seek comment on regulations or actions at the state level that may impact deployment and subscribership in unserved and underserved areas.<sup>73</sup> We seek comment on the extent to which statewide rate-averaging requirements or limited local calling areas may make the costs of telecommunications service unaffordable to low-income consumers living in unserved or underserved areas. We also seek comment on existing state programs designed to ensure that rates in remote and tribal lands are affordable.

31. *Tribal / Insular Regulatory Impediments.* We seek comment on any regulations or requirements imposed by tribal or insular authorities that may deter entry in tribal lands or in insular areas. For example, we seek comment on whether local governments own or operate the local exchange carrier in their areas and what impact this may have on competitive entry from other cost-effective wireline, terrestrial wireless, or satellite service providers. We seek comment on whether government ownership or operation affects the provision of services supported by universal service mechanisms in these areas. We seek comment on any ownership or employment requirements imposed by tribal authorities that may impair the ability of carriers to provide service and/or compete with tribally-owned carriers. For example, we seek comment on the extent to which tribes require an ownership interest in a carrier as a prerequisite to allowing the carrier to provide service on tribal lands. We seek comment on the impact such requirements may have on the deployment of telecommunications facilities and services on tribal lands.

### III. TRIBAL LANDS

32. For our universal service support mechanisms to be effective on tribal lands, we seek to promote active involvement and collaboration between the Commission and tribal authorities.

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<sup>70</sup> See, e.g., Letter from John Ricker, National Exchange Carrier Association (NECA), to Magalie Roman Salas (dated October 1, 1998) (“NECA estimates that the cap will be \$864.2 million for 1999 payments. The individual study area expense adjustments for 1999 total \$926.9 million based on year-end 1997 data, hence payments of expense adjustments will be limited [\$62.7 million] as a result of the indexed cap.”)

<sup>71</sup> 47 U.S.C. § 3(25) (defining “Local Access and Transport Area.”)

<sup>72</sup> *Extending Wireless Service to Tribal Lands*, Notice of Proposed Rulemaking, WT Docket No. 99-266, FCC 99-205, (adopted Aug. 5, 1999).

<sup>73</sup> See, e.g., Testimony of Aloa Stevens, *Overcoming Obstacles Proceeding: Arizona Hearing*, at 1 (“In some states the regulatory agencies even oppose construction to remote areas, when such line extensions will have the effect of eroding the earnings level, or will eventually raise the cost of service to all other customers.”)



As a general matter, we seek comment on how we can increase Indian participation in the Commission's decision-making process.<sup>74</sup> At a more specific level, we seek comment throughout this section on issues unique to tribal lands that may affect the goals and incentives of federal universal service support mechanisms and consider additional, targeted assistance the Commission may want to provide to promote deployment and subscribership on tribal lands. As described below, the trust relationship between the federal government and Indians as well as principles of tribal sovereignty suggest that the federal government may have the authority to implement particularized measures to address the factors causing the unusually low subscribership on tribal lands. We emphasize that these proposals are not meant to imply that the states have not, or will not, do their share in promoting the availability of universal service on tribal lands. In fact, many states have made significant efforts in this area. We commend them for doing so and we encourage them to continue. In this proceeding, however, we consider measures the Commission may take to fulfill its obligation to address telecommunications needs on tribal lands.

## A. Jurisdiction

### 1. Background

33. As noted above, one of our goals in this proceeding is to identify and address the unique issues that may limit telecommunications deployment and subscribership in unserved or underserved regions of our Nation, including insular areas and tribal lands and to consider what changes in our universal service rules would best address these issues. Our jurisdiction to make these changes springs from our obligation under section 254 of the Act to develop policies and rules for the preservation and advancement of universal service. With respect to tribal lands, our exercise of this section 254 authority must be informed by our exploration of the jurisdiction of states and Indian tribes to regulate and provide telecommunications. Our jurisdiction to alter our universal service rules in ways targeted to benefit unserved tribal lands must also be informed by the principles of Indian law that stem from the unique relationship of the federal government with Indian tribes.<sup>75</sup>

34. This relationship is set forth in the Constitution of the United States, treaties, statutes, Executive Orders and court decisions. Historically, the United States has recognized the special trust relationship between the federal government and tribal authorities, the unique sovereign status of Indian tribes, and the federal obligation to guarantee the right of Indian tribes to self-government.

35. *Trust Relationship*. Federal courts have long recognized a “distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people.”<sup>76</sup> The formation of a trust relationship evolved out of a recognition of the

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<sup>74</sup> See, e.g., *Federal-State Joint Board on Universal Service Announces Rural Task Force*, Public Notice, CC Docket No. 96-45, FCC 98J-1 (Jt. Bd. rel. Jul. 1, 1998) (appointing Elstun Lausen II, Tanana Chiefs Conference, Inc. in category for “other appropriate representatives, including those of groups with special interest concerns, such as individuals or groups representing the concerns of Native Americans.”)

<sup>75</sup> See note 24, above, for definitions of Indians and Indian tribes.

<sup>76</sup> *Seminole Nation v. United States*, 316 U.S. 286, 296 (1942) (citing *Cherokee Nation v. State of Georgia*, 30 U.S. 1 (1831); *United States v. Kagama*, 118 U.S. 375 (1886); *Choctaw Nation v. United States*, 119 U.S. 1 (1886);

unequal bargaining power of Indian tribes in the formation of the treaties governing their rights and obligations. Over 150 years ago, Chief Justice Marshall acknowledged the special status of Indian tribes in the seminal case of *Cherokee Nation v. State of Georgia*, describing them as “domestic dependent nations.”<sup>77</sup> Since that time, the courts have routinely observed the federal government’s unique relationship with Indian tribes,<sup>78</sup> and as recently as June 14, 1999, the Supreme Court again recognized the “special federal interest in protecting the welfare of Native Americans.”<sup>79</sup> The Supreme Court has stated that, through this special trust relationship, the federal government “has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards.”<sup>80</sup>

36. *Tribal Sovereignty.* The Constitution of the United States recognizes the sovereign status of Indian tribes by classing Indian treaties as among the “Supreme Law of the land” and establishes Indian affairs as a unique area of federal concern. Indian tribes retain important sovereign powers over “their members and their territory” subject to the plenary power vested in Congress by the Constitution of the United States. Under the tribal sovereignty doctrine, “Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory.”<sup>81</sup> Under this doctrine, tribes have retained “a semi-independent position . . . not

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*United States v. Pelican*, 232 U.S. 442 (1914); *United States v. Creek Nation*, 295 U.S. 103 (1935); *Tulee v. State of Washington*, 315 U.S. 681 (1942). See also *Ramah Navajo Chapter v. Lujan*, 112 F.3d 1455, 1462 (10<sup>th</sup> Cir. 1997) (federal government has a unique trust relationship with Indians.)

<sup>77</sup> *Cherokee Nation v. State of Georgia*, 30 U.S. 1 at 17 (1831).

<sup>78</sup> See e.g., *Nance v. EPA*, 645 F.2d 701, 710 (9<sup>th</sup> Cir.) (cert. denied sub nom, *Crow Tribe of Indians Montana v. EPA*, 454 U.S. 1081 (1981); *Inter-Tribal Council of Arizona, Inc. v. Babbit*, 51 F.3d 199, 203 (9<sup>th</sup> Cir. 1995).

<sup>79</sup> *Greater New Orleans Broadcasting Association v. United States*, \_\_\_ U.S. \_\_\_, 1999 WL 380810, 380812 (June 14, 1999).

<sup>80</sup> *Seminole Nation*, 316 U.S. at 297. Since 1970, Presidential policy has reaffirmed the unique sovereign status of Indian tribes, the tribal-federal trust relationship, and the federal obligation to promote tribal self-sufficiency. See, e.g., President Richard Nixon, *Statement to the Congress of the United States*, The White House, July 9, 1970; President Ronald Reagan, *Statement by the President on Indian Policy*, The White House, Jan. 24, 1983; President George Bush, *Indian Policy Statement*, The White House, June 14, 1991; President William Clinton, *Government-to-Government Relations with Native American Tribal Governments*, Memorandum of Apr. 29, 1994, Federal Register vol. 59, No. 85, May 4, 1994, pp. 22951-22952 (*President Clinton’s April 1994 Memorandum*); President William Clinton, *Executive Order on Indian Tribal Governments*, The White House, May 14, 1998 (*President Clinton’s May 1998 Executive Order*.) *President Clinton’s April 1994 Memorandum* requires executive agencies to deal with Indian tribes on a government to government basis, carefully consider the implications of proposed actions on tribes and provide tribes with the opportunity to participate in agency activities. Several federal agencies have issued policy statements that recognize the status of tribal governments and support tribal self-determination. See, e.g., U.S. Department of the Interior, Memorandum from Ada E. Deer, Assistant Secretary for Indian Affairs to the Assistant Secretary for Fish and Wildlife and Parks, *Indian Fish and Wildlife Policy*, June 23, 1994; U.S. Department of Energy, *American Indian Policy*, July/August 1994; U.S. Department of Agriculture, Departmental Regulation No. 1020-6, *Policies on American Indians and Alaska Natives*, Oct. 22, 1992; U.S. Department of Commerce, *American Indians and Alaska Native Policy of the U.S. Department of Commerce*, Mar. 30, 1995; U.S. Department of Justice, Office of the Attorney General, *Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes*, June 1, 1995; U.S. Environmental Protection Agency, Memorandum from Carol M. Browner, Administrator, to All Employees, *EPA Indian Policy*, Mar. 14, 1994.

<sup>81</sup> *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 140 (1980), quoting *United States v. Mazurie*, 419 U.S. 544, 557 (1975).

as States, not as nations, . . . but as a separate people with the power of regulating their internal and social relations . . . .”<sup>82</sup> The foundation of Indian sovereignty over the reservation and tribal members was first recognized by Chief Justice John Marshall, who described the Indian tribes as “distinct political communities, having territorial boundaries within which their authority is exclusive, and having a right to all lands within those boundaries, which is not only acknowledged but guaranteed by the United States.”<sup>83</sup> The tradition of tribal sovereignty has persisted since Chief Justice Marshall’s early decisions construing the status of Indian tribes. As the Supreme Court has acknowledged “traditional notions of Indian self-government are so deeply ingrained in our jurisprudence that they have provided an important ‘backdrop’ against which vague or ambiguous federal enactment must always be measured.”<sup>84</sup> Congress recently declared that the trust relationship “includes the protection of the sovereignty of each tribal government.”<sup>85</sup>

37. *Tribal Self-determination.* Through the enactment of various statutes, Congress has demonstrated an “overriding goal of encouraging tribal self-sufficiency and economic development.”<sup>86</sup> For example, the Indian Financing Act of 1974 provides in pertinent part that: “[i]t is hereby declared to be the policy of Congress . . . to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities.”<sup>87</sup>

## 2. Issues for Comment

38. We recognize that principles of Indian law, including the trust relationship between the federal government and Indian tribes, tribal sovereignty, and tribal self-determination, must apply with equal force in the area of telecommunications.<sup>88</sup> With respect to telecommunications services provided by tribal carriers on or off the reservation or by non-tribal carriers within tribal

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<sup>82</sup> *McClanahan v. Arizona State Tax Comm’n*, 441 U.S. 164, 173 (1973), quoting *United States v. Kagama*, 118 U.S. 375, 381-382 (1886).

<sup>83</sup> *Worcester v. Georgia*, 6 Pet. 515, 557 (1832).

<sup>84</sup> *White Mountain Apache Tribe v. Bracker*, 448 U.S. at 143 (internal cites omitted). See also, *McClanahan v. Arizona State Tax Comm’n*, 441 U.S. 172 (1973) (“It must always be remembered that the various Indian tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that of our own Government.”) Tribal sovereignty, however, remains subordinate to Congress’ plenary power. See *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 154 (1980) (recognizing that “tribal sovereignty is dependent on, and subordinate to, only the Federal Government”).

<sup>85</sup> 25 U.S.C. § 3601.

<sup>86</sup> *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334-35 (1983) (internal quotations omitted) (referencing the Indian Financing Act of 1974, 25 U.S.C. § 1451, *et seq.*; the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450, *et seq.*; the Indian Reorganization Act of 1934, 25 U.S.C. § 461, *et seq.*; the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301, *et seq.*).

<sup>87</sup> 25 U.S.C. § 1451. See *Mescalero*, 42 U.S. at 334 (citing 25 U.S.C. §1451). See also *The Indian Self-Determination and Education Assistance Act of 1975*, 25 U.S.C. § 450; *The Indian Reorganization Act of 1934*, 25 U.S.C. § 461; *The Indian Civil Rights Act of 1968*, 25 U.S.C. § 1301; *The Indian Gaming Regulatory Act of 1988*, 25 U.S.C. § 2701 *et seq.*; and *The Indian Tribal Justice Act of 1993*, 25 U.S.C. § 3601 *et seq.*

<sup>88</sup> *Thirteenth Order on Reconsideration*, FCC 99-119 at para. 92, n.252.

lands (all of which are referred to jointly as “tribal telecommunications”) the parameters of federal, state and tribal authority, however, are not always clear. The Supreme Court, itself, has acknowledged that “generalizations on this subject have become treacherous.”<sup>89</sup> Nonetheless, some of the proposals presented in this Further Notice necessitate an effort to evaluate these jurisdictional relationships. In this Further Notice, we seek comment to determine how best to give effect to principles of Indian law in the context of rule changes intended to benefit unserved and underserved tribal lands.

39. *State Jurisdiction.* Three of the proposals detailed later in this Further Notice deal with provisions of sections 254 and 214 of the Act, and of our existing rules that are triggered when the state lacks jurisdiction over a carrier providing telephone exchange or access service in a particular area. First, as described in section IV, the determination of whether a state has jurisdiction over a common carrier providing telephone exchange service and exchange access is key in determining whether the Commission is required to designate telecommunications carriers as eligible to receive federal universal service support in high-cost areas. Second, as detailed in section V, in unserved areas where the state lacks jurisdiction the Commission, pursuant to section 214(e)(3) shall determine which common carrier or carriers are best able to provide service. Third, in section III.D.1, we propose that revisions to our Lifeline rules to address the situation faced by carriers not subject to state jurisdiction.

40. The issue of the extent to which tribal authorities or state governments have authority to regulate activities occurring on tribal lands, whether by tribal members or not, has a long and complex legal history, involving considerations of whether state regulation is preempted by federal regulation, whether state regulation is consistent with tribal sovereignty and self-determination, and whether tribes have consented to state jurisdiction, either in treaties or pursuant to the Indian Civil Rights Act of 1968.<sup>90</sup> In addition, Indian law jurisprudence finds state law generally inapplicable when states attempt to regulate the conduct of Indians directly within reservation boundaries.<sup>91</sup>

41. We recognize that some state commissions have asserted jurisdiction over carriers seeking to provide service on tribal lands and regulate certain aspects of the provision of telecommunications service on tribal lands. We seek comment, in particular from state commissions as well as any other interested parties, concerning the extent of state and tribal regulation of telecommunications provided on tribal lands and by tribally-owned or operated carriers. In particular, we seek comment on the appropriate jurisdictional authority in the following situations: (1) tribally-owned or operated carriers providing service within the reservation (a) to tribal members, (b) to non-tribal members, and (c) to non-tribal members living on non-native fee lands (within the reservation); (2) non-tribally owned or operated carriers offering service both inside and outside of the reservation; and (3) tribally-owned or operated carriers offering service outside of the reservation. We refer parties commenting on these issues

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<sup>89</sup> *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973).

<sup>90</sup> 18 U.S.C. §§ 1321, 1322, 1326 (1976). Among other things, the Indian Civil Rights Act provides for the Constitutional rights of Indians (including the provisions contained in the Bill of Rights of the United States Constitution) and establishes jurisdiction over criminal and civil actions.

<sup>91</sup> *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980).

to the various ways in which tribal lands could be defined, as discussed below, and seek comment on how these definitions inform the jurisdictional analysis requested in this section.<sup>92</sup>

42. In addition, we seek comment on the jurisdictional treatment of the following geographic entities, as classified by the Bureau of the Census:<sup>93</sup> (1) American Indian Reservations, which are areas with boundaries established by treaty, statute and /or executive or court order; (2) Trust Lands, which are real property held in trust by the federal government that is associated with a specific American Indian reservation or tribe and which may be located within or outside the reservation; (3) Tribal Jurisdiction Statistical Areas, which are delineated by those Federally-recognized tribes in Oklahoma that no longer have a reservation; (3) Tribal Designated Statistical Areas, which encompasses federally and state-recognized tribes without reservation or trust lands; (4) Alaska Native Regional Corporations, which are corporate entities established under the Alaska Native Claims Settlement Act of 1972 (ANCSA) to conduct the commercial and nonprofit business of Alaska Natives;<sup>94</sup> and (5) Alaska Village Statistical Areas, which are tribes, bands, clans, groups, villages, communities, or associations in Alaska that are recognized pursuant to the ANCSA.

43. We seek comment on whether there are any other kinds of tribal relationships that would inform our jurisdictional analysis. We seek comment on whether the state commission has jurisdiction over telecommunications in the situations described above, the legal authority for such jurisdiction (*e.g.* the state constitution, state statute, Indian treaty, etc.); and the extent to which the particular state commission exercises that jurisdiction. We also seek comment on the existence of any concurrent jurisdiction.

44. In addition, we observe that wireline telephone calls between Indian tribal lands and the state in which tribal land is located are currently treated as intrastate calls, subject to state jurisdiction. We seek comment on whether this treatment is consistent with principles of tribal sovereignty and the Indian law jurisprudence regarding the limits of state authority, referenced above. We also seek comment on whether the treatment of these calls as intrastate is consistent with the division of jurisdiction between the Commission and the states under section 2 of the Act. We seek comment as well on the need, impact, and Commission's authority to reclassify these calls as interstate for the purpose of giving effect to principles of tribal sovereignty.

45. We observe further that state jurisdiction may be preempted by the operation of federal law "if it interferes with or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state

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<sup>92</sup> See section III.B.

<sup>93</sup> The Geographic Areas Reference Manual describes in great detail the basic geographic entities the Census Bureau uses in its various data tabulations and documents the purposes, definitions, standards, criteria, and procedures used to select, define, delineate, and revise these geographic entities. See <http://www.census.gov/geo/www/garm.html>. To view or download the Census Bureau's listing of the American Indian and Alaska Native Areas by State in 1990, go to <http://www.census.gov/ftp/pub/geo/www/GARM/Ch5GARM.pdf>. Land Area and Poverty Data for American Indian and Alaska Native Areas can be viewed at: <http://www.census.gov/geo/www/ezstate/aianapov.html>. For more recent information, see Veronica E. Velarde Tiller, Tiller Research, Inc., *American Indian Reservations and Trust Areas* (prepared under an award from the Economic Development Administration, U.S. Department of Commerce, 1996).

<sup>94</sup> Public Law 92-203, as amended by Public Law 94-204.

authority.”<sup>95</sup> An express Congressional statement of preemption is not required.<sup>96</sup> Instead, a preemption analysis “requires a particularized examination of the relevant state, federal and tribal interests.”<sup>97</sup> We seek comment on state interests in regulating telecommunications on tribal lands, including the ability to ensure reasonable rates, quality service, and the continued viability of local exchange carriers (LECs). We also seek comment from each tribal government, and any other interested parties, on the extent to which the state’s exercise of jurisdiction over telecommunications on tribal lands and over tribal carriers that serve areas both inside and outside Indian sovereign territory is warranted.

46. *Tribal Regulation.* We seek comment from each tribal government, and any other interested parties, on the extent of tribal authority over regulation of telecommunications on tribal lands. As a threshold matter, we note that the Commission has previously spoken to some aspects of this issue in the *A.B. Fillins Order*, in which the Commission considered the extent of tribal regulatory authority over the provision of cellular service within a tribal reservation.<sup>98</sup> In that order, the Commission held that under well-settled case law, the Communications Act applies with equal force to tribal reservations as to other areas, and that the Commission has sole authority under Title III of the Act with respect to management and licensing of radio spectrum in tribal areas.<sup>99</sup> The Commission also concluded, however, that the Communications Act does not preempt tribal authority over access by telecommunications carriers to tribal lands, because the provisions of the Act that preempt state and local impediments to entry do not apply to tribal authorities.<sup>100</sup>

47. In light of this statutory framework, we seek comment on the current extent to which tribal authorities have engaged in telecommunications regulation and on any future plans of tribal authorities to regulate telecommunications in tribal areas. We seek comment on the extent to which tribal authorities consider regulation of tribal telecommunications important to the right to self-government and self-determination. We also seek comment on whether tribal authorities should be considered as comparable to state authorities for purposes of regulating telecommunications services, and the degree to which the federal-tribal relationship on communications matters is similar or dissimilar to the federal-state relationship. Finally, while we have determined in the *A.B. Fillins Order* that tribal authorities are not subject to preemption under provisions of the Act applicable to state and local governments, we seek comment on what

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<sup>95</sup> *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983), citing *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980).

<sup>96</sup> *Id.*

<sup>97</sup> *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 176 (1989), citing *Ramah Navajo School Bd., Inc. v. Bureau of Revenue*, 458 U.S. 832, 838 (1982).

<sup>98</sup> AB Fillins: Petition for a Declaratory Ruling Preempting the Authority of the Tohono O’odham Legislative Council to Regulate the Entry of Commercial Mobile Radio Service to the Sells Reservation Within the Tucson MSA, Market No. 77, *Memorandum Opinion and Order*, 12 FCC Rcd 11755 (1997) (*AB Fillins Order*).

<sup>99</sup> *Id.* at paras. 30-32 (citing *United States v. Farris*, 624 F.2d 890 (9<sup>th</sup> Cir. 1980), cert. denied sub nom. *Baker v. United States*, 449 U.S. 1111 (1981)).

<sup>100</sup> *AB Fillins* at paras. 16-18 (finding that the tribal legislative council’s decision to prevent the location of cell sites on reservation lands is within its authority over the occupation and use of tribal lands and is not preempted by Section 253 or Section 332(c) of the Act).

authority, if any, the Commission has to preempt tribal regulations that may be inconsistent with our federal regulatory scheme.

48. *Tribal Self-determination and Universal Service Goals.* We seek comment to determine how principles of Indian law and federal support for tribal self-determination affect the Commission's statutory mandate to ensure that consumers in all regions of the nation have access to the services supported by federal universal service support mechanisms. Pursuant to the Act, the Commission is bound by its statutory mandate to promote the availability of the services supported by federal universal service support mechanisms in all regions of the Nation.<sup>101</sup> We seek comment on whether this statutory obligation is affected or constrained by any contrary interests, for cultural or other reasons, of certain tribal authorities. We seek comment, in particular from tribal authorities, to ascertain whether tribal authorities share the goals established by the 1996 Act, which the Commission is bound to implement. We seek comment on the extent to which tribal authorities seek to promote the availability of telecommunications services and competition among telecommunications providers.

49. We also seek comment on whether the services supported by federal universal service support mechanisms are consistent with the interests of tribal authorities in promoting service in tribal lands.<sup>102</sup> We recognize that some tribal authorities may prefer a different mix of services to be supported. For example, some tribes may prefer support for terrestrial wireless or satellite services, rather than wireline services. Other tribes may want to prioritize the ability for each member to receive basic telecommunications service, rather than the entire package of services included in the definition of universal service. We seek comment on whether the Commission has the authority to and whether it should develop a procedure by which the Commission, the Joint Board and the sovereign Indian tribes could identify a single alternative definition of the services supported by federal universal service support mechanisms in tribal lands. We seek comment on additional administrative burdens that would be associated with implementing this procedure.

## **B. Defining "Tribal Lands"**

50. The definition we adopt of "tribal lands" will be used to identify those areas in which, for reasons based on principles of Indian sovereignty, the Commission seeks comment to determine whether possible modifications to our federal universal service policies and rules may be warranted. In defining tribal lands, we seek to ensure that we limit the reach of these proposals to those areas in which principles of tribal sovereignty and tribal self-determination apply. We also seek to balance the reasonable exercise of federal jurisdiction with appropriate deference to state sovereignty and jurisdiction.

51. We seek comment on defining tribal lands as all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation. Alternatively, we seek comment on defining tribal lands to have the same meaning as the term "Indian country," as that term is defined by the Bureau of Indian Affairs. "Indian country" means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government,

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<sup>101</sup> 47 U.S.C. § 254(b)(3).

<sup>102</sup> See n. 34, *supra*.

notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.<sup>103</sup>

52. In addition, we seek comment on whether the geographic entities, as classified by the Bureau of the Census, should be included in the definition of tribal lands:<sup>104</sup> (1) American Indian Reservations, which are areas with boundaries established by treaty, statute and / or executive or court order; (2) Trust Lands, which are real property held in trust by the federal government that is associated with a specific American Indian reservation or tribe and which may be located within or outside the reservation; (3) Tribal Jurisdiction Statistical Areas, which are delineated by those Federally-recognized tribes in Oklahoma that no longer have a reservation; (3) Tribal Designated Statistical Areas, which encompasses federally and state-recognized tribes without reservation or trust lands; (4) Alaska Native Regional Corporations, which are corporate entities established under the ANCSA<sup>105</sup> to conduct the commercial and nonprofit business of Alaska Natives;<sup>106</sup> and (5) Alaska Village Statistical Areas, which are tribes, bands, clans, groups, villages, communities, or associations in Alaska that are recognized pursuant to the ANCSA.

53. We observe that, with the exception of the first category, American Indian Reservations, the above listed classifications used by the Bureau of the Census would not be encompassed in a definition of tribal lands that is limited to “all land within the limits of any Indian reservation under the jurisdiction of the United States Government,” as set forth above. We recognize that tribes encompassed by these classifications may face obstacles in obtaining telecommunications services that are similar to those faced by tribes in living in American Indian Reservations. Commenters supporting the inclusion of any of these categories should explain the source of the Commission’s authority to implement the additional measures proposed in this item with respect to these areas, including noting any jurisdictional arguments provided in response to questions raised in section III.A.2.

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<sup>103</sup> 18 U.S.C. § 1151. The term “dependent Indian communities” refers to a limited category of Indian lands that are neither reservations nor allotments, that have been set aside by the federal government for the use of Indians as Indian land, and that are under federal superintendence. *Alaska v. Native Village of Venetie Tribal Government*, 118 S.Ct. 948, 953 (1998). Although Congress initially defined the term “Indian country” for purposes of federal criminal jurisdiction, the Supreme Court has recognized that the term also applies to questions of civil jurisdiction. *Alaska v. Native Village of Venetie Tribal Government*, 118 S.Ct. at 952, n.1; *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 208, n.5 (1987); *DeCoteau v. District County Court*, 420 U.S. 425, 427, n.2 (1975).

<sup>104</sup> See n. 93 for references to information identifying the specific tribes included within these classifications.

<sup>105</sup> See para. 21.

<sup>106</sup> Public Law 92-203, as amended by Public Law 94-204.



## C. High-Cost Support Mechanisms

### 1. Background

54. In 1984, the Commission established high-cost support mechanisms to promote the nationwide availability of telephone service at reasonable rates.<sup>107</sup> The high-cost loop fund provides support by allowing incumbent LECs with higher than average local loop costs to allocate an additional portion of those costs to the interstate jurisdiction to be recovered from interstate revenues.<sup>108</sup> This enables the state jurisdictions to establish lower local exchange rates in study areas receiving such assistance.<sup>109</sup> In general, a study area corresponds to an incumbent LEC's entire service territory within a state.<sup>110</sup> Typically for incumbent LECs operating in more than one state, each state represents a study area.

55. Pursuant to existing support mechanisms, high-cost loop support for most incumbent LECs is calculated using data provided by incumbent LECs pursuant to the Commission's cost accounting and jurisdictional separations rules.<sup>111</sup> Non-rural carriers are scheduled to make the transition on January 1, 2000 to a new support mechanism based on forward-looking costs, while rural carriers will continue to receive support based on the existing mechanisms until at least January 1, 2001. Under the existing mechanisms, the amount of an incumbent LEC's high-cost loop support is based on the relationship of its historical loop cost for a particular study area to the national average loop cost. In order to determine this relationship, approximately half of all incumbent LECs submit their historical loop cost data to NECA each year pursuant to sections

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<sup>107</sup> See generally *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, 96 FCC 2d 781 (1984). Pursuant to the Commission's directive, the local exchange carriers formed NECA to administer the high-cost support mechanisms. The support mechanisms include the high-cost loop fund, Dial Equipment Minutes (DEM) weighting assistance support and Long Term Support. The Commission's DEM weighting assistance mechanism provides support for local switching costs to telephone companies with 50,000 or fewer access lines. Initially, support was provided by allowing carriers to allocate a greater portion of their switching costs to the interstate jurisdiction. These costs were recovered through interstate access charges. In the *First Report and Order*, the Commission modified the program to provide that support attributable to DEM weighting would be recovered through the new universal service support mechanism. See *First Report and Order*, 12 FCC Rcd at 8940-4; 47 C.F.R. § 54.301. Long Term Support (LTS) refers to the support given to some carriers to supplement the part of the interstate portion of their local loop costs recovered through the Carrier Common Line (CCL) charge. LTS allows LECs with higher-than-average loop costs to charge only an average CCL rate. In the *First Report and Order*, the Commission determined that until carriers begin to receive support based on the new high-cost mechanism, LTS would be computed for each incumbent LEC using a baseline level of LTS derived from 1997 historical cost data but adjusted each year to reflect the annual percentage change in the nationwide average cost per loop and inflation. See 47 C.F.R. § 54.303.

<sup>108</sup> See 47 C.F.R. § 36.611.

<sup>109</sup> *Id.*

<sup>110</sup> 47 C.F.R. § 36 app. (defining "study area"); 47 U.S.C. § 251(h) (defining incumbent local exchange carrier). See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Recommended Decision and Order*, 49 Fed. Reg. 48325 (Dec. 12, 1984); *Decision and Order*, 50 Fed. Reg. 939 (Jan. 8, 1985); see also *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking*, 5 FCC Rcd 5974 (Oct. 10, 1990).

<sup>111</sup> See 47 C.F.R. Parts 36 and 69.

36.611 and 36.612 of the Commission's rules.<sup>112</sup> Because the cost data is not submitted by carriers until seven months after the end of a calendar year, and because NECA requires time to analyze the data and make the necessary nationwide calculations of support, carriers generally do not receive high-cost support based on these data until the beginning of the second calendar year after costs are incurred. The impact of this rule is mitigated, however, by section 36.612 of the rules, which allows carriers to update on a quarterly basis the calendar year data that they submit to NECA on July 31 of each year.<sup>113</sup>

56. The remainder of incumbent LECs, known as "average schedule companies," are not required to perform jurisdictionally-separated cost studies.<sup>114</sup> Average schedule treatment historically has been available to companies that are presumed, because of their small size, to lack the resources to justify a requirement that they perform separations and access charge cost studies to determine their compensation from interstate services.<sup>115</sup> NECA develops a schedule based on generalized industry data to reflect the costs of a typical small incumbent LEC. Subject to Commission approval, NECA's average schedule formula is used to provide support to average schedule companies.<sup>116</sup>

57. *Study Area Freeze.* The Commission froze all study area boundaries effective November 15, 1984 to curtail the ability of incumbent LECs to place high-cost exchanges within their existing service territories in separate study areas to maximize the payments from the universal service support mechanisms.<sup>117</sup> As a result, an incumbent LEC must apply to the Commission for a waiver of the study area boundary if it wishes to sell or purchase an exchange.<sup>118</sup>

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<sup>112</sup> Incumbent LECs must submit account data to the Administrator for each of its study areas. See 47 C.F.R. § 36.611, 36.612.

<sup>113</sup> See 47 C.F.R. § 36.612. If a carrier files a quarterly update, NECA recalculates the carrier's high-cost support for the remainder of the year based on the updated data (*e.g.*, data covering the last nine months of the previous calendar year and the first three months of the current calendar year), rather than the calendar year data submitted on July 31. Thus, the quarterly update provision allows carriers to receive support earlier than the beginning of the second calendar year after costs are incurred.

<sup>114</sup> Section 69.605(c) of the Commission's rules defines an average schedule company as "a telephone company that was participating in average schedule settlements on December 1, 1982." 47 C.F.R. § 69.605(c). Prior to the adoption of the Commission's access charge rules in 1984, incumbent LEC compensation arrangements were handled through private contractual agreements within the telephone industry. The industry's settlement mechanism based the amount of incumbent LEC compensation either on cost studies or average schedule formulas that were used to estimate an incumbent LEC's cost of service. To facilitate implementation of its access charge rules, the Commission incorporated a modified version of the industry's existing average schedule arrangement. See *Proposed MTS and WATS Market Structure*, Third Report and Order, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983) (*Average Schedule Order*). See also *National Exchange Carrier Association, Inc. Proposed Modifications to the 1997 Interstate Average Schedule Formulas*, Order on Reconsideration and Order, AAD 97-2, DA 97-2710 at para. 3 (Comm. Carr. Bur. rel. Dec. 24, 1997).

<sup>115</sup> See *Average Schedule Order*, *supra* n. 114.

<sup>116</sup> These average schedule companies may convert to "cost companies" and receive compensation from NECA based on their company-specific costs. Once they make this election, however, they cannot later resume average schedule status. See 47 C.F.R. § 69.605(c).

<sup>117</sup> *Id.*

<sup>118</sup> The Commission requires carriers to petition for a waiver whenever a company seeks to create or reconfigure study areas except under three conditions: (a) a separately incorporated company is establishing a study

58. *Interim Cap on High-Cost Fund.* In 1993, the Commission became concerned about the rapid and erratic pattern of growth in the size of the high-cost loop fund and initiated an inquiry to reevaluate its universal service support mechanism and to consider permanent changes in the manner in which high-cost support would be provided.<sup>119</sup> At that time, the Commission established an interim cap to the universal service fund.<sup>120</sup> The cap was designed to moderate the growth of the fund while the Commission conducted a rulemaking proceeding and to allow for an orderly transition to the new universal service support mechanisms that would be adopted.<sup>121</sup> Under the cap, the total fund for a given year may increase by no more than a percentage equal to the percentage growth nationwide in the number of loops for that year.<sup>122</sup>

59. *May 8, 1997 First Report and Order.* In 1997, the Commission adopted broad revisions to its universal service support mechanisms consistent with the directive of the 1996 Act to ensure that universal service support mechanisms be explicit, sufficient, and sustainable as local competition develops. The Commission established a plan for providing high-cost support through the explicit federal universal service support mechanism rather than the interstate access charge rate structure<sup>123</sup> and a methodology for determining high-cost support based on the forward-looking economic cost of providing the supported services to a particular service area.<sup>124</sup>

60. Currently, all carriers receive high-cost support based upon the high-cost support mechanisms which pre-date the 1996 Act. As discussed above, non-rural carriers will begin

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area for a previously unserved area; (b) a company is combining previously unserved territory with one of its existing study areas in the same state; and (c) a holding company is consolidating existing study areas in the same state. *American Samoa Government and the American Samoa Telecommunications Authority: Petitions for Waivers and Declaratory Rulings to Enable American Samoa to Participate in the Universal Service High Cost Support Program and the National Exchange Carrier Association Pools and Tariffs*, Order, CC Docket No. 96-45, AAD/USB File No. 98-41, DA 99-1131 (Acct. Pol. Div., Com. Car. Bur. Rel. June 9, 1999) (American Samoa); *Guam Telephone Authority, Petition for Declaratory Ruling*, Report and Order, AAD 97-27, DA 97-595 (Acct. Aud. Div. rel. March 21, 1997) (*Guam Study Area Waiver Order*). In evaluating petitions seeking a study area waiver, the Commission uses a three-pronged standard: (1) the change in study area boundaries must not adversely affect the high-cost loop fund; (2) the state commission(s) having regulatory authority over the exchange(s) to be transferred must not object to the change; and (3) the public interest must support such a change. *Guam Study Area Waiver Order* at para. 3. With respect to not adversely affecting the high-cost loop fund, we have required that study area waivers for a single carrier shall not increase total universal service support by more than one percent. *See US West Communications, Inc. and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1774 at para. 14 (1995), *aff'd on recon*, 12 FCC Rcd 4644 (1997).

<sup>119</sup> *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Notice of Inquiry, FCC 93-435 (rel. Sep. 14, 1993).

<sup>120</sup> *Id.*

<sup>121</sup> *See Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Recommended Decision, 9 FCC Rcd 334 (1993); Report and Order, 9 FCC Rcd 303 (1993) (establishing interim cap); Report and Order, 11 FCC Rcd 1077 (1995) (extending cap through July 1, 1996); Report and Order, 11 FCC Rcd 7920 (1996) (extending the cap until the final rules implementing the 1996 Act provisions become effective).

<sup>122</sup> 47 C.F.R. § 36.601(c).

<sup>123</sup> *See First Report and Order*, 12 FCC Rcd at 8926-47.

<sup>124</sup> *First Report and Order*, 12 FCC Rcd at 8898-8926. In using the term "forward-looking economic cost," we mean the cost of producing services using the least cost, most efficient, and reasonable technology currently available for purchase with all inputs valued at current prices.

receiving high-cost support based on forward-looking costs on January 1, 2000.<sup>125</sup> The Commission intends that rural carriers also will receive support based on forward-looking costs, but only after further review by the Commission, the Joint Board, and the Rural Task Force appointed by the Joint Board, and in no event before January 1, 2001.<sup>126</sup>

61. Until a carrier receives high-cost support based upon forward-looking costs, that carrier's support will be determined on the basis of whether the carrier is an incumbent LEC<sup>127</sup> or a competitive eligible telecommunications carrier. A competitive eligible telecommunications carrier is defined in our rules as an eligible telecommunications carrier that does not meet the definition of incumbent LEC. A competitive eligible telecommunications carrier receives the same amount of support per customer that the incumbent LEC previously serving that customer received.<sup>128</sup>

### ***2. Federal Share of High-Cost Support***

62. As discussed above, because the trust relationship creates a unique relationship between the federal government and Indian tribes, the federal government may have authority to undertake additional measures to promote deployment and subscribership on tribal lands and to provide universal service support necessary to offset the particular challenges facing these areas. With respect to high-cost support on tribal lands, we seek comment on the extent to which states currently support the costs of universal service in tribal lands and whether the Commission should provide an additional portion of the universal service support calculated by the federal support methodology in high-cost, tribal lands. For instance, with regard to the forward-looking high-cost support mechanism for non-rural carriers, we seek comment on whether, rather than providing support for costs that exceed both a national cost benchmark and the individual state's resources to support those costs, the mechanism should provide support for all costs in unserved tribal lands that exceed the national benchmark.

### ***3. Separate Study Areas Option for Tribal Lands***

63. In order to provide additional high-cost support to tribal lands, we seek comment on modifications to our study area rules. Our study area rules provide a mechanism through which the Commission has controlled the growth of the high-cost universal service support mechanism. Universal service support for high-cost areas is determined on the basis of average loop costs

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<sup>125</sup> *Federal-State Joint Board on Universal Service, Access Charge Reform*, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket 96-45; Fourth Report and Order in CC Docket No. 96-262; and Further Notice of Proposed Rulemaking in CC Docket Nos. 96-45, 96-262, FCC 99-119 (rel. May 28, 1999).

<sup>126</sup> *Thirteenth Order on Reconsideration*, FCC 99-119 at paras. 21, 129. See also *First Report and Order*, 12 FCC Rcd at 8889, para. 204, 8910, para. 245, 8917-18, paras. 252-56; *Federal-State Joint Board on Universal Service Announces the Creation of a Rural Task Force, Solicits Nominations for Membership on Rural Task Force*, Public Notice, FCC 97J-1 (rel. Sept. 17, 1997).

<sup>127</sup> For purposes of its universal service rules, the Commission adopted the Act's statutory definition of incumbent LEC. See 47 C.F.R. § 54.5; 47 C.F.R. § 51.5; 47 U.S.C. § 251(h)(1). An incumbent LEC is defined in the Act as a LEC that, with respect to an area: (1) provided telephone exchange service in such area on February 8, 1996, the date of enactment of the 1996 Act, and (2) was a member of NECA on February 8, 1996, or became such member's successor or assign.

<sup>128</sup> 47 C.F.R. § 54.307.

throughout a study area. Averaging costs on a study-area wide basis spreads the burden of serving high-cost areas among all of the telecommunications subscribers in that study area. As a result, however, carriers with relatively low average loop costs in a particular study area receive no support for serving additional customers in a high-cost portion of that study area if the loop costs in the high-cost portion do not raise the overall average loop costs for the study area above a specific national benchmark, currently 115% of the national average cost per loop.<sup>129</sup> By freezing study area boundaries, the Commission sought to eliminate incentives for carriers to place high-cost exchanges in separate study areas in order to receive additional support for providing service to those study areas. As a result of these two policies, however, certain carriers may experience strong financial disincentives to serving unprofitable high-cost customers in their study areas and other carriers may lack incentives to purchase those unserved exchanges.

64. In order to promote the deployment of universal services on tribal lands, we seek comment on modifying our rules to permit carriers to treat tribal lands<sup>130</sup> as a distinct study area.<sup>131</sup> We seek comment on whether, by providing an exception to our study area rules, we can eliminate regulatory requirements that may deter carriers from serving high-cost, tribal lands. For example, one option may be that the tribal study area for a carrier will consist of all of the tribal lands served by the carrier within the borders of a single state. This means that carriers may have a tribal study area in each state in which it provides service on tribal lands. We seek comment on whether the tribal study area should include all of the tribal lands in a state (rather than, for example, a single nationwide tribal study area) because states use study areas for purposes of determining intrastate revenue requirements.

65. We emphasize that the proposal to allow tribal study areas is not related to the issue of the area over which costs are averaged to determine support using the new high-cost mechanisms, which is pending in the high-cost proceeding.<sup>132</sup> We seek comment on how allowing a separate tribal study area could affect whether the carrier serving that area falls within the statutory definition of a rural carrier for providing service to that area. If a carrier designates the tribal lands within a state as a separate study area, the number of access lines or inhabitants in that newly created study area may qualify the carrier as a rural carrier with respect to that study area.<sup>133</sup> We seek comment on whether this may result in some carriers, currently designated as non-rural, being considered rural for purposes of receiving universal service support in certain tribal study areas.

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<sup>129</sup> See *Thirteenth Order on Reconsideration* at para. 98.

<sup>130</sup> For a discussion of the possible definitions of “tribal land”, see para. 50, above.

<sup>131</sup> This exception would not affect the requirement that, for a rural carrier, its service area is defined to mean their study area. See 47 U.S.C. § 214(e)(5). Rural carriers, like other carriers, may have study areas in multiple states. As a result of the rule change, they now may have study areas in multiple states and on tribal lands. For rural carriers, the service area for purposes of determining universal service obligations and support, continues to be their study areas.

<sup>132</sup> See *Thirteenth Order on Reconsideration* at V.B.2.

<sup>133</sup> See 47 U.S.C. § 153(37) (cited in n. 10, above).

#### 4. *Interim Cap on the High-Cost Fund*

66. In the *First Report and Order*, the Commission concluded that it would maintain the cap on the existing high-cost loop support mechanism until all carriers receive support based on the new high-cost funding mechanism.<sup>134</sup> The cap on the high-cost loop fund was initially intended as an interim measure.<sup>135</sup> Commission rules require that if total support, based on each carrier's actual costs, is above the total allowed capped amount, each recipient of high-cost loop support will receive a reduced amount of support to keep the total fund at the capped amount.<sup>136</sup> The cap has served its purpose in controlling excessive growth in the size of the fund during the past six years as the Commission has reformed its universal service support mechanisms. We have stated that the rural carriers will receive support based on the new high-cost funding mechanism no earlier than January 1, 2001. The Commission has not established a timetable for moving rural carriers to a forward-looking high-cost support mechanism. Rather, this undertaking is on hold pending the Rural Task Force making its recommendation to the Joint Board; the Joint Board may recommend that the Commission conduct further proceedings on certain issues.

67. Allowing carriers to designate separate tribal study areas, as proposed above, could mean that additional carriers may be entitled to a portion of the high-cost support fund. We seek comment on the need for the Commission to provide additional high-cost support under the existing mechanisms to tribal lands. In order to do so, the Commission may either lift the cap on the high-cost fund to allow for growth in the size of the fund attributable to the separate study area proposal or reallocate the existing funds among the expanded category of recipients. We seek comment on these options. We also seek comment on any other options that may assist the Commission in achieving the goal of targeting additional federal high-cost support to tribal lands.

#### D. Revisions to Lifeline

68. The Commission's Lifeline support program for low-income consumers is designed to reduce the monthly billed cost of basic service for low-income consumers, which we anticipate will increase telephone penetration. Lifeline provides carriers with three elements of universal service support.<sup>137</sup> The support must be passed through to each qualifying low-income consumer by an equivalent reduction in his or her monthly bill for telephone service. All carriers receive a baseline amount of \$3.50 per month per Lifeline customer in the form of a waiver of the federal subscriber line charge (SLC).<sup>138</sup> An additional \$1.75 per month is available per Lifeline customer if "the state commission approves an additional reduction of \$1.75 in the

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<sup>134</sup> *First Report and Order*, 12 FCC Rcd at 8929-8930.

<sup>135</sup> *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 9 FCC Rcd 303 (1993).

<sup>136</sup> Commission rules require that the national average cost per loop be increased by an amount that reduces each carrier's high-cost fund payment in order that the total fund equal the capped amount. See 47 C.F.R. § 36.622 (c) and (d).

<sup>137</sup> Federal universal service support for low-income consumers is available only where eligibility is based solely on income or factors directly related to income. 47 C.F.R. § 54.409.

<sup>138</sup> 47 C.F.R. § 54.403(a)

amount paid by consumers. . . .”<sup>139</sup> Finally, carriers can receive federal matching funds of fifty percent of the amount of state Lifeline support, up to a maximum of an additional \$1.75 per month, as long as the entire amount is passed on to subscribers.<sup>140</sup> Federal Lifeline support per qualifying low-income consumer is capped at \$7.00 per month.<sup>141</sup>

### *1. State Commission Approval*

69. The Commission has received petitions for waiver of our Lifeline rules to allow carriers not subject to the jurisdiction of a state commission to receive the second tier of federal support where no regulations issued by local authorities (including state commissions and tribal authorities) exist that would prevent an equivalent reduction in the monthly telephone bills of qualifying low-income consumers.<sup>142</sup> In drafting our rule, we did not consider the situation faced by carriers not subject to the jurisdiction of a state commission. Based on these waiver petitions, it appears that our rule has given rise to certain situations that we did not anticipate. The requirement of state consent prior to making available the second tier of federal Lifeline support was intended to reflect deference to the states in such areas of traditional state expertise and authority.<sup>143</sup> We did not intend to require carriers not subject to state commission jurisdiction to seek either state commission action or a Commission waiver in order to receive the additional \$1.75 available under federal support mechanisms, where that additional support would be passed through to consumers. For these reasons, we propose to modify our rule to state that an additional \$1.75 per qualifying low-income consumer will be provided to the carrier where the additional support will result in an equivalent reduction in the monthly bill of each qualifying low-income consumer. This proposed revision maintains deference to the state commission because the additional support will not be provided where a state commission with jurisdiction to do so has not permitted an equivalent reduction in the consumer’s bill. The proposed revision is intended to eliminate the need for carriers not subject to the jurisdiction of a state commission to seek state commission action or a Commission waiver. We seek comment on the proposed revision.

### *2. Federal Support on Tribal Lands*

70. In addition, in keeping with principles of tribal sovereignty, we seek comment on modifying our rule to provide that the third tier of federal support, a maximum of \$1.75 per month per low-income consumer, is available to customers on tribal lands. As described above, the federal government has a special trust relationship with Indian tribes, and this entails special responsibilities, particularly where tribal reservations appear to be particularly disadvantaged by a lack of important resources, like telecommunications.<sup>144</sup> With respect to tribal lands, we seek

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<sup>139</sup> 47 C.F.R. § 54.403(a)

<sup>140</sup> 47 C.F.R. § 54.403(a)

<sup>141</sup> 47 C.F.R. § 54.403(a)

<sup>142</sup> See Petitions for Waiver of Section 54.403(a) filed by Gila River Telecommunications, Inc. (January 22, 1999), Tohono O’odham Utility Authority (January 26, 1999), San Carlos Telecommunications, Inc. (February 12, 1999) and Fort Mojave Telecommunications, Inc. (February 17, 1999).

<sup>143</sup> *First Report and Order* 12 FCC Rcd at 8963.

<sup>144</sup> See *supra* note 76.

comment on the extent to which states currently provide the support necessary to qualify for matching funds for the third tier of Lifeline support.<sup>145</sup> We also seek comment on whether the federal government, in light of its trust relationship with Indian tribes, should provide carriers serving tribal lands the third tier of Lifeline support, \$1.75 per qualifying Lifeline customer, as long as all such Lifeline customers receive an equivalent reduction in their bills. Unlike in other areas, this federal support amount would not be contingent upon the state in which the tribal lands are located providing support.

### 3. *Amendments to Consumer Qualification Criteria*

71. We seek comment on whether the Commission should expand the consumer qualifications for Lifeline assistance to ensure that low income consumers on tribal lands are able to participate fully in the Lifeline assistance program. Under our current rules, in states that provide intrastate matching funds, a consumer must meet the criteria established by the state commission to receive federal Lifeline support.<sup>146</sup> In most states, a consumer can meet the criteria by demonstrating or certifying that he or she participates in one of several narrowly targeted low income assistance programs.<sup>147</sup> We are concerned that some state commissions have established Lifeline criteria that may inadvertently exclude low income consumers on tribal lands because the criteria do not include low income assistance programs that are specifically targeted toward Indians living on tribal lands.<sup>148</sup> Similarly, in those states that do not provide intrastate matching funds (and thus do not establish the consumer qualifications for Lifeline participation), a consumer seeking Lifeline support must certify his or her participation in one of the following Commission-designated low income assistance programs: Medicaid; food stamps; Supplemental Security Income; federal public housing assistance; or Low-Income Home Energy Assistance Program.<sup>149</sup>

72. We seek comment on how the Commission might expand the consumer qualifications for Lifeline support to enable low income consumers on tribal lands to participate in the Lifeline assistance program. In particular, we seek comment about whether we should amend our rules to allow low income consumers on tribal lands to qualify for Lifeline support by certifying their participation in additional means tested assistance programs, such as the programs administered by the Bureau of Indian Affairs<sup>150</sup> or Indian Health Services.<sup>151</sup> We encourage commenters to

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<sup>145</sup> See *Monitoring Report*, June 1999, CC Docket No. 98-202, (rel. Jul. 12, 1999). Section 2, Low-Income Support, contained information about the Lifeline and Link Up support mechanisms. Table 2.1 Lifeline Monthly Support by State or Jurisdiction provides information about the amount of support in each state's programs. See also National Exchange Carrier Association, Federal Universal Service Programs Fund Size Projections & Contribution Base for the Third Quarter 1999, appendix 5. (filed April 30, 1999).

<sup>146</sup> 47 C.F.R. § 54.409(a).

<sup>147</sup> See *Universal Service Order*, 12 FCC Rcd at 8973.

<sup>148</sup> See, e.g., *Overcoming Obstacles Proceeding*, Comments of Larry Wetsit, Nemont Telephone Cooperative, Inc.; *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Jerome Block, Commissioner, New Mexico Public Regulation Commission, at p. 136.

<sup>149</sup> 47 C.F.R. § 54.409(b).

<sup>150</sup> See, e.g., 25 C.F.R. § 20.1 *et seq.*



indicate whether there might be other suitable criteria -- based solely on income or factors related to income -- that should be used to determine qualification for low income members of tribal lands. We ask commenters to indicate whether providing Indians living on tribal lands with greater access to Lifeline assistance might increase incentives for eligible telecommunications carriers to serve these tribal lands. Finally, we seek comment on whether the Commission could apply any new criteria specifically targeted to low income Indians living on tribal lands both to states that do not provide matching funds and states that do provide such funds.

#### **IV. DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS PURSUANT TO SECTION 214(e)(6)**

73. Pursuant to section 254(e) of the 1996 Act, not all telecommunications providers are eligible for federal universal service support. For purposes of the universal service support mechanisms for high-cost areas and low income consumers “only an eligible telecommunications carrier designated under section 214(e) shall be eligible” to receive federal universal service support.<sup>152</sup> To be designated as an eligible telecommunications carrier, a carrier must:<sup>153</sup>

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

74. Under section 214(e), the primary responsibility for designating a prospective carrier as an eligible telecommunications carrier lies with the state commission.<sup>154</sup> In a situation where there is no common carrier willing to provide supported services to an unserved community that requests such services, section 214(e)(3) states that:<sup>155</sup>

[T]he Commission, with respect to interstate services . . . or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

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<sup>151</sup> See 42 U.S.C. 2002. See also *Overcoming Obstacles Proceeding*, Comments of Nemont Telephone Cooperative at p. 2 (Indians utilize the services of the Indian Health Services ... which is an entitlement and not health insurance).

<sup>152</sup> 47 U.S.C. § 254(e).

<sup>153</sup> 47 U.S.C. § 214(e)(1).

<sup>154</sup> 47 U.S.C. § 214(e)(2) (“A State Commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State Commission.”)

<sup>155</sup> 47 U.S.C. § 214(e)(3).

In the event that a common carrier is not subject to the jurisdiction of a state commission, section 214(e)(6) authorizes the Commission, upon request, to designate the carrier as an eligible telecommunications carrier, for a service area designated by the Commission, if the carrier meets the qualifications for eligible telecommunications carrier status.<sup>156</sup>

75. Section 214(e) of the Act states that only an “eligible telecommunications carrier” designated under section 214(e) shall be eligible to receive federal universal service support.<sup>157</sup> Pursuant to section 214(e)(2) and (e)(5) of the Act, state commissions are generally responsible for designating eligible telecommunications carriers and for designating service areas for such carriers.<sup>158</sup> Initially, section 214(e) did not include a provision for designating carriers not subject to the jurisdiction of a state commission. The Act was amended in 1997 to address this “oversight.”<sup>159</sup> Section 214(e)(6) authorizes the Commission to designate as an eligible telecommunications carrier “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission.” We tentatively conclude that, by adding section 214(e)(6), Congress sought to ensure that carriers serving all regions of the United States have access to a mechanism that will allow them to be designated as eligible telecommunications carriers, if they meet the statutory requirements. Recognizing that the designation of eligible telecommunications carriers is primarily a state commission function, Congress granted this Commission the authority for this task in the event that a carrier is not subject to the jurisdiction of a state commission.<sup>160</sup>

76. Although some of the legislative history of section 214(e)(6) focuses on the ability of tribally-owned carriers to be designated as eligible telecommunications carriers,<sup>161</sup> the statutory

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<sup>156</sup> 47 U.S.C. § 214(e)(6).

<sup>157</sup> 47 U.S.C. § 214(e).

<sup>158</sup> 47 USC §§ 214(e)(2) and (e)(5).

<sup>159</sup> Statement of Senator McCain, 143 Cong. Rec. S115545-04, S115546 (Oct. 31, 1997).

<sup>160</sup> See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice, FCC 97-419 (rel. Dec. 29, 1997). Until recently, carriers seeking eligible telecommunications carrier designation from the Commission have been tribally owned or tribal cooperatives. See *Designation of Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O’odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Memorandum Opinion and Order, AAD/USB File No. 98028, DA 98-392, (rel. Feb. 27, 1998); *Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 98-2237 (rel. Nov. 4, 1998); *Cheyenne River Sioux Tribe Telephone Authority Seeks FCC Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, AAD/USB File No. 98-21, DA 98-150 (rel. Jan. 28, 1998).

On June 2, 1999, however, we received a petition from a carrier that is not affiliated with a tribe to serve a tribal area. *Petition of Smith Bagley, Inc., for Designation as an Eligible Telecommunications Carrier: Pleading Cycle Established*, Public Notice, DA 99-1331 (rel. Jul. 7, 1999). We do not intend to delay this application pending the adoption of final rules in this proceeding. We will consult with the tribal authorities and relevant state commission prior to making a designation on how best to consider any input we may receive. The example is merely illustrative of the challenges we face in coordinating our federal universal service policies with tribal interests.

<sup>161</sup> See, e.g., Statement of Senator McCain, 143 Cong. Rec. S115545-04, S115546 (Oct. 31, 1997) (“[t]ypically, States also have no jurisdiction over tribally owned companies which may or may not be regulated by a tribal authority that is not a State commission per se.”); Statement of Representative Bliley, 143 Cong. Rec. H10807-02

language and other legislative history is not so limited. The other legislative history states that “the intent of this bill is to cover such situations where a State commission lacks jurisdiction over a carrier, in which case the FCC determines who is eligible to receive federal universal service support.”<sup>162</sup> The legislative history also makes clear that “nothing in this bill is intended to impact litigation regarding jurisdiction between State and federally recognized tribal entities” or to “expand or restrict the existing jurisdiction of State commissions over any common carrier or provider in any particular situation.”<sup>163</sup> In the following paragraphs, we seek comment on how section 214(e)(6) should be interpreted and implemented with respect to carriers (whether tribally owned or otherwise) that provide telecommunications services to tribal areas.

77. First, however, we seek comment identifying other situations in which carriers providing telephone exchange and exchange access services to areas other than tribal lands are not subject to state commission jurisdiction and thus must seek designation as eligible telecommunications carriers from the Commission. In this context, we seek comment on whether the Commission, rather than state commissions, has the jurisdiction to designate terrestrial wireless or satellite carriers as eligible telecommunications carriers. If such carriers submit applications for designation pursuant to section 214(e)(6) during the pendency of this proceeding, we will consider them on a case by case basis in light of the statutory language and the showings made by the affected parties. We also note that our analysis of the scope of the designation provision of section 214(e)(6) is not intended to affect any other decision with respect to the authority of state commissions or tribal authorities to regulate telecommunications on tribal lands or over terrestrial wireless or satellite carriers.

78. The statutory language of section 214(e)(6) is ambiguous with respect to when the Commission’s authority to designate eligible telecommunications carriers is triggered. It is not clear whether the Commission’s authority is triggered when a carrier is not subject to the jurisdiction of a state commission or when the service or access the carrier provides is not subject to the jurisdiction of a state commission. Thus, the initial question in interpreting section 214(e)(6) with respect to the provision of telecommunications service in tribal lands is under what circumstances the Commission may designate carriers as eligible telecommunications carriers. The title of section 214(e)(6), “Common Carriers not Subject to State Commission Jurisdiction,” suggests that the triggering inquiry is whether the carrier is subject to state commission jurisdiction. We tentatively conclude, however, that the better interpretation of section 214(e)(6) is that the determination of whether a carrier is subject to the jurisdiction of a state commission depends in turn on the nature of the service provided (*e.g.* telephone exchange or access service provided by wire, satellite or terrestrial wireless) or the geographic area in which the service is being provided (*e.g.* tribal lands). This interpretation is supported by the legislative history of section 214(e)(6). Representative Tauzin stated that “S.1354 makes a technical correction to the Act that will make it possible for telephone companies serving *areas*

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(Nov. 13, 1997) (“some common carriers providing service today are not subject to the jurisdiction of a State commission; most notably, some carriers owned or controlled by native Americans”); Statement of Representative Markey, 143 Cong. Rec. H10807-02, H10808 (Nov. 13, 1997) (“[t]he bill before us today allows a common carrier that is not subject to the jurisdiction of a State commission, including those telephone companies owned by certain federally-recognized Indian tribes, to be designated. . .”).

<sup>162</sup> Statement of Representative Bliley, 143 Cong. Rec. H10807-02, H10809 (Nov. 13, 1997).

<sup>163</sup> See Colloquy between Representatives Thune and Bliley, 143 Cong. Rec. H10807-02, H10809 (Nov. 13, 1997).

not subject to the jurisdiction of a State Commission, to be eligible to receive federal Universal Service support.”<sup>164</sup> Our tentative conclusion that the nature of the service or the geographic area in which the carrier provides it should be the basis for distinguishing between the designation authority of the Commission and state commission under section 214(e)(6), is consistent with other provisions of the Act. Section 2 of the Act similarly distinguishes between federal and state jurisdiction over telecommunications services based on the geographic area in which the service is provided. Section 332(3) of the Act limits state authority on the basis of the service provided (*i.e.* commercial and private mobile service). We seek comment on this analysis and on any other factors which may be relevant to this determination.

79. Our next question then is under what circumstances are telecommunications carriers providing telecommunications services on tribal lands subject to state commission authority? In section III.A.2, above, we seek comment on the extent to which a state commission has jurisdiction over tribally-owned carriers seeking to provide telecommunications service on tribal lands and over non-tribally-owned carriers seeking to provide such service on tribal lands. The answer to these questions will determine whether the Commission may designate carriers seeking to provide service on tribal lands as eligible telecommunications carriers. With respect to tribally-owned carriers seeking to provide telecommunications service on tribal lands, we note that state law is generally inapplicable when states attempt to regulate the conduct of tribal members directly within reservation boundaries,<sup>165</sup> except in "exceptional circumstances."<sup>166</sup> We seek comment on whether, for the purpose of eligible telecommunications carrier designation, tribally-owned carriers providing telecommunications services within tribal reservations would be subject to state regulatory authority.

80. We further recognize that when states seek to regulate non-tribal members and their activities conducted within a reservation, the appropriateness of the state's assertion of regulatory authority is determined by a "particularized inquiry" into the nature of the state, federal, and tribal interests at stake. Specifically, the analysis turns "on whether state authority is pre-empted by the operation of federal law; and '[s]tate jurisdiction is pre-empted . . . if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority.' The inquiry is to proceed in light of traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development."<sup>167</sup> We recognize that this inquiry is a particularized one, and thus specific to each state and the facts and circumstances surrounding the provision of telecommunications services by non-tribal members within those tribal lands. However, we seek comment on whether there are any general federal, state and tribal interests at stake which might inform the inquiry and help provide general guidance on the proper boundaries of state authority in this case. Specifically, we seek comment on the federal government's interest in assuming authority over the designation

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<sup>164</sup> Statement of Representative Tauzin, 143 Cong. Rec. H10807-02, H10809 (Nov. 13, 1997) (emphasis added). *See also* Statement of Representative Bliley at H10809.

<sup>165</sup> *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980); *New Mexico v. Mesclaero Apache Tribe*, 462 U.S. 324, 331-332.

<sup>166</sup> *New Mexico v. Mesclaero Apache Tribe*, 462 U.S. at 331-32.

<sup>167</sup> *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216 quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334-5 (1983) (internal citations omitted).

of eligible telecommunications services, and the extent to which state authority would be preempted by the operation of federal law -- namely section 214 or other relevant provisions or other federal or tribal interests reflected in federal law.

81. We also seek comment on the states' interests in designating eligible telecommunications carriers, as well as the implications of state designation on Indian sovereignty, self-government and "tribal self-sufficiency and economic development."<sup>168</sup> We recognize, however, that some state commissions have asserted jurisdiction over carriers seeking to provide service on tribal lands, and that these commissions regulate certain aspects of a carrier's provisions of service on tribal lands.<sup>169</sup>

82. In implementing section 214(e)(6), we are concerned that the fact intensiveness and the legal complexity of determining whether a state has jurisdiction over carriers seeking designation as an eligible telecommunications carrier may lead to confusion, duplication of efforts and needless controversy among carriers, tribal authorities, state commissions and this Commission, which could undermine efforts to achieve our universal service goals. For these reasons, we propose the following process to treat applications for the Commission's designation of eligible telecommunications companies eligible to receive universal service support for serving tribal land. Carriers seeking designation as an eligible telecommunications carrier from this Commission, whether to serve tribal lands or on the basis of other jurisdictional arguments,<sup>170</sup> should consult with the relevant tribal authority, where appropriate, and the state commission on the issue of whether the state commission has jurisdiction to designate the carrier. In situations where the tribal authority and the state commission agree that the state has jurisdiction, we anticipate that the state would conduct the designation proceeding. In instances where the tribal authority challenges the state's exercise of jurisdiction, we encourage the carriers, with the support of the tribal authority, to apply to this Commission for designation. In the public comment period subsequent to a carrier's application for designation as an eligible telecommunications carrier, the carriers and tribal authorities would be expected to demonstrate why Commission designation is appropriate. Interested parties, including the state commission, that disagree with the Commission's exercise of jurisdiction would also be expected to raise their challenges in that proceeding. We seek comment on this proposal and suggestions for other ways in which the determination of whether the designation must be performed by the Commission or a state commission could be simplified or streamlined.

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<sup>168</sup> *Calbazon Band of Mission Indians*, 480 U.S. at 216.

<sup>169</sup> *See, e.g.* The Cheyenne River Sioux Tribe Telephone Authority and U S West Communications, Inc., Joint Petition for Preemption Pursuant to section 253, CC Docket No. 98-6 (Jan. 22, 1998); *Cheyenne River Sioux Tribe Telephone Authority and U S West v. PUC of South Dakota*, 1999 WL 314108 (S.D. May 19, 1999) (affirming South Dakota PUC's decision to deny U S West's proposed sale of three exchanges to the Cheyenne River Sioux Tribe Telephone Authority.) In section III.A, we seek comment on the nature and extent of state and tribal regulation of telecommunications services provided by tribal carriers on tribal lands. We also seek comment on the extent to which, and on what basis, states have previously designated tribal and non-tribal carriers as eligible telecommunications carriers eligible to receive universal service support.

<sup>170</sup> *See, e.g., Petition of Smith Bagley, Inc., for Designation as an Eligible Telecommunications Carrier: Pleading Cycle Established*, Public Notice, DA 99-1331 (rel. Jul. 7, 1999). *See* 47 U.S.C. § 332 ("no state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a state from regulating the other terms and conditions of commercial mobile services . . .").

## V. UNSERVED AREAS -- IMPLEMENTATION OF SECTION 214(e)(3)

### A. Overview

83. The federal universal service support mechanisms are designed to provide appropriate incentives for the deployment of facilities capable of providing the supported services and the promotion of increased subscribership. This system depends upon the complex interrelationship between federal mechanisms and state actions. For these reasons, we rely on the input of the Joint Board in making our decisions. In general, we are confident that the new forward-looking high-cost support mechanism described in the *Thirteenth Order on Reconsideration* will provide appropriate incentives for carriers to provide supported services to all Americans who need them. Nonetheless, we are concerned that certain areas of the nation remain unserved because of extraordinarily high-costs, low-incomes, or any other factors identified above in section II.C above, that would inhibit service. In this section, we discuss a specific statutory provision, section 214(e)(3) of the Act, that may allow the Commission to accelerate the deployment of facilities and the provision of service in unserved areas by ordering carriers to serve those areas.

84. Section 214(e)(3) of the Act establishes that, in certain instances, the Commission or state commissions may order a common carrier to provide the services supported by universal service in unserved areas. Due to the lack of information in the record, and at the Joint Board's recommendation, the Commission decided in the May 8, 1997 *First Report and Order* not to adopt particular rules to implement this provision at that time.<sup>171</sup> As part of our current efforts to promote the deployment of service in unserved areas, insular and tribal lands, we conclude that it is time to establish a framework for conducting proceedings pursuant to section 214(e)(3). Accordingly, we seek comment, as described below, regarding the implementation of this provision.

85. Section 214(e)(3) provides that:

if no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies,<sup>172</sup> or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service shall meet the requirements of paragraph (1) and shall be

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<sup>171</sup> *First Report and Order*, 12 FCC Rcd at 8885-8886. The Commission encouraged state commissions to file with the Common Carrier Bureau reports detailing the status of unserved areas in their states. *See, e.g.*, Letter from Diane Wells, Minnesota Public Utilities Commission, to Valerie Yates, FCC (dated June 18, 1999) (enclosing information regarding a petition that the Minnesota Public Utilities Commission is currently processing concerning "unassigned territory" in Minnesota). *See also First Recommended Decision*, 12 FCC Rcd at 184.

<sup>172</sup> *See* 47 U.S.C. §214(e)(6) (authorizing the Commission to designate a common carrier that is not subject to the jurisdiction of a state commission as an eligible telecommunications carrier). *See also* discussion at section IV, above.

designated as an eligible telecommunications carrier for that community or portion thereof.

The legislative history for this provision states that section 214(e)(3) “makes explicit the implicit authority of the Commission” to order a common carrier to provide services supported by the universal service support mechanisms.<sup>173</sup>

### **B. Defining “Unserved Area”**

86. In order to determine whether an allegedly unserved community is eligible for relief pursuant to section 214(e)(3),<sup>174</sup> we must first decide whether the area at issue is unserved. Only after making this initial determination can we proceed with the rest of the analysis required by section 214(e)(3). We propose defining an unserved area as “any area in which facilities would need to be deployed in order for its residents to receive each of the services designated for support by the universal service support mechanisms.” In the *First Report and Order*, we identified the services that would be supported by universal service support mechanisms as: single-party service; voice grade access to the public switched network; DTMF signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income consumers.<sup>175</sup> These services were identified based on the statutory directive embodied in section 254(c)(1)(A)-(D), requiring the Joint Board and the Commission to “consider the extent to which ... telecommunications services” included in the definition of universal service: (1) are essential to education, public health, or public safety; (2) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (3) are being deployed in public telecommunications networks by telecommunications carriers; and (4) are consistent with the public interest, convenience and necessity.<sup>176</sup>

87. The proposed definition is based on whether facilities would need to be deployed to provide the supported services to distinguish unserved areas from areas in which a large percentage of the population does not subscribe to available services. This definition is intended to help further our statutory mandate to promote the availability of services supported by federal universal service support mechanisms.<sup>177</sup> We recognize that this definition may result in certain areas being deemed unserved, even though those areas are receiving some level of service that includes less than all of the services designated for support by the universal service support mechanisms. We also recognize that this definition may result in the existence of relatively small unserved areas within larger areas that are currently receiving service. We seek comment on whether this definition will enable us to appropriately target our efforts to those areas that do not receive all of the services supported by federal universal service support mechanisms.

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<sup>173</sup> S. Rep. No. 230, 104th Cong., 2d Sess. 131, at 141 (1996) (Joint Explanatory Statement).

<sup>174</sup> 47 U.S.C. § 214(e)(3).

<sup>175</sup> *First Report and Order*, 12 FCC Rcd. at 8809.

<sup>176</sup> 47 U.S.C. § 254(c)(1)(A)-(D).

<sup>177</sup> 47 U.S.C. §254.

88. We emphasize, however, that determining whether a particular area meets the definition of unserved area is only the beginning of the analysis under section 214(e)(3). To obtain relief pursuant to section 214(e)(3), each of the steps discussed below must be followed. We seek comment on this analysis and we invite commenters to propose alternative definitions.

### **C. Determining When a Community is Unserved**

89. The language “or any portion thereof” in section 214(e)(3) suggests that we are not meant to impose minimum size requirements on the number of potential subscribers needed to invoke the authority of section 214(e)(3). We seek comment on whether the language should be interpreted differently or suggests a particular definition.

### **D. Determining When No Common Carrier Will Provide Service**

90. By its terms, the relief afforded in section 214(e)(3) is not triggered until a determination is made that “no common carrier will provide” the services supported by the federal universal service support mechanisms. Therefore, we seek comment on the meaning of the phrase “no common carrier will provide” the supported services.

91. As an initial matter, section 214(e)(3) does not specify whether the request for service must be received from members of the unserved community or whether state, local, or tribal authorities must make an official request for service from the carrier on behalf of the unserved members of the community. We tentatively conclude that limitations on who may issue the request are not warranted by the terms of the statute or the goals it seeks to achieve. We seek comment on this tentative conclusion.

92. We tentatively conclude that the language “no common carrier will provide” the services supported by the federal universal service support mechanisms means something more than no common carrier is actually providing the supported services. We seek comment on how we can determine that no common carrier is willing to provide the supported services. We seek comment on which common carriers must be asked in order to reach the conclusion that no common carrier will provide the service. We seek comment on how a satellite services provider should be treated for this issue, given that they can potentially provide service to these unserved areas. We also seek comment on whether the reasons for the common carrier’s refusal to provide service are relevant to a determination that the area is unserved. For example, what if the refusal to provide service is based on the poor credit histories of the individuals requesting service or an existing overdue debt? Given the extremely low annual incomes, on average, on tribal lands, it seems possible that inadequate credit histories of the potential customers may cause a carrier to be unwilling to provide service.

### **E. Identifying Carrier or Carriers Best Able to Serve Unserved Areas**

93. Section 214(e)(3) authorizes the Commission, with respect to interstate service or an areas served by a carrier to which section 214(e)(6) applies, and state commissions, with respect to intrastate service, to determine which carrier or carriers are best able to provide service to the requesting, unserved community and order that carrier or carriers to provide service. We seek comment on the relative roles that the Commission and the states should play in determining



which carriers are best able to provide the supported services in unserved areas, including any coordination that should occur in making this determination.

94. We seek comment on whether the Commission is authorized to and whether it should establish national guidelines by which states may or must make this determination, when they have jurisdiction to do so. We recognize that the selection of the carrier to serve some unserved areas pursuant to section (e)(3) of the Act is to be made by state commissions. We seek comment on whether a consistent, national approach is necessary to further the universal service goals of the Act or to provide certainty to carriers regarding the possible application of this important provision. We seek comment on whether, in situations where the state has jurisdiction to designate eligible telecommunications carriers, all aspects of this decision should be left to the states because states have more familiarity with the areas in question. We also seek comment on the role of tribal authorities with respect to the Commission's determination of the carrier or carriers best able to serve unserved, tribal lands. We also seek comment to determine whether the Commission's obligation to identify and order a carrier to provide service in tribal lands should be affected by the interests of the tribal authorities.

95. One approach for making a determination pursuant to section 214(e)(3) would be to conduct a fact-intensive inquiry, polling common carriers serving nearby or surrounding areas to determine where existing facilities are deployed, to estimate the costs for each carrier to provide the supported services, and to consider other possible factors that may be relevant to the conclusion that a carrier is "best able." We tentatively conclude, however, that our preferred approach would be to adopt a competitive bidding mechanism for identifying the carrier or carriers best able to provide service in unserved areas for which the Commission has authority to order carriers to provide service. We seek comment on the use of a competitive bidding mechanism in section V.E.2, below. We seek comment on whether it is within our authority to require states to adopt a competitive bidding mechanism to determine which carrier or carriers will be ordered to provide intrastate service in unserved areas to which section 214(e)(6) does not apply.

96. If the competitive bidding mechanism does not give rise to a carrier willing and able to provide the supported services in the unserved area at a reasonable cost, we seek comment on whether the Commission should then initiate an inquiry to determine the carrier or carriers best able to provide service to the area. We seek comment on whether the following factors would be relevant in making that determination: (1) whether the area falls within the designated service area of an existing carrier; (2) the extent to which a carrier has deployed facilities capable of providing supported services in the surrounding area; (3) the cost for that carrier to build facilities capable of providing the supported services; (4) the quality of services that would be provided; (5) the financial strength of the carrier; (6) the proportionate impact serving the area would have on the number of lines and the geographic area served by the carrier; (7) the amount of time required for the carrier to deploy facilities; and (8) a carrier's status as either an incumbent LEC or a competitive eligible telecommunications carrier. We seek comment on any other factors that may be relevant. We also seek comment on whether our inquiry must be limited to incumbent LECs and competitive eligible telecommunications carriers or whether we may also include other competitive LECs, interexchange carriers, terrestrial wireless or satellite service providers, or providers of cable or electric services that would be capable of providing the supported services to the unserved area. We seek comment on whether to exclude certain carriers from consideration, for example, carriers that are considered small entities for purposes

of the Regulatory Flexibility Act.<sup>178</sup> Finally, we seek comment on whether the preferences of the unserved community for a particular carrier or technology should be considered in making a determination of which carrier is best able to provide service to the area.

### *1. Background on Competitive Bidding*

97. In the Notice of Proposed Rulemaking issued to implement the universal service provisions of the 1996 Act,<sup>179</sup> the Commission sought comment on how to provide universal service support to rural, insular, and high-cost areas, generally,<sup>180</sup> and asked whether competitive bidding could be used to set the level of support.<sup>181</sup> The Commission sought comment on the use of a competitive bidding system in which eligible carriers offering all of the services supported by universal service mechanisms would bid on the level of assistance per line that they would need to provide such services at affordable rates, consistent with the Act. The Commission explained that such an approach would attempt to harness competitive forces to minimize the cost of universal service. In a July 1996 Public Notice, the Common Carrier Bureau sought further comment on a competitive bidding system.<sup>182</sup> In addition, Commission staff conducted *ex parte* meetings relating to competitive bidding, including a March 19, 1997 forum on universal service auctions.<sup>183</sup>

98. The Joint Board focused its recommendations regarding support for rural, insular, and high-cost areas on a mechanism for estimating the forward-looking economic cost of service for such areas. The Joint Board concluded that:

[w]hile the record in this proceeding persuades us that a properly structured competitive bidding system could have significant advantages over other mechanisms used to determine the level of universal service support for high cost areas, we find that the information contained in the record does not support adoption of any particular competitive bidding proposal at this time.<sup>184</sup>

99. The Joint Board cited the potential advantages of competitive bidding including the use of marketplace dynamics to establish the level of universal service support for any given area.<sup>185</sup> The Joint Board noted that "[a] properly designed competitive bidding system would

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<sup>178</sup> 5 U.S.C. § 601 *et. seq.*, amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). *See* section VIII.C for the Initial Regulatory Flexibility Act Analysis.

<sup>179</sup> Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing a Joint Board*, CC Docket No. 96-45, 11 FCC Rcd 18092 (1996) (*May 1996 Notice*).

<sup>180</sup> *May 1996 Notice*, 11 FCC Rcd at 18101-18116.

<sup>181</sup> *May 1996 Notice*, 11 FCC Rcd at 18111.

<sup>182</sup> Public Notice, Common Carrier Bureau Seeks Further Comment on Specific Questions in Universal Service Notice of Proposed Rulemaking, DA 96-1078 (rel. July 3, 1996) (Further Comment Public Notice).

<sup>183</sup> We also note that the California Public Utilities Commission conducted a workshop on May 8-9, 1997, to develop auction mechanism rules for the California High-cost fund.

<sup>184</sup> *First Recommended Decision*, 12 FCC Rcd at 265.

<sup>185</sup> *First Recommended Decision*, 12 FCC Rcd at 266.

reduce the role of regulators in determining the costs of providing universal service once an area becomes subject to bidding."<sup>186</sup> The Joint Board also recognized that a properly structured competitive bidding system could reduce the amount of support needed for universal service by reflecting the lower costs of more efficient carriers and new technologies that would be used to set the level of universal service support for the entire area.<sup>187</sup>

100. The Joint Board found that sections 254 and 214(e) of the Act<sup>188</sup> and the record developed in this proceeding provide some guidance as to how a competitive bidding system should be structured.<sup>189</sup> The Joint Board recommended that any carrier that meets the eligibility criteria for universal service support should be permitted to participate in the auction and that any competitive bidding system should be competitively neutral, favoring neither incumbents nor new entrants.<sup>190</sup> It also recommended that the system adopted should minimize the ability of bidders to collude,<sup>191</sup> and suggested that the system should either prescribe a minimum number of bidders or be designed to be effective for any number of bidders.<sup>192</sup> Finally, the Joint Board recommended that, in determining the geographic area that carriers would bid to serve, any final proposed bidding plan use areas sized to promote competition and target universal service support efficiently.<sup>193</sup>

101. On May 8, 1997, the Commission released its *First Report and Order*. In the *First Report and Order*, the Commission adopted most of the recommendations of the Joint Board including "a specific timetable for implementation of federal universal service support to rural, insular, and high cost areas."<sup>194</sup> In the *First Report and Order*, the Commission found that "a compelling reason to use competitive bidding is its potential as a market-based approach to determining universal service support. . . ."<sup>195</sup> The Commission also found that "a properly structured competitive bidding system would . . . reduce the amount of support needed for universal service."<sup>196</sup> By reducing the amount of support provided for universal service, the Commission found that competitive bidding may advance the goal of affordable rates because carriers would be able to pass-through any reductions to their subscribers. The Commission concluded, however, that further proceedings were needed to examine issues related to the use of competitive bidding to set universal service support levels for rural, insular, and high-cost areas.<sup>197</sup> Specifically, the Commission found that the record did not contain adequate discussion

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<sup>186</sup> *First Recommended Decision*, 12 FCC Rcd at 266.

<sup>187</sup> *First Recommended Decision*, 12 FCC Rcd at 266.

<sup>188</sup> 47 U.S.C. §§ 214(e), 254

<sup>189</sup> *First Recommended Decision*, 12 FCC Rcd at 267.

<sup>190</sup> *First Recommended Decision*, 12 FCC Rcd at 267.

<sup>191</sup> *First Recommended Decision*, 12 FCC Rcd at 267.

<sup>192</sup> *First Recommended Decision*, 12 FCC Rcd at 268.

<sup>193</sup> *First Recommended Decision*, 12 FCC Rcd at 268.

<sup>194</sup> *First Report and Order*, 12 FCC Rcd at 8888.

<sup>195</sup> *First Report and Order*, 12 FCC Rcd at 8948.

<sup>196</sup> *First Report and Order*, 12 FCC Rcd at 8948.

<sup>197</sup> *First Report and Order*, 12 FCC Rcd at 8951.

or analysis to enable us either to define a competitive bidding mechanism that would be consistent with the requirements of sections 214(e) and 254, or to adopt specific procedures for implementing a lawful competitive bidding system.<sup>198</sup>

## ***2. Competitive Bidding Proposal***

102. We tentatively conclude that we should adopt a competitive bidding mechanism to identify the carrier or carriers best able to provide the supported services in unserved tribal lands and to set the level of support provided for serving the area. We are hopeful that we may be able to design a competitive bidding mechanism that will generate public awareness of the needs of a particular area for service and elicit proposals from one or more carriers that could be compared before determining which carrier or carriers should be designated as an eligible telecommunications carrier for the area. We seek comment on this proposal.

103. We seek comment on whether the possibility that a carrier will be ordered to provide service pursuant to section 214(e)(3) will provide incentives for carriers to participate in the competitive bidding mechanism in order to be able to set the terms on which they will provide service. We seek comment on whether the competitive bidding mechanism could bring unserved areas to the attention of carriers previously unaware of the need for telecommunications services in those areas and thus identify carriers that would be willing to provide service to the area for a support amount equal to or lower than the amount that would be provided under existing federal universal service support mechanisms. In addition, we seek comment on possible negative incentives and distortions that may be created by using a competitive bidding mechanism. For example, we seek comment on whether a competitive bidding approach will likely lead carriers to provide the lowest-cost, lowest-quality service that meets the definition of supported services, unfairly depriving residents of higher quality or advanced services.

104. We also seek comment on whether the Commission should conduct a trial to determine whether a competitive bidding mechanism is the most efficient means of identifying the carrier or carriers best able to provide the supported services in unserved areas. We seek comment on how large a service area would be appropriate for such a trial. We seek comment on whether the Commission should solicit volunteers from Indian tribes that currently have large unserved areas.

### **(a) Participants**

105. We seek comment on the possible participants in a competitive bidding proceeding. Section 214(e)(3) states that any carrier ordered to provide service pursuant to this section shall meet the requirements necessary and be designated an eligible telecommunications carrier for the unserved area.<sup>199</sup> We seek comment on whether a carrier must first be designated an eligible telecommunications carrier for the area prior to participating in the competitive

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<sup>198</sup> *First Report and Order*, 12 FCC Rcd at 8949-8951.

<sup>199</sup> *See* 47 U.S.C. §214(e)(1). To be designated as an eligible telecommunications carrier, a carrier must: (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such services and the charges therefor using media of general distribution.

bidding mechanism. We seek comment on whether any carrier that can demonstrate that it can meet the requirements of section 214(e)(1) may participate in the competitive bidding mechanism. We seek comment on what kind of showing is necessary to demonstrate that a carrier can meet the requirements of section 214(e)(1). We seek comment on whether terrestrial wireless or satellite providers will be able to participate in the competitive bidding mechanism. We also seek comment on the number of bidders we should anticipate for auctions in the universal service context, and the extent to which we should consider that number in deciding the type of auction that should be used, as discussed below.

### **(b) Number of Winners**

106. We seek comment on whether the characteristics of the unserved tribal lands may be such that it is not economically practical to support more than one provider to serve unserved, tribal lands. To the extent that supporting a single provider is more economical, permitting multiple providers to receive federal universal service support may not be in the public interest. In addition, if all carriers were entitled to receive support at the level determined in the competitive bidding auctions, bidders would have no incentive to bid below the opening level; that is, competitive bidding would not reveal the minimum amount of support necessary to provide service to the area. For these reasons, we propose that qualified eligible telecommunications carriers bid to secure an exclusive right to receive universal service support for serving the unserved tribal area. That is, the winning bidder would be the only carrier designated as an eligible telecommunications carrier for providing the supported services to the unserved, tribal lands subject to competitive bidding.

107. We seek comment on whether the Commission has the authority to and whether we should try to attract carriers by agreeing to designate only one carrier to serve the unserved, tribal land or permitting only one carrier to receive federal universal service support for serving the area. We seek comment on whether a decision to limit support to a single carrier is consistent with the universal service provisions and pro-competitive goals of the Act. We observe that, in the case of an area served by a rural carrier, the Commission “may” designate more than one eligible telecommunications carrier but must make a specific showing that an additional eligible telecommunications carrier would serve the public interest.<sup>200</sup> With respect to all other carriers, the Commission “shall” designate more than one common carrier as an eligible telecommunications carrier. We seek comment on whether these provisions apply with respect to an unserved area. We seek comment on whether the statutory language that the Commission “shall determine which carrier or carriers are best able to provide such service” indicates that the Commission may determine that a single carrier shall be designated. Finally, we seek comment concerning the ability of bidders to accurately estimate the possible future challenges from other carriers for the more profitable customers in the previously unserved, tribal lands.

108. As an alternative to a single winner, we consider the possibility of supporting two or more winning bidders. We generally believe that customers benefit most when multiple providers are available, because competition leads to lower prices and provides an alternative where service quality is unsatisfactory. Supporting two winning bidders means that a second carrier would be able to compete vigorously with the lowest bidder. We seek comment on

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<sup>200</sup> 47 U.S.C. § 214(e)(6). This discussion is limited to situations where the Commission has authority to designate eligible telecommunications carriers, including tribal lands.

whether to use the competitive bidding mechanism to identify a level of support which would be provided for serving the area and to allow any carrier with a bid within a specific range of the winning bidder,<sup>201</sup> who also satisfies the requirements of section 214(e)(1) of the Act, to receive that level of support for providing service to the area. We seek comment on whether the possibility of having multiple carriers receive support for these previously unserved areas would substantially diminish or even eliminate any incentives carrier might have to participate in competitive bidding. We seek comment on whether providing support sufficient to allow competing carriers to build the necessary infrastructure would generate customer benefits over the long-term that would offset the additional cost associated with supporting two carriers. In making this determination, we must consider the duration of the service term and the rate of change in network technology. For example, if technological change were so rapid that both the new entrant and incumbent carrier would need to install and recover the cost of new facilities for each contract term, the benefits of creating competing carriers would be significantly reduced. We seek comment on these issues.

### (c) Term of Exclusivity Period

109. If the Commission determines that a bidder should win the exclusive right to federal universal service support, we would seek to establish an exclusivity period that is of an adequate length to provide incentives for carriers to deploy facilities yet does not result in unnecessary support being provided. We seek comment on the appropriate duration of any exclusivity period. After the exclusivity period has ended, we could choose to re-auction the service obligation and consider multiple providers if the costs of providing service decreased or market conditions improved so that multiple providers became practical. We anticipate that that the length of the exclusivity period will affect the bids for monthly support levels. In addition, the length of the exclusivity period will affect the average administrative and transaction costs for conducting the auction. Granting exclusivity periods that are too short could be harmful because the winning carrier is likely to need time to establish its network, and to amortize its investments. In addition, more frequent auctions entail increased administrative costs. Granting periods that are too long, however, also could be harmful. Technological advances over time can create more efficient means of providing communications, which would enable firms to offer service at a lower cost. To the extent that the winning bidder is shielded from competition during the exclusivity period, the benefits of adopting a more efficient technology will accrue to the carrier, rather than the customer.<sup>202</sup> In addition, with longer contract terms, the carriers' prediction of their costs at later stages in the contract becomes more speculative, which could translate into higher bids in the auction. We seek comment on this analysis and the appropriate length of the exclusivity period. We suggest that commenters review the competitive bidding proposals and mechanisms summarized in Appendix D for examples that may assist in determining the length of the exclusivity requirement.

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<sup>201</sup> GTE proposes such a plan for multiple winners. *See* Appendix D.

<sup>202</sup> Allowing the benefits to accrue to the carrier may actually provide valuable incentives that encourage participation in the auction.

### (d) Bidding Process

110. We seek comment on whether to use a single-round, sealed bid process or a descending, multi-round auction.<sup>203</sup> Each bidder would submit an amount of support necessary per line given our universal service technical specifications. We observe that the Commission has successfully implemented multi-round auctions in other contexts.<sup>204</sup> We seek comment on whether a descending multi-round bidding system would be preferable to a single-round sealed bid auction.<sup>205</sup>

111. We also seek comment on how to establish the reservation price – the highest bid that would qualify for support – for the competitive bidding mechanism. One option would be to use the new high-cost mechanism to estimate the amount of support that would be available for providing the supported services in the unserved, tribal area and set that as the reservation price. We seek comment on what incentives carriers would have, if any, to bid an amount lower than the reservation price determined by the model. Alternatively, we seek comment on whether we should set a reservation price that is some percentage above the support amount determined under the new high-cost mechanisms. We seek comment on whether a rational percentage can be identified. We also seek comment on whether to conduct an auction without establishing a particular reservation price or specifically identifying the amount that would be provided under the new high-cost mechanism in an effort to determine the amount of support each carrier believes is necessary. We seek comment on whether, if we were to proceed in this manner, the Commission should reserve the right to conclude that the competitive bidding mechanism was not successful and to proceed to the fact-based inquiry, described in paragraph 96 above.

### (e) Support Amount

112. A well-designed auction should provide incentives for carriers to disclose the minimum amount of support they require, even though this information may be competitively sensitive. We seek comment on how to provide incentives for carriers to reveal the minimum amount of support necessary to provide service to the unserved area. We seek comment on whether we should employ a “Second Price” or “Vickrey” auction, in which the successful bidder gets support at the level of the lowest bid made by a non-successful bidder. In theory, this style of auction appears to induce bidders to reveal their actual costs and would thereby generate the same total support requirements as a first price, sealed bid auction.<sup>206</sup> Another factor relevant in setting the support level is whether the federal support provided constitutes the entire amount

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<sup>203</sup> For examples of procurement auctions where the low bid wins, see <http://www.netbidding.com/netbidding/html/netbidding.html> (business-to-business procurement) and <http://www.econ.ag.gov/epubs/pdf/aer766/index.htm> (USDA procurements).

<sup>204</sup> To date, the Commission has conducted 23 multi-round auctions for spectrum licenses in a variety of wireless services. For information on past Commission spectrum auctions, see <http://www.fcc.gov/wtb/auctions>.

<sup>205</sup> See Kelly-Steinberg proposal, summarized in Appendix D.

<sup>206</sup> In a standard, sealed-bid procurement auction, where the successful bidder receives the amount of the bid, a firm typically shades its bid by not revealing the minimum that it would require to supply the good or service. The firm weighs the benefits of a higher payment if it wins against the reduced probability of winning. For general information about different types of auctions, see Vernon Smith, “Auctions,” in *The New Palgrave: Allocation, Information and Markets*, edited by J. Eatwell, M. Milgate, and P. Newman, The MacMillan Press Limited: Hong Kong, 1989. See also Paul Milgrom, *Auctions and Bidding: A Primer*, 3 J. Econ. Persp. 10 (1989).

of subsidy available to the carrier. We tentatively conclude that we would need to establish that the competitive bidding mechanism for unserved areas would be used to determine the entire amount of support to be divided and the relevant share of support would be allocated to the federal and state authorities, in whatever proportion is established for the high-cost support mechanism in general. We seek comment on this analysis.

### (f) Obligations Assumed by Winning Bidder

113. We tentatively conclude that, pursuant to section 214(e), a successful bidder must provide the services supported by the universal service support mechanisms to all customers requesting service in the designated area and advertise the availability of such service throughout the service area.<sup>207</sup> We seek comment on this tentative conclusion.

### 3. Other Proposals and Examples of Competitive Bidding

114. A number of parties submitted competitive bidding proposals in the universal service docket, the most detailed of which were submitted by GTE,<sup>208</sup> consultants to Ameritech,<sup>209</sup> and Frank Kelly and Richard Steinberg of Cambridge University, Great Britain.<sup>210</sup> These proposals were designed to determine the carrier or carriers entitled to receive universal service support and the level of support to be provided. In addition, other government agencies have used competitive bidding systems that may have features relevant to the market at issue here. We seek comment on these other competitive bidding proposals, summarized in Appendix D, because aspects of these proposals may be preferable to the competitive bidding approach proposed above.

## F. Ordering Carriers to Provide Service

115. We seek comment on the ramifications of ordering a carrier to provide service in an unserved area. We tentatively conclude that this requirement entails an obligation to deploy the facilities necessary to provide the services supported by federal universal service support mechanisms, to offer the services to all customers requesting service in the designated area, and to advertise the availability of such service throughout the service area. These requirements are consistent with the language in section 214(e)(3) of the Act, stating that the carrier ordered to provide service shall meet the requirements of section 214(e)(1) of the Act.<sup>211</sup> We seek comment on this tentative conclusion.

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<sup>207</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>208</sup> We note that there had been a continuing dialogue between GTE's economic consultant, Stanford Professor Paul Milgrom, and Ameritech's economic consultants, Yale Professors Jeremy Bulow and Barry Nalebuff that led to modifications in the proposals submitted. See, e.g., *ex parte* summary from Charon Harris, GTE, to William Caton, FCC dated March 31, 1997 (*GTE March 31 ex parte*). The most detailed and current description of the GTE proposal is probably the summary submitted by GTE on June 21, 1997 (*GTE June 21 ex parte*).

<sup>209</sup> See, e.g., Letter from Celia Nogales, Ameritech, to William Caton, FCC, dated May 2, 1997.

<sup>210</sup> Letter from Richard Steinberg, University of Cambridge, to Evan Kwerel, FCC, dated June 23, 1997 (A Combinatorial Auction with Multiple Winners for COLR, June 9, 1997) (Kelly-Steinberg). See <http://www.statslab.cam.ac.uk/~frank/AUCTION/>.

<sup>211</sup> 47 U.S.C. §§ 214(e)(3) and 214 (e)(1). Pursuant to section 214(e)(1), to be designated as an eligible telecommunications carrier, a carrier must: (A) offer the services that are supported by Federal universal service



116. We also seek comment whether additional measures may be necessary to ensure that the carrier ordered to provide service is able to earn an appropriate return on its investment. For example, a carrier may deploy facilities, advertise the availability of services and offer service to all customers and yet an inadequate number of customers may subscribe to the service, rendering the operation unprofitable. This result may occur due to faulty estimations by the carrier, but it may also be the result of unpredictable demand. Similarly, it is possible that carriers may provide services to all requesting customers, yet the customers might default on their bills. If the carrier is ordered to provide service, to what extent must it retain customers who cannot pay overdue debts or with poor credit records? How will the carrier recover its investment on the facilities deployed to provide service to subscribers who do not pay their bills? We seek comment on these issues, including the appropriate role for the Commission and state commissions to play in addressing these issues.

## VI. UNDERSERVED AREAS

117. In this section of the Further Notice, the Commission considers whether additional support for low-income consumers is necessary to promote subscribership in unserved and underserved areas, including tribal and insular areas.

### A. Defining “Underserved Area”

118. In the *Thirteenth Order on Reconsideration*, the Commission observed that there may be inadequately served areas that are characterized by extremely low penetration, low population density, and high costs.<sup>212</sup> We seek comment on the need for the Commission to establish a definition of “underserved area” that would be used in targeting supplemental universal service support to those areas. For example, a community may be considered underserved if the penetration rate of the community is significantly below the national average. In addition to the number of supported services available, and the percentage of the population receiving those supported services, there may be other identifying characteristics that describe an underserved area. We seek comment on an appropriate definition for underserved area. For example, we could define underserved area as a geographic area that meets certain statistical benchmarks, *i.e.*, a penetration rate below a certain percentage, a population density below a certain level, costs of providing supported services above a certain level, etc. We also seek comment on whether there is sufficient, readily available statistical data to make such a definitional approach viable.

### B. Expanding LinkUp to Include Facilities-Based Charges

119. We seek comment on whether increasing federal support to offset initial connection charges may be necessary to increase the success of our universal service support mechanisms in underserved areas, including insular and tribal lands. In the proceeding leading up to the *Second Recommended Decision*, the Arizona Corporation Commission (Arizona

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support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such services and the charges therefor using media of general distribution.

<sup>212</sup> *Thirteenth Order on Reconsideration* at para. 92.

Commission) submitted a proposal to use a portion of federal support to address the problem of unserved areas and the inability of low-income residents to obtain telecommunications service because they cannot afford to pay the required line extension or construction costs.<sup>213</sup> The Arizona Commission's proposal was not intended to be a comprehensive alternative to the high-cost fund distribution model, but rather to address a discrete concern related to low-income residents in remote areas. We seek comment on the Arizona Commission's proposal and the extent to which the problem identified by the Arizona Commission is widespread. In particular, we seek further data on the cost of line extensions in rural areas and regarding the number of residents that are deprived of telecommunications services because of high line extension or construction costs and areas in which this problem is acute.

120. The Joint Board recognized that investments in line extensions historically have been an issue addressed by the states through intrastate proceedings that establish reasonable rates for line extension agreements and encourage carriers to minimize unserved regions of the states.<sup>214</sup> The Joint Board suggested that these issues should continue to be dealt with by states, to the extent that the states are able to do so.<sup>215</sup> We note that regulators generally require carriers to use rate averaging to reduce the rates for their highest-cost customers in rural and insular areas, but those regulators often still permit carriers to charge particularly isolated customers a supplementary "initial connection" charge for installing a new line. Moreover, while regulators also generally require carriers to amortize the cost of installing new lines, if there is a reasonable chance that those lines will not be used over their full life-span, regulators often permit carriers to charge most, if not all, of the initial connection charge up front. These charges can be prohibitive.<sup>216</sup> We seek comment on whether states have the ability to address this problem, or, in the alternative, whether federal assistance, in some instances, may be necessary.

121. We seek comment on what role the Commission might play in trying to alleviate this problem. We seek comment on whether we might provide additional support through the LinkUp America program -- which provides federal support to reduce the price of initial connection charges -- at least for locations with significantly lower than average telecommunications penetration rates, *e.g.*, below 75 percent.<sup>217</sup> Commenters supporting such an approach should also explain whether support would be provided as a one-time payment or over a number of years. We also seek comment on what we might do to encourage carriers to offer installment loans for such extensions over a practical time frame. We seek comment on these

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<sup>213</sup> Proposal of the Arizona Corporation Commission For Distribution of Federal USF Funds to Establish Service to Low-Income Customers in Unserved Areas, or in the Alternative, for Amendment of the May 8, 1997 Report and Order to Provide for Federal USF Distribution for This Purpose; (*received* April 28, 1998) (Arizona Proposal). This document is attached as an Appendix to paper copies of this Further Notice (Appendix E). Electronic copies of the Arizona Proposal can be obtained through the Commission's Electronic Comment Filing System: <https://gullfoss.fcc.gov/cgi-bin/ws.exe/prod/ecfs/comsrch.hts>.

<sup>214</sup> *Second Recommended Decision*, 13 FCC Rcd at 24764-24765.

<sup>215</sup> *Second Recommended Decision*. 13 FCC Rcd at 24765.

<sup>216</sup> See Navajo Communications Company, response to Arizona Corporation Commission Data Request, ACC Docket No. T-2115-97-640 (Unserved Areas), Jun. 19, 1998 at attachment B. This document was placed on the record in CC Docket No. 96-45 and is available through the Commission's Electronic Comment Filing System: <https://gullfoss.fcc.gov/cgi-bin/ws.exe/prod/ecfs/comsrch.hts>.

<sup>217</sup> LinkUp support is currently limited to a 50-percent discount on initial connection charges, up to a maximum of a \$30 discount. See 47 C.F.R. § 54.411.

and any other alternatives that might be more effective ways of addressing this problem. For example, we seek comment on whether the provision of telecommunication service to remote areas using terrestrial wireless or satellite technologies might allow service at lower cost compared to the cost of line extension or construction of wireline facilities. Commenters offering proposals should also explain how their proposals would avoid encouraging uneconomic investments in relatively high-cost technologies.

### **C. Support for Intrastate Toll Calling**

122. In paragraph 30 above, we seek comment on the extent to which limited local calling areas impose a barrier to increased penetration in certain underserved areas. For example, the local calling area for the Jemez Pueblo in New Mexico includes only about half a dozen other towns. It does not include any other Pueblos or hospitals nor the cities of Albuquerque or Santa Fe, where most residents work.<sup>218</sup> Similarly, the calling area for the Picuris Pueblo does not even include 911 calls.<sup>219</sup> To the extent that limited local calling areas impose a barrier to increased penetration, we seek comment on how to remove this barrier. For example, expanding the local calling area to include the unserved or underserved area and the nearest metropolitan area or community of interest may entice more consumers to request service. Expanding local calling areas, however, would likely cause upward pressure on local rates. We seek comment on how expanded local calling areas would impact local rates, including rates for consumers living in communities outside of tribal lands. We seek comment on what role, if any, the Commission is authorized to and should play in seeking to address impediments caused by limited local calling areas.

123. We seek comment on whether federal universal service support mechanisms should provide additional support for low-income consumers living in remote areas or low-income consumers living on tribal lands. For example, the Commission could provide support for calls outside of the local calling area that fall within specified federally-designated support areas. Similarly, federal universal service support could be provided to pay for a foreign exchange (FX) line service from the remote or tribal area to the nearest metropolitan area or community of interest. We seek comment on whether such proposals would eliminate incentives for states to ensure affordable local rates. We also seek comment on whether the provision of service by terrestrial wireless or satellite providers would alleviate any problems associated with limited local calling areas.

### **D. Expanded Availability of Toll Limitation Devices**

124. Many households may forgo telecommunications service because of past or anticipated future problems with high telephone bills.<sup>220</sup> The general prevalence of this bill

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<sup>218</sup> See *Overcoming Obstacles Proceeding: Arizona Hearing*, Testimony of Gov. Raymond Gachupin, Jemez Pueblo, p. 34; Testimony of Gov. Eagle Rael, Picuris Pueblo, p. 60; and Testimony of Anthony Lucio, Zuni Pueblo, at p. 63. See also *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Nora Helton, Fort Mojave Tribe, p. 43.

<sup>219</sup> See *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Gov. Eagle Rael, Picuris Pueblo, at p. 60.

<sup>220</sup> Prof. Arturo Gandara, UC Davis Law School, July 7, 1998 Meeting on Indian Telecommunications Issues.

management problem was documented in a GTE-Pacific Bell commissioned survey done in 1993 by the Field Research Corp. for the California PUC.<sup>221</sup> The Commission sought to address the problem, however, by requiring carriers offering low-income subscribers "Lifeline" service, to permit those subscribers to secure a "toll limitation" service -- either toll blocking or toll control.<sup>222</sup> We believe that our actions in this regard should alleviate this bill management problem.<sup>223</sup> We seek comment on whether expanded options for toll-control or toll-blocking would make telecommunications service more desirable in unserved and underserved areas, including tribal lands. We ask that commenters identify any specific toll-control or toll-blocking features that would be useful, including, for example, the ability to require the use of a Personal Identification Number (PIN) in order to restrict access to toll calls.<sup>224</sup> We also recognize that the benefits of these options are minimal if consumers are not aware of them. We seek comment on what additional measures, if any, the Commission should undertake to ensure consumers are educated about the availability of toll-limitation devices.

### E. Publicizing Availability of Low-Income Support

125. We observe that customers may fail to subscribe to telecommunications service because they are unaware of the Commission's Lifeline and LinkUp programs, which are intended to make service more affordable, and the availability of toll-control and toll-blocking, which are intended to help low-income consumers control the amount of their monthly bills. Although the Commission's Lifeline and LinkUp programs have been providing universal service support to eligible customers for more than a decade, we are concerned that carriers may have failed to publicize the programs in some areas, particularly on Indian reservations. Unfortunately, it appears that in markets where carriers find it unprofitable to provide service, they have no particular incentive to publicize the availability of Lifeline and LinkUp. Thus, the Commission found that none of the representatives of the pueblos testifying in the January, 1999 Albuquerque field hearings were aware of the Lifeline and LinkUp programs.<sup>225</sup> Furthermore, despite the 60-percent unemployment rate in the Cheyenne River Sioux Telephone Authority area, only about 10-percent of the subscribers there receive Lifeline service.<sup>226</sup>

126. We seek comment on whether the Commission should play a role in ensuring the spread of information on tribal lands, or in other low-income, underserved areas, about the

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<sup>221</sup> Field Research Corp., *Affordability of Telephone Service: A Survey of Customers and Non-Customers* (funded jointly by GTE and Pacific Bell for the California Public Utilities Commission). This document was placed on the record of CC Docket No. 96-45 on July 28, 1999 and is available through the Commission's Electronic Comment Filing System: <https://gullfoss.fcc.gov/cgi-bin/ws.exe/prod/ecfs/comsrch.hts>.

<sup>222</sup> See 47 C.F.R. §§ 54.401(a)(3), 54.400.

<sup>223</sup> We are aware that at least three carriers serving Indian reservations in Arizona were able to offer toll blocking, but not toll control, and a fourth did not expect to offer either until the summer of 1998, but believe that that difficulty was only temporary. See *Fort Mojave Order*, *supra*.

<sup>224</sup> See, e.g., *Overcoming Obstacles Proceeding*, Testimony of Karen Buller, National Indian Telecommunications Institute at p. 2.

<sup>225</sup> See, e.g., *Overcoming Obstacles Proceeding: Albuquerque Hearing*, Testimony of Anthony Lucio, Zuni Pueblo, pp. 63. See also *id.* at pp. 72-75, 106-08.

<sup>226</sup> See, *Overcoming Obstacles Proceeding: Arizona Hearing*, Testimony of J.D. Williams, Cheyenne River Sioux Telephone Authority, Transcript at 71-72 (draft).

availability of low-income support that may make telecommunications service affordable. We recognize that carriers already have an incentive to convince potential customers of the value of their service -- assuming the customers will be profitable to serve. We are concerned about those consumers whom carriers may consider unprofitable to serve. We tentatively conclude that a lack of information may contribute to the significantly low penetration rates on tribal lands.

127. We seek comment on what options the Commission may have to promote awareness of low-income support mechanisms on tribal lands. Section 214(e)(1)(B) of the Act requires an eligible telecommunications carrier to “advertise the availability of” the services supported by federal universal service support mechanisms “and the charges therefor using media of general distribution.”<sup>227</sup> We seek comment on the possibility of amending our current universal service rules to require carriers to publicize the availability of Lifeline and LinkUp and toll-limitation options. For example, we could revise section 54.405 of our rules<sup>228</sup> by adding the following italicized language:

All 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 services.*

128. We seek comment on the costs and benefits of requiring carriers to publicize the availability of Lifeline, LinkUp and toll-control devices. Alternatively, the Commission could encourage and participate in other marketing and information dissemination efforts, such as preparing consumer information fact-sheets that would be distributed in local communities. We seek comment on whether there is, or should be, some entity that would collect and verify the accuracy of data on Lifeline rates for each reservation, the eligibility standards for Lifeline in the relevant state, and how individuals who desired Lifeline service could confirm their eligibility and how they could sign up for service. We also seek comment on the best ways to disseminate this information to the relevant audience of potential Lifeline subscribers. We seek comment on any research or other data that indicates the most effective way of marketing to this population, whether via broadcast, print, wireline, or other media; whether separately or in combination with the marketing efforts of other social programs seeking to reach this audience; and whether on a federal, state or tribal level. Commenters aware of a particularly effective program are requested to provide us with sufficient information to enable us to contact that program administrator.

## **F. Support for Rural Health Care Infrastructure**

129. In the 1996 Act, Congress ordered the Commission to provide universal service support for “any public or nonprofit healthcare provider that serves persons who reside in rural areas.”<sup>229</sup> It also directed the agency “to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit . . . health care providers.”<sup>230</sup> In the *First Report and Order*, the Commission implemented these instructions by adopting rules to provide public or nonprofit

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<sup>227</sup> 47 U.S.C. §214(e)(1)(B).

<sup>228</sup> 47 C.F.R. §54.405.

<sup>229</sup> 47 U.S.C. § 254(h)(1)(A).

<sup>230</sup> 47 C.F.R. § 254(h)(2)(A).

Rural Health Care Providers (RHCPs) with discounts on one 1.544 bandwidth link or the equivalent over the distance generally necessary to reach the nearest urban hospital.<sup>231</sup> That discount generally enables an RHCP to pay no more than it would pay if it were located in the nearest urban area.<sup>232</sup> In addition eligible public and non-profit health care providers without local access to Internet service providers may also receive support for toll-free access to an Internet service provider.<sup>233</sup>

130. Both the Joint Board and the Commission considered whether improvements to the public switched telephone network should be supported if such improvements are necessary to provide telemedicine and telehealth services in rural areas.<sup>234</sup> In the *First Report and Order*, the Commission discussed the need to improve telecommunications infrastructure in Alaska, particularly so that rural health care providers can use telemedicine and telehealth services.<sup>235</sup> The State of Alaska asserted that "the major obstacle to providing telemedicine services in Alaska is that the public switched network is not currently capable of providing services in rural locations where there is significant need."<sup>236</sup> The Alaska Public Utilities Commission (PUC) asserted that Alaska is "heavily dependent on satellite communications to provide links between the majority of remote, rural health care providers and the few regional hospitals" and that affordable satellite connectivity is often limited to bandwidth of 9.6 kbps.<sup>237</sup> Because satellite signals must be "hopped" through multiple earth stations, including antiquated analog earth stations, residents of Alaska are often prevented from using fax machines or computer modems.<sup>238</sup>

131. Although the Commission's Advisory Committee on Telecommunications and Health Care<sup>239</sup> recommended that universal service support be available to build, improve, or extend telecommunications infrastructure in such areas,<sup>240</sup> the Commission concluded that "the existing record contains insufficient information to determine the level of need for such infrastructure development or to estimate reliably the costs to support such development."<sup>241</sup> In

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<sup>231</sup> 47 C.F.R. § 54.613.

<sup>232</sup> 47 C.F.R. § 54.613.

<sup>233</sup> 47 C.F.R. § 54.621 grants health care providers support of up to \$180 per month for up to 30 hours per month for toll charges for links to Internet service providers if the health care provider cannot obtain toll-free Internet access.

<sup>234</sup> *First Report and Order*, 12 FCC Rcd at 9108-10; *First Recommended Decision*, 12 FCC Rcd at 432; *see also First Report and Order*, 12 FCC Rcd at 9098-9107.

<sup>235</sup> *See First Report and Order*, 12 FCC Rcd at 9138-39.

<sup>236</sup> *Id.* (quoting Alaska Mar. 7 *ex parte*, attachment at 2-3).

<sup>237</sup> Alaska PUC universal service comments at 5. Under 1999 state law, the Alaska PUC ceased to exist as of June 30, 1999. Its responsibilities, including all open cases, were transferred to the new Alaska Regulatory Commission.

<sup>238</sup> *First Report and Order*, 12 FCC Rcd at 9138-39 (citing Alaska Mar. 7 *ex parte*, attachment at 3).

<sup>239</sup> The Advisory Committee was established on June 12, 1996 to advise the Commission and the Joint Board on telemedicine, and particularly the provisions of the Telecommunications Act of 1996 relating to rural health care providers. The Advisory Committee, composed of 38 individuals with expertise and experience in the fields of health care, telecommunications, and telemedicine, issued its report on October 15, 1996.

<sup>240</sup> FCC ADVISORY COMMITTEE ON TELECOMMUNICATIONS AND HEALTH CARE, FINDINGS AND RECOMMENDATIONS (October 15, 1996) at 8 (Advisory Committee Report).

<sup>241</sup> *First Report and Order*, 12 FCC Rcd at 9109-10.

addition, the Commission concluded that it had insufficient information about existing federal and state programs already supporting infrastructure development and their success in meeting existing needs.<sup>242</sup> The Commission found that it has authority, under section 254(h)(2)(A), to implement a program of universal service support for infrastructure development as a method of enhancing access to advanced telecommunications and information services as long as such a program is competitively neutral, technically feasible, and economically reasonable.<sup>243</sup>

132. We seek comment on the technical limitations of the telecommunications services available to rural health care providers throughout the United States, including Alaska and insular areas. We ask commenters to provide as much detail as possible regarding the extensions or improvements needed in areas lacking adequate infrastructure. We ask that commenters identify the most urgent needs, such as those that would address threats to the health and safety of residents. We particularly encourage providers of fixed satellite services, geo-stationary satellites, and emerging technologies, to describe the capability of these technologies to serve Alaska and insular areas,<sup>244</sup> and ask these providers to estimate the costs, provide a timetable for deploying particular technologies, and provide information regarding the capability of different technologies to support telehealth and telemedicine applications. We ask providers of other technologies, such as fixed wireless technology, to describe whether these technologies could effectively supplement the apparently inadequate infrastructure in the rural areas of Alaska, insular areas, and the mainland United States.

133. We seek comment on whether and to what extent improvements to the telecommunications network required to meet the telecommunications needs of rural health care providers should be supported by federal universal service mechanisms and whether other mechanisms exist that would provide support for improving infrastructure. We ask parties to submit detailed descriptions of any programs supporting infrastructure development that would assist rural health care providers. We specifically ask the sponsors of programs cited in the State Health Care Report<sup>245</sup> and other commenters familiar with these programs to detail their scope, identify any needs that are unmet by existing programs, and explain why.

134. We invite commenters to submit specific proposals that they have already prepared for expanding the federal universal service support for rural health care providers to include infrastructure improvement costs of telecommunications carriers. Any commenter submitting a proposal should analyze the extent to which the proposal is competitively neutral, technically feasible, and economically reasonable, as required pursuant to section 254(h)(2).<sup>246</sup>

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<sup>242</sup> *Id.*

<sup>243</sup> *Id.* at 9109 *citing* 47 U.S.C. § 254(h)(2)(A).

<sup>244</sup> In the *First Report and Order*, the Commission recognized that non-wireline technologies may provide the most cost-effective manner of providing services to areas currently underserved or receiving unsatisfactory service from the use of wireline technologies. *First Report and Order*, 12 FCC Rcd at 9108.

<sup>245</sup> *See id.* at 9109-10 n.1668 (noting Office of Rural Health Policy's Rural Telemedicine Network Grant Program and Rural Health Outreach Grant Program; the Telecommunications and Information Infrastructure Program administered by NTIA; and the Internet Connections Grant Program and the High Performance Computing and Communications Program administered by the National Institutes of Health, Department of Health and Human Services and recent federal legislation that requires the Rural Utility Service to increase the capabilities of the telecommunications infrastructure installed pursuant to its program, which provides long-term loans to improve rural telecommunications infrastructure.) *See* 7 U.S.C. § 935(d)(3)(B)(iv); 7 C.F.R. § 1751.106 *et seq.*

<sup>246</sup> 47 U.S.C. § 254(h)(2).

Commenters should also file detailed cost information for any proposal submitted. We recognize that some improvements to the telecommunications network made to provide service to rural health care providers may also be used to provide commercial services. We seek comment on whether and to what extent we should take account of such additional revenue sources in the event that support is provided to extend or improve telecommunications networks.<sup>247</sup>

## VII. INSULAR AREAS

135. In the *First Report and Order*, the Commission stated it would seek further comment in a subsequent proceeding on universal service issues affecting insular areas.<sup>248</sup> The Commission recognized that, while insular areas will benefit from the federal universal service support mechanisms, insular areas may face unique problems that could limit their ability to participate in and benefit from all of the universal service programs.<sup>249</sup> In particular, the Commission expressed concern about the low subscribership levels in insular areas, including Puerto Rico, and the potential need to tailor universal service support for both rural health care providers and telecommunications carriers in insular areas.<sup>250</sup> The Commission also concluded that it would consider in a later proceeding whether and how to support infrastructure development needed to enhance public and not-for-profit health care providers' access to advanced telecommunications and information services, for both insular and non-insular rural areas.<sup>251</sup> We initiate that discussion in this section of the Further Notice.

### A. Defining "Insular Area"

136. In articulating the principle that consumers in all regions of the nation should have access to telecommunications services, Congress explicitly included insular areas within this mandate.<sup>252</sup> As the Joint Board noted in the *Recommended Decision*, however, the Act does not define the phrase insular areas.<sup>253</sup> We tentatively conclude that we should adopt a definition of insular areas to provide clarity regarding the availability of universal service support in those areas.

137. We observe that, in other statutes, the term insular area generally refers to the island portions of the United States that are not states or portions of states.<sup>254</sup> In addition, we

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<sup>247</sup> See Advisory Committee Report at 6 (recommending adoption of a mechanism to allow an eligible telecommunications carrier to repay, from its profits, universal service support for using infrastructure financed by universal service support).

<sup>248</sup> *First Report and Order*, 12 FCC Rcd at 8997, 9109-10, 9137. See Letter from David L. Sieradski, Counsel for the American Samoa Telecommunications Authority, to Valerie Yates, FCC (dated July 9, 1999) (encouraging the Commission to seek comment on providing support for telemedicine in insular areas, such as American Samoa) (ASTCA Letter).

<sup>249</sup> *Id.* at 8995-9001.

<sup>250</sup> *Id.* at 8843-44, 9136-38.

<sup>251</sup> *Id.* at 9109.

<sup>252</sup> 47 U.S.C. § 254(b)(3).

<sup>253</sup> *First Recommended Decision*, 12 FCC Rcd 87 at 93 n.8.

<sup>254</sup> See, e.g., 16 U.S.C. § 1802(30) (providing for conservation and management of the United States' fishery resources and defining "Pacific Insular Area" as American Samoa, Guam, the Northern Mariana Islands, Baker



observe that in common usage, the term insular area means "of, or having the form of an island."<sup>255</sup> Accordingly, we propose the following definition of insular areas: "islands that are territories or commonwealths of the United States." By including the phrase "territories or commonwealths," we intend to restrict the definition to areas that are populated islands that have a local government.<sup>256</sup> We also observe that the proposed definition comports with publications of the Department of Interior's Office of Insular Affairs (OIA)<sup>257</sup> and various provisions of the United States Code.<sup>258</sup> We seek comment on this proposal.

138. We seek comment on whether the definition of insular areas should include only those areas that are subject to the laws of the United States, and for which carriers serving those areas would be required to contribute to our universal service support mechanisms,<sup>259</sup> and, if so, we seek comment on whether the proposed definition satisfies this goal. We seek comment on whether the definition of insular areas should exclude sovereign states that are not subject to the laws of the United States<sup>260</sup> nor eligible to receive universal service support under the Act,<sup>261</sup>

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Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, and including all islands and reefs appurtenant to such islands, reefs, or atolls); 16 U.S.C. § 2503(k) (defining, for the purposes of the urban park and recreation recovery program, "insular areas" as Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands); 42 U.S.C. § 5204 (providing for disaster relief for insular areas and defining them as American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands as insular areas); 48 U.S.C. § 1469a (congressional declaration of policy regarding insular areas for certain grant-in-aid programs and defining them as the U.S. Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands); 48 U.S.C. § 1492 (congressional declaration of energy policy with respect to insular areas and defining them as Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau). *See also* 47 C.F.R. § 2.105 (stating that the Caribbean insular areas comprise the Commonwealth of Puerto Rico, the unincorporated territory of the United States Virgin Islands; and Navassa Island, Quita Sueno Bank, Roncador Bank, Serrana Bank and Serranilla Bank; listing the Pacific insular areas in International Telecommunication Union Regions 2 and 3 as Johnston Island, Midway Island, the Commonwealth of the Northern Mariana Islands; the unincorporated territory of American Samoa; the unincorporated territory of Guam; and Baker Island, Howland Island, Jarvis Island, Kingman Reef, Palmyra Island, and Wake Island).

<sup>255</sup> *Id.* at 2 (citing Webster's New World Dictionary 731 (2d. College ed. 1982)).

<sup>256</sup> *Id.*

<sup>257</sup> *Id.* at 2, 3 (citing OIA's home page on the world wide web at <http://www.doi.gov/territor.html> and U.S. DEPARTMENT OF INTERIOR, OFFICE OF INSULAR AFFAIRS, A REPORT ON THE STATE OF THE ISLANDS (1996) (REPORT ON THE STATE OF THE ISLANDS)).

<sup>258</sup> *Id.* at 3 (citing 48 U.S.C. §§ 1469a, 1492(a)(1), (3)).

<sup>259</sup> The Universal Service Worksheet states at page 3: "[a]ll telecommunications carriers providing interstate telecommunications within the United States, with very limited exceptions, must file an FCC Form 457 Universal Service Worksheet. For this purpose, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island."

<sup>260</sup> We note that some sovereign states, such as the Marshall Islands, have signed Compacts of Free Association with the United States. *See* REPORT ON THE STATE OF THE ISLANDS at 110.

<sup>261</sup> Section 254(b)(3) states the goal of providing access to those in insular areas, but it qualifies its coverage to "[c]onsumers in all regions of the Nation," thereby excluding consumers in other nations.

unpopulated islands,<sup>262</sup> and insular areas subject to the jurisdiction of, and receiving telecommunications service from, the United States military.<sup>263</sup> We tentatively conclude that Puerto Rico, American Samoa, CNMI, Guam, and the U.S. Virgin Islands are properly included in the definition of insular areas and seek comment on this tentative conclusion.

139. We seek comment on whether the Freely Associated States (FAS), including the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, should be included in the definition of insular areas.<sup>264</sup> These islands are associated with the United States through the terms of a Compact of Free Association, which gives the Commission authority and jurisdiction over various telecommunications services in the FAS, but carriers are not subject to universal service contribution requirements for the services they provide on these islands. We also observe that Midway Atoll is being transferred from the jurisdiction of the United States Navy to the U.S. Fish & Wildlife Service of the Department of Interior and has a population of 450 persons. We seek comment on whether Midway Atoll should be included in the definition of insular areas.<sup>265</sup> We invite commenters to provide alternative definitions of "insular areas" and to describe which areas would and would not be included with any alternative definition.

140. We seek comment on whether similarities between the historical experience of Indians and persons living in insular areas warrant the extension of federal trust-type principles, including supplemental measures to promote the availability of universal service, to insular areas.<sup>266</sup>

## B. Rural Health Care Support

141. Parties have already submitted information to us demonstrating that insular areas may have few hospitals and substantial undeveloped terrain and that travel between insular areas and more developed states or countries nearest to them may be very expensive. For these reasons, we anticipate that telehealth and telemedicine initiatives may be particularly important in insular areas.<sup>267</sup> We encourage interested parties to highlight previous comments they have

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<sup>262</sup> The following islands are possessions or territories of the United States without population: Baker Island, Howland Island, Jarvis Island, Kingman Reef, and Navassa Island. See <http://www.doi.gov/oia/oiafacts.html>; see also Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, *Memorandum Opinion and Order*, 12 FCC Rcd 11548, 11559 (Com. Car. Bur. 1997) (*1997 Bureau Rate Integration and Averaging Order*) (presenting results of Common Carrier Bureau's informal investigation of insular areas). Palmyra Island has a permanent population of fewer than four persons and is privately owned. See <http://www.doi.gov/oia/oiafacts.html>; *1997 Bureau Rate Integration and Averaging Order*.

<sup>263</sup> For example, Wake Island and Johnston Atoll are military installations to which physical access is strictly regulated.

<sup>264</sup> See Letter from Robert A. Underwood, *et al*, United States Congress, to William E. Kennard, Federal Communications Commission (dated May 8, 1998.)

<sup>265</sup> None of these 450 residents are indigenous persons. In addition, Midway Atoll does not have a local government. *Id.*

<sup>266</sup> See Letter from David Sieradski, on behalf of the American Samoa Telecommunications Authority, to Valerie Yates, FCC (dated July 9, 1999) and discussion of tribal lands, at section III.A, above.

<sup>267</sup> The Joint Working Group on Telemedicine defines "telemedicine" as "the use of telecommunications and information [service] technologies for the provision and support of clinical care to individuals at a distance and the

made on this issue or present any relevant new information to us. We are particularly interested in the differences between the needs and opportunities of rural health care providers in insular areas and those located in the remainder of the United States.

142. *Urban Rates.* In the *First Report and Order*, the Commission adopted rules requiring carriers to provide rural health care providers with access to telecommunications services permitting speeds up to 1 Mbps at rates comparable to those offered in urban areas.<sup>268</sup> Consistent with the statute, the Commission's rules for rural health care providers calculate support amounts on the basis of the difference between the "urban rate" and the "rural rate" for the supported service.<sup>269</sup> The urban rate is determined with reference to the rates charged other commercial customers of a similar service in the nearest large city in the state.<sup>270</sup> The nearest large city is defined as having a population of at least 50,000 people.<sup>271</sup>

143. In the *First Report and Order*, the Commission found that the mechanism of using urban rates as a benchmark for reasonable rates may be ill-suited to certain insular areas that are relatively rural all over.<sup>272</sup> The Commission concluded that it required additional information about whether telecommunications rates differ in urban and non-urban areas or insular areas, including areas of the Pacific Islands<sup>273</sup> and the U.S. Virgin Islands.<sup>274</sup> Accordingly, we seek comment on whether the rules concerning calculation of rural health care support need modifications to address the geographic or demographic situation in insular areas.<sup>275</sup> We invite commenters to propose specific revisions in this regard.

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transmission of information needed to provide that care." It defines "telehealth" as including clinical care, but additionally encompassing the related areas of "health professionals' education, consumer health education, public health, research and administration of health services." *First Report and Order*, 12 FCC Rcd at 9094, n.1557 citing JOINT WORKING GROUP ON TELEMEDICINE, TELEMEDICINE REPORT TO THE CONGRESS at 90, U.S. Department of Commerce (1997).

<sup>268</sup> See 47 C.F.R. 54.601 et seq (subpart G).

<sup>269</sup> 47 U.S.C. § 254(h)(1)(A); 47 C.F.R. §§ 54.605-609.

<sup>270</sup> 47 U.S.C. § 254(h)(1)(A); 47 C.F.R. § 54.605.

<sup>271</sup> 47 C.F.R. § 54.607.

<sup>272</sup> *First Report and Order*, 12 FCC Rcd at 9136 (discussing this issue and then designating as "urban areas" for the purposes of the universal service support for rural health care providers: the island of Tutuila for American Samoa, the island of Saipan for CNMI, the town of Agana for Guam, and the town of Charlotte Amalie for the U.S. Virgin Islands). Based on the record, we concluded that Puerto Rico, like the remainder of the United States, did not require these additional measures. *Id.* at 9138, para. 699 (finding that Puerto Rico has well-defined metropolitan and non-metropolitan areas and that the San Juan Regional Hospital and Main Medical Center is an advanced health care center offering sophisticated and advanced health care technology and services).

<sup>273</sup> We note that American Samoa did not participate in the universal service proceeding. *But see*, American Samoa Government and American Samoa Telecommunications Authority Petition for Waivers and Declaratory Rulings to Enable American Samoa to Participate in the Universal Service High Cost Support Program and the National Exchange Carriers Association Pools and Tariffs, CC Docket No. 96-45, AAD/USB File No. 98-41 (filed Feb. 1998).

<sup>274</sup> *First Report and Order*, 12 FCC Rcd at 9136, 9137.

<sup>275</sup> See, e.g., ASTCA Letter ("because ASTCA maintains a single set of rates that apply throughout the territory, there is no difference in between the rates in "urban" and "rural" [areas] within the Territory.")

144. *Nearest Large City.* Consistent with the statute, the Commission's rules for providing universal service support to rural health care providers limit the length of the supported service to the distance between the health care provider and the point farthest from that provider on the jurisdictional boundary of the nearest large city in the state.<sup>276</sup> The Governor of Guam proposed that we modify this rule to provide support for telecommunications services between an insular area's medical facilities and a supporting medical center in an urban area outside the insular area, such as in Hawaii or on the west coast of the continental United States.<sup>277</sup> We seek comment on this proposal. We encourage commenters supporting this proposal to present detailed estimates of the cost of such a proposal and steps that must be taken to implement it. Commenters favoring this proposal should also provide legal analysis explaining whether it would be consistent with section 254 to treat insular areas differently from the remainder of the United States, where support is only provided based on intrastate distances, as section 254(h)(1)(A) appears to require.<sup>278</sup>

145. Finally, we seek comment on whether health care providers and telecommunications carriers that serve insular areas face unique challenges that have not been documented previously in the record of this proceeding, and, if so, how we should tailor additional support mechanisms to address those problems, consistent with the statute.<sup>279</sup> We encourage commenters to present proposals for additional support mechanisms through which rural health care providers located in insular areas could have access to the telecommunications services available in urban areas of the nation at affordable rates.

### C. Access to Toll-Free Services in Insular Areas

146. Because of their traditional treatment as international destinations, the Pacific Island areas have faced high rates for interexchange service and have had limited ability to obtain access to toll-free and advanced services.<sup>280</sup> Calls between these insular areas and the remainder of the United States also required callers to use the "011" international access code.<sup>281</sup> Recent changes have begun to address these problems. Specifically, the 1996 Act requires that insular areas become subject to rate integration and averaging, which means that interexchange carriers are required to offer domestic interstate service using a uniform rate structure throughout

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<sup>276</sup> 47 U.S.C. § 254(h)(1)(A); 47 C.F.R. § 54.601(c)(1).

<sup>277</sup> See Governor of Guam universal service comments at 2, 13. See also ASTCA Letter ("the rural telemedicine that American Samoa needs support for is access to the nearest U.S. *urban* area with advanced health care facilities – Honolulu.") (emphasis in original).

<sup>278</sup> 47 U.S.C. §254(h)(1)(A).

<sup>279</sup> See *First Report and Order*, 12 FCC Rcd at 9136-37.

<sup>280</sup> See *id.* at 8995-900. Hawaii, Puerto Rico, and the U.S. Virgin Islands became rate integrated in 1976. See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, *Report and Order*, 11 FCC Rcd 9564, 9586 (1996 *Rate Integration and Averaging Order*) citing Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska, and Puerto Rico/Virgin Islands, *Memorandum Opinion, Order, and Authorization*, 61 FCC 2d 380 (Com. Car. Bur. 1976).

<sup>281</sup> See *First Report and Order*, 12 FCC Rcd at 8995-96.

the United States.<sup>282</sup> In addition, many insular areas have been integrated into the North American Numbering Plan (NANP).<sup>283</sup> In the *First Report and Order*, the Commission permitted residents of CNMI and Guam to access toll-free (e.g., 800) services by using 880 and 881 codes and paying the cost of reaching Hawaii where the calls could be connected thereafter toll-free to the called party until July 1, 1998,<sup>284</sup> and that date was subsequently extended indefinitely.<sup>285</sup>

147. In the *First Report and Order*, the Commission determined that "these changes will have a significant impact on how residents of the[se] islands place interexchange calls and the rates that they, and toll-free access customers, will pay for the calls they place."<sup>286</sup> Based upon the recommendation of the Joint Board, the Commission concluded that it should delay, until after July 1, 1998, consideration of whether the Commission should provide additional support for toll-free access and access to advanced and information services for insular areas so that the impact of rate integration and averaging and incorporation into the NANP could be evaluated.<sup>287</sup> We seek comment on whether rate integration, rate-averaging, and incorporating insular areas into the NANP are leading toll-free customers to include insular areas in their toll-free calling areas. We seek comment on whether additional universal service support is needed to support toll-free calling from insular areas. We ask commenters to present any evidence that the marketplace will not fully solve this problem.

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<sup>282</sup> Section 254(g) requires the Commission to "adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas . . . [and] require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State." 47 U.S.C. § 254(g). See *1996 Rate Integration and Averaging Order*, 11 FCC Rcd at 9596-99 (Common Carrier Bureau approved, subject to certain amendments, rate integration plans for CNMI and Guam). American Samoa did not file its plan to comply with section 254(g) of the Act until October 1, 1997. See American Samoa Government's Proposed Rate Integration Plan for American Samoa, CC Docket 96-61, filed Oct. 1, 1997. See also *1997 Bureau Rate Integration and Averaging Order*, 12 FCC Rcd at 11557-59; Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, *Order*, CC Docket No. 96-61, 13 FCC Rcd 1953 (Com. Car. Bur., Comp. Pric. Div. 1997) (granting American Samoa until Oct. 1, 1997 to file its plan and granting parties until Oct. 16, 1997 to submit comments on the plan); 47 U.S.C. § 254(g).

<sup>283</sup> *First Report and Order*, 12 FCC Rcd at 8995-96 (CNMI and Guam were integrated into the NANP on July 1, 1997). American Samoa, unlike CNMI and Guam, is not yet part of the NANP. See *1997 Bureau Rate Integration and Averaging Order*, 12 FCC Rcd at 11557-59.

<sup>284</sup> *First Report and Order*, 12 FCC Rcd at 8999-9001. This period was established to allow time for telecommunications users to adjust to inclusion in the NANP. See *id.* at 8999-9000. Because many toll-free access customers in the United States do not purchase toll-free access service that includes insular areas, some incumbent LECs in insular areas offer "paid access" to many toll free numbers using an 880 or 881 number. Under this arrangement, the calling party pays a charge that covers the cost of the portion of the call from the insular area to Hawaii, where the call is linked to the domestic toll-free access service. See *id.* at 8996-97.

<sup>285</sup> Federal-State Joint Board on Universal Service, Requests for Extension of 880/881 Transitional Dialing Plan by the Commonwealth of the Northern Mariana Islands and the Territory of Guam, *Order*, CC Docket No. 96-45, APD No. 98-2, DA 98-1299 (released June 30, 1998).

<sup>286</sup> *First Report and Order*, 12 FCC Rcd at 8998.

<sup>287</sup> *First Report and Order*, 12 FCC Rcd at 8998-99, 9001 (stating that this additional time will allow the Commission to evaluate business decisions regarding the geographic scope of the toll-free services that they purchase).

## VIII. PROCEDURAL MATTERS

### A. Ex Parte Procedures

148. The Further Notice is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.<sup>288</sup>

### B. Comment Filing Procedures

149. Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>289</sup> interested parties may file comments as follows: comments are due 60 days after publication of the Further Notice in the Federal Register and reply comments are due 90 days after publication of the Further Notice in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS)<sup>290</sup> or by filing paper copies.

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

151. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All paper filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street S.W., Room TW-A325, Washington, DC 20554.

152. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW, Room 5-A523, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using WordPerfect 5.1 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read-only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 96-45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase (Disk Copy – Not an Original.) Each diskette should contain only one party's

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<sup>288</sup> See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

<sup>289</sup> 47 C.F.R. §§ 1.415 and 1.419.

<sup>290</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20<sup>th</sup> St. NW, Washington DC 20037.

### C. Initial Regulatory Flexibility Act Analysis

153. The Regulatory Flexibility Act (RFA) requires a Regulatory Flexibility Act analysis whenever an agency publishes a notice of proposed rulemaking or promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification.<sup>291</sup> Pursuant to section 603 of the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and actions considered in this Further Notice. The text of the IRFA is set forth in Appendix F. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided above in paragraph 149. The Commission will send a copy of the Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>292</sup> In addition, summaries of the Further Notice and IRFA will be published in the Federal Register.<sup>293</sup>

## IX. ORDERING CLAUSES

154. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 214(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214(e), and 254, this FURTHER NOTICE OF PROPOSED RULEMAKING IS HEREBY ADOPTED and COMMENTS ARE REQUESTED as described above.

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<sup>291</sup> 5 U.S.C. § 601 *et. seq.*, amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>292</sup> *See* 5 U.S.C. § 603(a).

<sup>293</sup> *See id.*

155. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this FURTHER NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary



**APPENDIX A: COMMISSION MEETINGS ON INDIAN  
TELECOMMUNICATIONS ISSUES – LIST OF ATTENDEES****April 30, 1998****Outside Parties:**

Charles Blackwell, Ambassador from the Chickasaw Nation  
Jack Brown, Golden West, SD  
James Casey, Morrison & Forester  
Audrey Choi, Office of Vice President Gore  
Darrell Gerlaugh, Gila River Telephone Inc., AZ  
Steve Gigamough, Salt River Pima, AZ  
Robert Gough, Intertribal Council on Utility Policy, Rosebud SD  
L. Marie Guillory, NTCA  
Larry Irving, NTIA  
Alex Lookingelk, Standing Rock Sioux Tribe, ND  
Chris McLean, Rural Utilities Service  
Bill Quinn, Salt River Pima-Maricopa Indian Community  
Pat Spears, Intertribal Council on Utility Policy, SD  
Tony Thompson, Oneida Nation  
Alice Walker, Cheyenne River Sioux Tribal Telephone Authority, CO  
JD Williams, Cheyenne River Sioux, SD

**Commission Participants:**

Chairman William E. Kennard  
Commissioner Susan Ness  
Commissioner Gloria Tristani  
John Nakahata, Chief of Staff  
Ruth Milkman, Deputy Chief, Common Carrier Bureau  
Catherine Sandoval, Director, Office of Communications Business Opportunities  
Staff from the Common Carrier Bureau, Wireless Telecommunications Bureau, International Bureau, Office of Legislative and Intergovernmental Affairs, Office of Communications Business Opportunities and the Office of General Counsel

**July 7, 1998****Outside Parties:**

Charles Blackwell, Ambassador from the Chickasaw Nation  
James Casey, Morrison and Forester  
Prof. Arturo Gandara, University of California Davis Law School  
Robert Gough, Intertribal Council on Utility Policy, Rosebud SD  
Dr. James May, Cal. St. Univ. at Monterey Bay, CA  
Roanne Robinson, NTIA  
Randy Ross, SD  
Pat Spears, Intertribal Council on Utility Policy, SD

**Commission Participants**

Chairman William E. Kennard

Commissioner Gloria Tristani

Rick Chessen, Senior Legal Advisor, Office of Commissioner Tristani

Paul Gallant, Legal Advisor, Office of Commissioner Tristani

Michele Ellison, Deputy General Counsel, Office of General Counsel

Catherine Sandoval, Director, Office of Communications Business Opportunities

Staff from the Common Carrier Bureau, Wireless Telecommunications Bureau, Mass Media Bureau, Cable Services Bureau, Office of Communications Business Opportunities, the Office of Workplace Diversity, and the Office of General Counsel

**APPENDIX B: OVERCOMING OBSTACLES TO TELEPHONE SERVICE TO INDIANS ON RESERVATIONS –COMMISSION HEARINGS****Albuquerque Hearing**

Chairman William E. Kennard, Federal Communications Commission  
Commissioner Gloria Tristani, Federal Communications Commission  
The Honorable Tom Udall, United States House of Representatives  
The Honorable Heather Wilson, United States House of Representatives  
The Honorable Leonard Tsosie, State of New Mexico House of Representatives  
The Honorable Lynda Lovejoy, Chairwoman, State of New Mexico Public Regulation Commission  
The Honorable Eagle Rael, Governor, Picuris Pueblo  
The Honorable Steve Beffort, Secretary, New Mexico General Services Department  
The Honorable Anthony O. Lucio, Councilman, Zuni Pueblo  
The Honorable Raymond Gachupin, Governor, Jemez Pueblo  
The Honorable Jerome Block, State of New Mexico Public Regulation Commission  
The Honorable Herb Hughes, State of New Mexico Public Regulation Commission  
The Honorable Bill Pope, State of New Mexico Public Regulation Commission  
The Honorable Arnold Cassador, President, Jicarilla Apache Tribe  
Jean Whitehorse, Native American Library Project, Crownpoint, NM  
The Honorable Tony Anaya, former Governor of New Mexico  
Arthur Martinez, Western New Mexico Telephone Company, Inc.  
Edward Lopez, New Mexico Vice President, U S West  
Francis Mike, Navajo Communications Company, Inc.  
Gene DeJordy, Esq., Executive Director – Regulatory Affairs, Western Wireless Corporation  
George Arthur, Council Delegate, Navajo Nation  
Godfrey Enjady, General Manager, Mescalero Apache Telephone and Utilities Company  
Karen Buller, President, National Indian Telecommunications Institute  
Peter Carson, Vice-President, Business Development, ArrayComm, Inc.  
Richard Weiner, Esq., State of New Mexico Office of the Attorney General  
Stanley Pino, Chairman, All Indian Pueblo Council  
Mr. Scholten  
Henry Dodge, Ramah Navajo Chapter, NM  
Mary Alice Tsosie, Native American Librarian and Special Interest Group, NM

**Arizona Hearing**

Chairman William E. Kennard, Federal Communications Commission  
Commissioner Susan Ness, Federal Communications Commission  
Commissioner Harold Furchtgott-Roth, Federal Communications Commission  
Jim Irvin, Commissioner Chairman, Arizona Corporation Commission  
The Honorable Charles Blackwell, Ambassador for the Chickasaw Nation  
James Casey, Morrison and Forester  
David Motycka, Utilities Division, Arizona Corporation Commission

Mark DiNunzia, Utilities Division, Arizona Corporation Commission  
Maureen Scott, Arizona Corporation Commission  
Patrick Black, Chief of Staff, Arizona Corporation Commission  
David Redick, CA  
Ed Groenhout, Northern Arizona University, AZ  
Laura Lo Bianco, Iridium North America  
Herman Laffoon, Jr., Colorado Indian Tribes, Parker, AZ  
Alison Hughes, Associate Director, Arizona Telemedicine Program, Rural Health Office,  
University of Arizona, College of Medicine  
Aloa Stevens, Director, External Affairs – West, Citizens Communications  
Carl Artman, Oneida Nation, Airadigm Communications, Inc.  
Charles W. Wiese, General Manager, Tohono O'odham Utility Authority  
Christopher McLean, Deputy Administrator, Rural Utility Service, U. S. Department of  
Agriculture  
David Siddall, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, Chartered  
Ivan Makil, President, Salt River Pima-Maricopa Indian Community  
J. D. Williams, General Manager, Cheyenne River Telephone Authority  
Jeff Olson, Director, Regulatory Planning and Policy for Issues Integration/Planning and  
Strategy, GTE Service Corporation  
Madonna Peltier Yawakie, President, NATec, Inc.  
Nora Helton, Chairperson, Fort Mojave Indian Tribe  
Rhonda McKenzie, President and Chief Executive Officer, Aircom Consultants, LLC d/b/a  
InAirNet  
Richard Watkins, General Manager, Smith Bagley, Inc. operating as Cellular One of Northeast  
Arizona  
The Honorable Mary Thomas, Governor, Gila River Indian Community  
Vernon James, President, San Carlos Apache Telecommunications Utility, Inc.  
Walter Purnell, President and Chief Executive Officer, American Mobile Satellite Corporation

**APPENDIX C: OVERCOMING OBSTACLES TO TELEPHONE SERVICE TO INDIANS ON RESERVATIONS – PARTIES FILING COMMENTS****COMMENTS**

AMSC Subsidiary Corporation  
Bell Atlantic Mobile  
Cellular Telecommunications Industry Association  
Gila River Telecommunications, Inc.  
ICO Global Communications (Holding) Limited  
Motorola, Inc.  
National Telephone Cooperative Association  
National Tribal Telecommunications Alliance  
Nemont Telephone Cooperative, Inc.  
North Dakota Public Service Commission  
Salt River Pima-Maricopa Indian Community  
SkyBridge, LLC  
Southwestco Wireless, L.P.  
TCA, Inc. - Telcom Consulting Associates  
The Hopi Tribe  
US West Communications, Inc.  
Western Wireless Corporation

**LETTERS**

Colorado River Indian Tribes  
Daryl Townek, Concerned People, Lewiston, NY  
Eastern Nebraska Telephone Company  
Ernest and Carol E. Patterson, Concerned People, Lewiston, NY  
Frank L. Williams, Tuscarora Indian Reservation, NY  
Mark F. Williams, Sr., Tuscarora Indian Reservation, NY  
Stefan J. Levine, Red Bank, NJ  
United Native American Telecommunications, Inc.  
William Martin, Tuscarora Indian Reservation, NY

**TESTIMONY**

Alison Hughes, Arizona Telemedicine Program  
Aloa J. Stevens, Citizens Communications and Navajo Communications Company  
Arthur Martinez, Western New Mexico Telephone Company, Inc.  
Carl Artman, Airadigm Communications, Inc.  
Charles W. Wiese, Tohono O'odham Utility Authority  
Christopher A. McLean, Deputy Administrator, Rural Utilities Service, United States  
Department of Agriculture  
Commissioner Chairman James Irvin, Arizona Corporation Commission  
Councilman Anthony Lucio, Zuni Pueblo  
David R. Siddall, Esq.  
Edward J. Lopez, Jr., US West  
Francis Mike, New Mexico Telephone Association and Navajo Communications Company, Inc.

George Arthur, Navajo Nation  
Godfrey Enjady, Mescalero Apache Telephone and Utilities Company  
Governor Eagle Rael, Picuris Pueblo  
Governor Mary Thomas, Gila River Indian Community  
Governor Raymond Gachupin, Pueblo of Jemez  
Ivan Makil, Salt River Pima-Maricopa Indian Community  
J.D. Williams, Cheyenne River Sioux Telephone Authority  
Jeff Olson, GTE Service Corporation  
Karen Buller, National Indian Telecommunications Institute  
Madonna Peltier Yawakie, NAtec, Inc.  
Nora Helton, Fort Mojave Telecommunications, Inc.  
Peter Carson, ArrayComm, Inc.  
President Arnold Cassador, Jicarilla Apache Tribe  
Rhonda G. McKenzie, MTG, Inc. and Aircom Consultants, LLC  
Richard Watkins, Smith Bagley, Inc. (operating as Cellular One)  
Stanley Pino, All Indian Pueblo Council  
Steven R. Beffort, State of New Mexico, General Services Department  
Walter Purnell, American Mobile Satellite Company

**APPENDIX D: COMPETITIVE BIDDING PROPOSALS AND EXAMPLES*****1. GTE Proposal***

156. GTE proposes that there be bidding for support in geographic areas called Census Block Groups (CBGs).<sup>294</sup> Every six months, carriers desiring to serve a CBG could notify the state commission with jurisdiction over that CBG, that they wanted to initiate an auction for the rights and duties of carrier of last resort (COLR)<sup>295</sup> in that CBG.<sup>296</sup> Assuming there were enough qualified bidders, the state would employ a single round, sealed-bid auction to set the per-customer support in that CBG.<sup>297</sup> Bids could be no higher than the "reservation" price for each CBG. That reservation price would be based on the current level of support an incumbent LEC was receiving for that CBG, although each incumbent LEC would be permitted to make a one-time set of adjustments to the support levels for the CBGs they served as long as the total support received by the incumbent LEC from all the CBGs it served remained the same.<sup>298</sup> The adjusted support levels, increased by a prescribed percentage, would then become the reservation prices for each CBG.<sup>299</sup>

157. Under the GTE proposal, after submitting bids, every bidder that was within 15% of the low bid would be a successful bidder in the auction. If there were no other bidders within 15% of the low bid, the low bidder and next lowest bidder within 25% of the low bid would be a successful bidder. If no other bid was within 25% of the low bid, only the low bidder would be a successful bidder. Each successful bidder would then assume COLR obligations and receive per-customer support equal to the highest level of support sought by a carrier with a successful bid. If there were only one winner, the new support would be set at the reservation price, *i.e.*, the current support increased by the prescribed percentage.<sup>300</sup> Starting with the lowest bidder, GTE would also allow bidders to withdraw from the auction after an initial set of the successful bidders was determined. If a bidder withdrew, there would be a new selection of successful bidders, treating the withdrawn bid as if it had never been made.<sup>301</sup> If the auction resulted in a new COLR for the area, either in addition to the incumbent or in place of the incumbent, the support levels and obligations for that area would be frozen for three years. No new entrants

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<sup>294</sup> Letter from W. Scott Randolph, GTE, to Mark Nadel, FCC, CC Docket 96-45, dated June 20, 1997 (GTE June 20 *ex parte*) at 14. A census block group is a geographic area defined by the Bureau of the Census, which contains approximately 400 households.

<sup>295</sup> GTE defines a COLR as a carrier eligible for universal service support that undertakes the obligations established by a state agency, within federal guidelines, as a condition of receipt of federal universal service support.

<sup>296</sup> GTE June 20 *ex parte* at 19-20.

<sup>297</sup> *Id.* at 18, 20.

<sup>298</sup> Thus a LEC could increase the level of support it received for serving some CBGs and decrease it for others as long as the net effect on support was zero. *Id.* at 16-17.

<sup>299</sup> *Id.* at 21.

<sup>300</sup> *Id.* at 21-22, 25.

<sup>301</sup> *Id.* at 26.

could receive universal service support during this time, although they could enter and provide service without such support. After the three-year period, carriers could bid on the area again.<sup>302</sup>

158. GTE's proposal would allow a COLR to transfer or sell its rights and obligations to any qualified carrier, as long as the number of COLRs in the CBG would not decrease.<sup>303</sup> The GTE proposal also requires penalties for any carrier that defaults on its COLR obligations. GTE also proposes that, when the incumbent LEC desires to exit the market at the current level of support and no other carrier volunteers to serve the market with a bid at or below the reservation price for the service area, the level of support would be raised by some designated percentage. GTE also recognizes that contingent bids may be appropriate if there are substantial economies of density and proposes that this could be addressed by requiring each bidder to submit a two-part bid. The first element would reveal the amount of support it would require if it were the only bidder to receive support for serving the market. The second element would reveal what the bidder would require if it were one of multiple carriers receiving support for serving the market.<sup>304</sup>

## 2. Proposal of Ameritech Consultants

159. Jeremy Bulow and Barry Nalebuff, consultants for Ameritech, propose that carriers be asked to compete for a portion of a lump-sum of support<sup>305</sup> in return for assuming COLR obligations over a subset of customers in a particular area. Under their proposal, all carriers, both COLR and non-COLR, in a particular area would assign customers that they did not find profitable to serve to a COLR pool. After the bidding (for support and associated COLR obligation), the "unprofitable" customers (those no carrier found it profitable to serve) would be randomly assigned to the successful bidders. Bulow and Nalebuff advocate a sealed-bid auction, in which a carrier's bid is the amount it would require to take 100 percent of the COLR pool in a particular area. The lowest bid wins and the carrier making that bid is awarded a pre-designated substantial fraction of the COLR pool, *e.g.*, 70%, along with an equal fraction of the total support. The second lowest bidder may choose to accept the remaining, smaller fraction of the COLR pool, along with a share of the total support equal to that smaller fraction.<sup>306</sup> If the second lowest bidder declines, the third lowest bidder would be offered the same choice. If all other bidders decline the opportunity, the lowest bidder would be assigned 100 percent of the COLR pool and 100 percent of the successful bid (*i.e.*, support). Under this proposal, the total support amount would equal the amount of the lowest bid. Bulow and Nalebuff would allow a COLR to trade its COLR-pool customers to other carriers for cash or other service obligations.

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<sup>302</sup> *Id.* at 28.

<sup>303</sup> *Id.* at 28-29.

<sup>304</sup> *Id.* at 29-30.

<sup>305</sup> These lump-sum payments to carriers are very different from the block grants that Congress rejected in this area. As the Joint Board observed, in quoting the Senate Working Group "[s]uch grants would be incompatible with the statute's architecture of discounts. . . [a]ffordability cannot be determined under a block grant approach." *First Recommended Decision* 12 FCC Rcd at 366-367 (*citing* Senate Working Group further comments at 2). Thus, both we and the Joint Board have rejected them as contrary to Congressional intent. Lump sum payments here would merely serve to pay carriers a fixed amount for providing the universal service specified by the Commission.

<sup>306</sup> Workshop on Competitive Bidding for Universal Service Support, March 13, 1997, FCC, Washington, DC.



160. Bulow and Nalebuff contend that if there is only one LEC in a region, then support should be set on a per-subscriber basis to provide an incentive for that carrier to serve the entire market.<sup>307</sup> If, however, non-COLRs without subsidies compete for individual customers against a COLR with a per-subscriber subsidy, the COLR will have an unfair advantage. Because of the per-subscriber subsidy the COLR will be able to win certain customers that an unsubsidized firm could serve at lower cost. Bulow and Nalebuff contend that fixed-fee support avoids this distortion. As discussed above, a fixed-fee subsidy could be applied to multiple COLRs by splitting the total award among the winning bidders in proportion to their COLR obligations. They also argue that, in the presence of economies of density, competitive bidding could lead to unnecessarily high support, because the most efficient bidder would tend to bid higher than necessary to protect against the possibility that it would be forced to share the COLR customers rather than bidding lower based on the assumption that it would serve 100 percent of the COLR pool. Bulow and Nalebuff thus suggest that the lowest bidder should be awarded a large fraction -- perhaps 70-75 percent -- of the COLR pool.

161. Bulow and Nalebuff argue, as well, that their suggested approach removes the problem that a competitor to the incumbent LEC will try to "cherry pick" the most profitable customers, which could occur under the GTE competitive bidding proposal. For the GTE proposal, the "cherry picking" problem prompts the suggestion that competitive bidding be conducted for areas that are small enough to have homogeneous costs of service (*e.g.*, Census Block Groups). Bulow and Nalebuff argue that their approach would allow competitive bidding over larger and more diverse areas than the GTE proposal would allow, which may be administratively simpler or less costly. They also argue that competitive bidding over larger areas would be preferable if there are cost synergies among small markets.

### ***3. The Kelly & Steinberg Auction Proposal***

162. Frank Kelly and Richard Steinberg propose that per-subscriber support be given to carriers serving "blocks" of customers. Under their proposal, a two-stage auction would set the amount of support over all blocks at the same time. They would base the initial support level for each block on either the historical cost of serving residential customers in the block or on a forward-looking economic cost mechanism's prediction of such service costs, whichever is lower.

163. In the first stage of the auction, bidders would submit a sealed set of "contingent" bids on any blocks in which they were interested.<sup>308</sup> The contingent bids would ask for different levels of support depending upon the number of carriers that were chosen to serve the block. For example, they might ask for \$10 in support if they were the sole provider, \$6 if they were to share the block with one other carrier, and \$4.50 if they were to share the block with two bidders. Each bid would equal the lump-sum payment that the carrier sought for serving its share of customers in that block. The auctioneer would then determine the lowest total support payout for each possible number of successful bidders, *e.g.*, the lowest bid to be sole provider, the sum of the two lowest of those bids contingent on sharing the block with one other carrier, the sum of

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<sup>307</sup> *Id.*

<sup>308</sup> Letter from Richard Steinberg, University of Cambridge, England to Evan Kwerel, FCC, June 23, 1997 (*A Combinatorial Auction with Multiple Winners for COLR* (June 9, 1997)) (hereinafter Kelly-Steinberg) at 4. Note: Kelly-Steinberg are posting the current version of their proposal at [www.statslab.cam.ac.uk/~frank/AUCTION](http://www.statslab.cam.ac.uk/~frank/AUCTION)

the three lowest of those bids contingent on sharing the block with two other carriers, eligible telecommunications carrier.<sup>309</sup> The auctioneer would then adjust these levels of support by a preferential weighting factor that attempted to quantify the societal benefit of increasing the number of firms competing in a market.<sup>310</sup> The auctioneer would then select the lowest adjusted support level and the associated successful bidder or bidders. The bidders with the lowest bids for the contingency of that number of successful bidders would be the first stage winners. For example, if the lowest payout was for two carriers then support would be available to the carriers with lowest bids for sharing support with one other carrier. If there were multiple winners in a block, each successful bidder would be assigned a proportional share of the block, *i.e.*, a "sub-block."

164. The second stage of the auction would consist of multiple rounds of open combinatorial bidding in which bidders offered to serve some combination of blocks and sub-blocks for less support than the successful bidders from the first or any previous round.<sup>311</sup> A valid combinatorial bid would consist of a list of requested support amounts, one support amount for each sub-block in the combination. The total value of the combinatorial bid would be the sum of these support amounts. A valid combinatorial bid would need to seek less total support (*i.e.*, have a lower total value of the bid) than previous bids by an exact amount, *i.e.*, "bid increment." Initially it would need to improve on the combined bids of the first stage successful bidders. The rounds of the second stage would start by considering combinations across two blocks, and then progressively consider larger combinations. Bidders would not be allowed to make combinatorial bids over sub-blocks within a block.

165. To be eligible to bid, bidders would need to remain "active" in the auction, by either holding the low bid in the previous round or submitting an acceptable bid in the present round.<sup>312</sup> How active a bidder was in the present round would determine how many bids it could place in the next round.<sup>313</sup> The level of activity needed to be allowed to make bids in the next round would also change as the auction continued.<sup>314</sup>

166. When second-stage bidding activity stopped, the auction would end and final successful bidders would be declared.<sup>315</sup> The successful bidders would receive per-customer support base on their bid, for serving customers up to their designated proportion of a block, (*e.g.*, one-third of the customers in a block if there had been three successful bidders of the block at the end of the first stage). Multiple successful bidders within the block would then compete for customers within a block. Unserved customers would be assigned to a successful bidder not serving its full share of customer in the block. A successful bidder would be free to attract the business of all the customer in a block, but would only receive support for its share, *e.g.*, one-

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<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> *Id.* at 5.

<sup>312</sup> *Id.*

<sup>313</sup> *Id.* at 5 (suggesting bidders initially should be required to remain active on sub-blocks covering 60 percent of the number of customers for which they wish to remain eligible to bid).

<sup>314</sup> *Id.* at 5-6 (suggesting that the activity requirement increase, as the second stage progresses, to 80 percent of the number of desired customers, and finally to 95 percent of such customers).

<sup>315</sup> *Id.* at 6.

third, of the marked that it was assigned in the auction. Throughout the auction process, no bid waivers or bid withdrawals would be allowed.<sup>316</sup>

#### ***4. Other Competitive Bidding Proposals***

167. Time Warner notes that the Act appears to preclude the grant to any single carrier of exclusive rights to receive universal service support for serving a high-cost area.<sup>317</sup> Therefore, Time Warner proposes that to encourage low bids, we reward the successful bidder by granting it 100% of the high-cost support that it bids while all other bidders would receive a smaller percentage.<sup>318</sup> Time Warner also asserts that a competitive system cannot work unless all participants have equal access to relevant information about the market including costs and revenues.<sup>319</sup> Time Warner thus proposes to require incumbent LECs to disclose fully information about the market, including cost and revenues. Finally, Time Warner recommends periodic rebidding of areas to ensure that support levels reflect current costs and competitive conditions.<sup>320</sup>

168. MCI proposes a bidding system only for those few areas that are not served or areas where a carrier becomes unwilling to serve at the established universal service support level.<sup>321</sup> MCI suggests that the Commission should join with the state to conduct the auction that will determine the level of support available in the area.<sup>322</sup> The state would certify the carriers eligible to participate in the auction, and the eligible carriers would bid the amount of support they require to serve the area.<sup>323</sup> Any carrier willing to provide service in that area would then be eligible to receive support at the level submitted by the lowest bidder. If the incumbent was not a successful bidder, it would have to make its network available for resale at net book value to the successful bidder.<sup>324</sup>

169. Citizens for a Sound Economy Foundation (CSE Foundation) suggests an open, multiple-round auction that would allow bidders to gain information about the costs of providing service to different areas as they learn what other carriers have bid on those areas.<sup>325</sup> It suggests that higher bidders obtain reduced universal service support.<sup>326</sup> Finally, because the need to finance an investment over many years is particularly important when large-scale, capital-intensive projects are involved, CSE Foundation contends that it is important that the universal

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<sup>316</sup> *Id.* at 7.

<sup>317</sup> Time Warner comments, CC Docket 96-45, Apr. 12, 1996 at 9-11.

<sup>318</sup> *Id.* at 11.

<sup>319</sup> Time Warner comments, Aug. 2, 1996 at 42.

<sup>320</sup> *Id.* at 42-43.

<sup>321</sup> MCI comments, Apr. 12, 1996 at 18-19.

<sup>322</sup> *Id.*

<sup>323</sup> *Id.* at 19.

<sup>324</sup> MCI comments, Aug. 2, 1996 at 21-22.

<sup>325</sup> Citizens for a Sound Economy Foundation comments, May 7, 1996 at 8-9.

<sup>326</sup> *Id.* at 11.

service support be guaranteed over some period of time, perhaps five years. It expresses concern, however, over GTE's proposal to exclude from support any new provider during the period of time the support level is guaranteed. As a solution, CSE Foundation tentatively suggests that the right to receive support for a particular market be made transferable.<sup>327</sup>

### 5. *Hawaii Competitive Bidding Mechanism*

170. In 1995, the Hawaii legislature enacted a statute authorizing its PUC to select, via a competitive bidding process, single carriers of last resort to receive universal service funds for serving designated local exchange service areas.<sup>328</sup> Under the statute, once the PUC determines the level of support that is appropriate for each local exchange area, it must invite telecommunications providers to bid on these areas for providing service.<sup>329</sup> The successful bidder becomes the COLR for the local exchange service area for "a period of time and upon conditions set by the commission."<sup>330</sup> In choosing the successful bidder, the PUC is required to take into account "the level of service to be provided, the investment commitment, and the length of the agreement, in addition to the other qualifications of the bidder."<sup>331</sup> The PUC requires that bidders' proposals contain projected rates for the initial ten-year period and expected subsidies and loans that will lower the rates for consumers, but selection of the new provider need not be made entirely on the basis of who submits the lowest bid; rather it may reflect a weighing of multiple factors, *i.e.*, "internal and external strengths."<sup>332</sup>

171. The first rural area in which the PUC authorized carriers to compete with the incumbent LEC, GTE Hawaiian Tel, was the Ka'u area on the island of Hawaii.<sup>333</sup> In April 1996, the PUC issued a Request for Proposal (RFP), specifying the technical, engineering, financial, and other requirements for bidders.<sup>334</sup> The RFP also articulated specific "internal strengths," "external strengths," and "miscellaneous indicia of fitness and ability" on which bidders would be evaluated.<sup>335</sup>

172. The PUC selected TelHawaii, Inc. to be the COLR for the Ka'u area,<sup>336</sup> but TelHawaii and GTE Hawaiian Tel thus far have been unable to conclude an agreement for the

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<sup>327</sup> *Id.* at 13-14.

<sup>328</sup> Haw. Rev. Stat. § 269-43(a) & (b).

<sup>329</sup> Haw. Rev. Stat. § 269-43(b).

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> Hawaii PUC Decision & Order No. 14415, released December 13, 1995.

<sup>333</sup> *Id.*

<sup>334</sup> Hawaii PUC, Request for a Proposal to Provide Telecommunications Service for Ka'u, Island of Hawaii, April 30, 1996.

<sup>335</sup> *Id.* at 12. Internal strengths include organization, financial backing, technical facilities, operations expertise, and management and administrative experience. External strengths include proposed rates and rate design, track record, alertness to consumer needs and desires, consumer preferences, impact on entities other than competing applicants, and local ownership control. Miscellaneous indicia include first-in-field status, first-in-proposal process, quality of proposal, ongoing regulatory control, and overall general fitness.

<sup>336</sup> Hawaii PUC Decision & Order No. 14789, released July 15, 1996.

transfer or lease of GTE Hawaiian Tel's assets to TelHawaii for serving this area. GTE Hawaiian Tel sought reconsideration of the decision selecting TelHawaii as COLR, but the PUC subsequently held that it was necessary and in the public interest to condemn GTE Hawaiian Tel's assets and to allow TelHawaii to use these condemned assets in its operations as a public utility.<sup>337</sup> GTE Hawaiian Tel's appeal of this decision is now pending in the Hawaii Supreme Court.<sup>338</sup>

### **6. Examples From Foreign Countries: Chile & Peru**

173. In 1994, Chile's legislature passed a telecommunications law that established the Rural Telecommunications Development (RTD) Fund. Since 1995, Subsecretaria de Telecomunicaciones (SUBTEL), Chile's regulatory body, has allocated RTD funds<sup>339</sup> to companies through an annual competitive bidding process. The competitive bidding process is initiated when SUBTEL, after consulting with local and regional governmental entities, issues an annual prioritized list of RTD projects. SUBTEL assigns an "RTD maximum subsidy" for each project and issues a public notice calling for technically qualified companies to submit bids for one or more RTD projects.<sup>340</sup> RTD funds can be used by the selected companies to subsidize between 1/4 and 1/3 of the initial investment costs of rural projects. Bids are submitted in a single-round format and opened during a public meeting, and the bid that has the lowest RTD support wins. If two or more of the competing companies submit the same low bid, the RTD project and support are assigned by lottery. Companies that receive RTD funds are not given any exclusive market rights to profitable customers in the areas they serve.

174. In Peru, in 1994, the Organismo Supervisor de la Inversion Privada de Telecomunicaciones (OSIPTEL), the Peruvian regulator that administers the Fund for Investment in Telecommunications (FITEL), stated that it would allocate FITEL funds through a competitive bidding process similar to Chile's.<sup>341</sup> Also that year, OSIPTEL was designing the selection parameters for the projects.<sup>342</sup>

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<sup>337</sup> Hawaii PUC Decision & Order No. 15602 (1997).

<sup>338</sup> We also note that, in response to an August 16, 1996 petition by TelHawaii, the Accounting and Audits Division of the FCC's Common Carrier Bureau issued an order creating a new study area containing a rural telephone exchange serving approximately 2,447 access lines in the Ka'u area and allowing TelHawaii to operate under rate-of-return regulation. In the Matter of Petition for Waivers filed by TelAlaska, inc. and TelHawaii, Inc., *Memorandum Opinion and Order*, DA 97-1508 (CCB, Acct'g & Audits Div.), released July 16, 1997. In this order, the Division denied TelHawaii's request for a waiver of Sections 36.611 and 36.612 of the Commission's rules to enable it to receive universal service support immediately upon transfer of GTE Hawaiian Tel's assets to TelHawaii.

<sup>339</sup> RTD funds come from the annual government budget and are allocated to SUBTEL. Ley General de Telecomunicaciones, No. 18.168, Title IV, Article 28A, "Del Fondo de Desarrollo de Telecomunicaciones".

<sup>340</sup> See Bjorn Wellenius, *Extending Telecommunications Service to Rural Areas – The Chilean Experience*, Viewpoint, The World Bank Group Note No. 105, Feb. 1997; SUBTEL de Chile. *Funcionamiento del Fondo de Desarrollo de las Telecomunicaciones*. SUBTEL document, February, 1997.

<sup>341</sup> FITEL funds come from a one percent tax on the gross revenues of all telecommunications companies. Texto Unico Ordenado de la Ley de Telecomunicaciones. Decreto No. 013-93-TCC. Artículo 12. *Marco Legal de las Telecomunicaciones*, at 13, OSIPTEL, Nov. 1994.

<sup>342</sup> The FITEL program is intended to expand universal service by bringing telephone service to areas not currently served by Telefonica de Peru, the monopoly provider of telephone service.

## 7. Spectrum Auctions

175. In the Omnibus Budget Reconciliation Act of 1993, Congress amended the Communications Act of 1934 by adding Section 309(j), which granted the Commission authority, under certain circumstances, to employ competitive bidding to assign licenses to use portions of the electromagnetic spectrum. After adopting rules to govern this process,<sup>343</sup> the Commission began its spectrum auctions in 1994.

176. The first set of licenses to be auctioned authorized licensees to provide narrowband Personal Communications Services (PCS). Because of the likelihood that the values of these licenses were interdependent (*i.e.*, the value placed by a bidder on one license depends upon whether it also holds another license), the Commission chose to employ simultaneous, multiple-round auctions to assign these licenses. The Commission began by auctioning a relatively small number of licenses, 10 nationwide narrowband PCS licenses, in July 1994. As the Commission gained experience, it gradually expanded the number of licenses included in each auction.<sup>344</sup> Thus far, the Commission has held twenty-three spectrum auctions, employing both simultaneous and sequential auction designs, and both oral outcry and electronic methods for bidding.<sup>345</sup> Licenses for terrestrial-based mobile and fixed services (including the narrowband and broadband PCS services, the Specialized Mobile Radio Services, and the Wireless Communications Service), as well as for satellite broadcasting services (including the Direct Broadcast Satellite service and the Digital Audio Radio Service), have been assigned using competitive bidding.

177. To fulfill the requirements of Section 309(j), we have adopted general rules and procedures governing the types of auction designs that may be employed for spectrum auctions.<sup>346</sup> We have set eligibility rules, requiring that prospective bidders make pre-auction upfront payments,<sup>347</sup> and allowed alteration of competitive bidding mechanism details for each auction, including minimum levels of required bidding activity, minimum bid increments and

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<sup>343</sup> See, *e.g.*, *Implementation of Section 309(j) of the Communications Act-Competitive Bidding*, Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994); *Implementation of Section 309(j) of the Communications Act-Competitive Bidding*, Third Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2941 (1994); and *Implementation of Section 309(j) of the Communications Act-Competitive Bidding*, Fifth Report and Order, PP Docket No. 93-253, 9 FCC Rcd 5532 (1994).

<sup>344</sup> The largest auction conducted so far has been the D, E and F block broadband PCS auction, in which 1,479 licenses were put up for bid simultaneously.

<sup>345</sup> Most of the Commission's spectrum auctions have been conducted electronically, using computer software developed by the Commission specifically for this purpose.

<sup>346</sup> See Subpart Q of Part 1 of our rules, 47 C.F.R. §§ 1.2101 *et seq.* In addition, the Commission has adopted service-specific rules that govern auctions of licenses in particular services. See, *e.g.*, 47 C.F.R. §§ 24.701 *et seq.* (rules for broadband PCS auctions), and 90 C.F.R. §§ 90.801 *et seq.* (rules for 900 MHz SMR auctions). Since the competitive bidding for universal service support contemplated in the instant proceeding does not involve choosing from among mutually exclusive applications for licenses to use the electromagnetic spectrum, Section 309(j) of the Act, and the Commission's rules adopted pursuant thereto, would not apply.

<sup>347</sup> In Section 1.2106 of the Commission's rules, 47 C.F.R. § 1.2106, the Commission authorized the collection of upfront payments and set forth general rules concerning them. Service-specific rules require upfront payments in particular auctions. See, *e.g.*, 47 C.F.R. § 24.706 (upfront payment rule for broadband PCS auctions). *Public Notice*, Report No. AUC-94-04, released September 19, 1994 (setting forth auction procedures, including activity requirements, bid increments and stopping rules, for the FCC's auction of A & B block broadband PCS licenses).

stopping rules for ending the auction.<sup>348</sup> These rules are intended to ensure that in simultaneous multiple round auctions only sincere bidders participate and that auctions proceed at a reasonable pace and can be brought to a close in a rational manner.

178. We also have adopted rules that require payments in the event of bid withdrawal or default, so that bidders understand that they will be held to the amounts of their bids.<sup>349</sup> In general, a bidder who withdraws a high bid during the course of an auction will be subject to a payment calculated as the difference between the amount of the withdrawn bid and the amount of the successful bid the next time the license is offered by the Commission. Thus, no payment is required if the subsequent successful bid exceeds the withdrawn bid. If a successful bidder defaults or is disqualified after the close of an auction, that bidder must pay the amount already described and an additional three percent of the lesser of the defaulted bid amount and the subsequent successful bid. This additional payment is intended to encourage a bidder who has any doubt about its ability to make payment on a license to withdraw its bid before the auction closes, thereby giving others an opportunity to bid on that license.

179. Our rules concerning spectrum auctions also include anti-collusion provisions that were designed to work in conjunction with existing antitrust laws and to ensure that each bidder in a spectrum auction has access to the same information about all joint arrangements into which other bidders may have entered. These rules prohibit bidders from cooperating, collaborating, discussing, or disclosing the substance of their bids or bidding strategies with other bidders unless they are members of a bidding consortium or joint bidding arrangement that has been identified on the pre-auction application.<sup>350</sup> In addition, consistent with objectives for competitive bidding detailed in Section 309(j), there are rules to enable small businesses and businesses owned by members of minority groups and women, to overcome historical difficulties in gaining access to capital, thereby promoting opportunities for these groups to participate in the provision of spectrum-based services. These provisions included limiting eligibility to bid on licenses in "Entrepreneurs' Blocks" to companies below a certain size and making available bidding credits on certain licenses and installment payment plans that allow a successful bidder to spread out payment for a license over the license term.<sup>351</sup>

180. The Commission recently initiated a proceeding in which we will comprehensively examine our general competitive bidding rules for all auctionable services to identify how they can be changed to make our licensing processes more efficient.<sup>352</sup>

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<sup>348</sup> See 47 C.F.R. § 1.2104. Specific bidding procedures for each auction are usually announced by way of a public notice issued prior to the auction. See, e.g., *Public Notice*, Report No. AUC-94-04, released September 19, 1994 (setting forth auction procedures, including activity requirements, bid increments and stopping rules, for the FCC's auction of A & B block broadband PCS licenses).

<sup>349</sup> See, e.g., 47 C.F.R. § 1.2104(g) (general competitive bidding rules), and 47 C.F.R. § 24.704 (bid withdrawal rule applicable to broadband PCS auctions).

<sup>350</sup> 47 C.F.R. § 1.2105(c).

<sup>351</sup> See generally 47 C.F.R. § 1.2110. Special provisions also have been adopted to aid "designated entities" in connection with spectrum auctions for particular services. See, e.g., 47 C.F.R. § 24.309 (narrowband PCS); 47 C.F.R. § 24.709 (broadband PCS); 47 C.F.R. § 90.810 *et seq.* (900 MHz SMR).

<sup>352</sup> See Amendment of Part 1 of the Commission's Rules, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, WT Docket No. 97-82, FCC 97-60 (rel. Feb. 28, 1997).

## 8. FTS2000

181. The contract for providing telecommunications services to the United States government -- called FTS2000 -- was awarded by the General Services Administration (GSA) in 1988 to two different firms: 60% to AT&T and 40% to US Sprint. The decision to divide the contract between the two lowest bidders and to divide it 60%-40% was suggested by Congressman Jack Brooks and GSA agreed to do so. GSA then asked Coleman Research Corporation (CRC), an engineering firm, to quantify and suggest how to minimize the deleterious effects of splitting the contract. CRC estimated that the employment of a second carrier would raise actual costs by about eight percent, but that varying the allocation percentages would not have any significant effect on total costs. CRC was unable to estimate the likely benefits. The RFP was released in January 1988.<sup>353</sup>

182. Although the contract was for ten years, there were two points in time where the two successful firms (AT&T and Sprint) had an opportunity to rebid to secure a larger share of the total contract. Under this price redetermination/service reallocation (PR/SR) provision, 40% of the market shares of the two firms, *i.e.*, 24% from AT&T and 16% from Sprint, were made subject to the rebidding with three possible results. If the two firms made similar bids then each firm would retain its current market share, but if one firm bid significantly less than the other, than that firm would capture the 40% of the contract that was now available. AT&T and Sprint both originally bid \$.18 per minute. After the first rebidding both lowered their bids to \$.14 per minute. After the second rebidding AT&T lowered its bid to \$.07 per minute. Thus, when AT&T significantly underbid Sprint for the final three year period, AT&T captured 40% of the 40% Sprint market share leaving AT&T with 76% of the revenues and Sprint with only 24% of the revenues.<sup>354</sup>

183. GSA's analysis of the contract found that splitting the contract was not as costly as they had expected because the size of the contract was large enough to permit multiple firms to operate at their minimum efficient scale. Furthermore, GSA found that one of the most significant reasons that AT&T had for bidding aggressively was to avoid the danger that it would be underbid in subsequent rounds and that the news of such a significant loss would be heavily publicized by the successful bidder, suggesting that the federal government no longer regarded AT&T as the best choice.<sup>355</sup>

184. GSA is now considering how to implement the successor to FTS2000, so called FTS2001. GSA is considering whether it might permit as many as three firms to gain shares of federal revenues but, the number of successful bidders will depend on the differences between their bids.<sup>356</sup>

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<sup>353</sup> Mitretek *ex parte* meeting at the Federal Communications Commission, Washington, DC, Aug. 12, 1997, discussion with Robert R. Menna and David A. Garbin (dgarbin@mitretek.org). (Mitretek Aug. 12 *ex parte*).

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*

<sup>356</sup> *Id.*



## 9. Cable Franchise Bidding

185. Local cable television franchising authorities in the United States have generally awarded cable television franchises by issuing RFPs which solicit competitive bids. A municipality establishes a cable franchise once it grants a company permission to string wires above or below the public streets within a set area for a set time-period.<sup>357</sup> The RFP generally contains the area's minimum requirements for the municipality's desired cable service. It is published in a local newspaper and at least one national trade publication, after which companies have at least three months to prepare and submit their applications.<sup>358</sup> An average of four to five companies initially submit bids. Once the bidding period is over, local policymakers select the most promising few bids and then conduct hearings on them. Remaining bidders are given the opportunity to amend their proposals. The competition among remaining bidders ensures that the quality of service is high. A single successful bidder is usually awarded an exclusive, renewable contract, usually 15 years in duration.<sup>359</sup>

186. Once the contract is awarded, the successful bidders and the municipality commence negotiations for the unresolved issues in the contract. Many view this franchising relationship as akin to direct regulation.<sup>360</sup> Critics of the cable franchising system argue that the selection process is political and subjective.<sup>361</sup>

187. To guarantee a cable franchisee's obligations to the municipality under a franchise agreement, the municipality generally collects a form of collateral. It may require performance bonds or security deposits, partially in the form of cash or municipal bonds, the remainder in a letter of credit. The collateral acts as a security for damages, losses, or expenditures that the municipality incurs as a result of the successful bidder's failure to comply with the contract, or pay all the funds due to the municipality.<sup>362</sup>

## 10. Essential Airline Service

188. To ensure that smaller communities always remain linked to the national transportation system after the passage of the Airline Deregulation Act of 1978, Congress established the Essential Air Service Program, which is administered by the Department of Transportation (Department).<sup>363</sup> Under the Program, if an airline wishes to terminate, suspend, or reduce its service to a particular area, the airline must file a 90-day notice with the appropriate

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<sup>357</sup> John Thorne, Peter Huber, *Federal Broadband Law* §4.5, at 229 (Boston: Little, Brown, 1995).

<sup>358</sup> Mark A. Zupan, *Non-Price Concessions and the Effect of Franchise Bidding Schemes on Cable Company Costs*, 20 *Applied Economics* 305 (1989).

<sup>359</sup> *Id.* at 305, 306.

<sup>360</sup> Mark A. Zupan, *The Efficacy of Franchise Bidding Schemes in the Case of Cable Television: Some Systematic Evidence*, 32 *J.L. & Econ.* 401, 403 (1989).

<sup>361</sup> See Mark Nadel, *COMCAR: A Marketplace Cable Television Franchise Structure*, 20 *Harv. J. On Legis.* 541, 547 (1983) (commenting that selection procedure requires political maneuvering by applicants, in addition to the making of unrealistic promises for service by bidder).

<sup>362</sup> Daniel L. Brenner, Monroe E. Price, and Michael I. Meyerson, *Cable Television and Other Nonbroadcast Video, Law and Policy*, § 3.07[8][c], (1997).

<sup>363</sup> 49 U.S.C. §§ 41731-41742.

state aviation agency, officials in the affected community, and the Department. Before the 90-day notice period ends, other carriers have the opportunity to propose to replace without support the incumbent carrier. If no carrier expresses interest in serving the area without support before the 90-day notice period ends, the Department must solicit proposals for subsidized service.

189. Carriers submitting proposals must carefully detail the calculations of their support need. The Department reviews all proposals, meets with each applicant to finalize their proposals, and then solicits the opinions of the affected community's members. The Department selects a new carrier after weighing factors that include the following: the community preferences; the amount of support required; the quality of proposed service; the applicant's financial stability; the applicant's reputation for reliability; and the applicant's marketing relationships with major carriers. The Department usually chooses a carrier that is then eligible to provide supported service for a two-year period. As the end of the two-year period approaches, the Department will either renegotiate the support rate with the incumbent and publish this tentative rate in an order to show cause, or solicit new proposals in the same manner used for replacing an incumbent as previously described.<sup>364</sup>

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<sup>31</sup><sup>364</sup> Department of Transportation, Essential Air Service and Domestic Analysis Division, *What is Essential Air Service?* (May, 1997).

**APPENDIX E: ARIZONA PROPOSAL CONCERNING UNIVERSAL SERVICE  
SUPPORT FOR INITIAL CONNECTION CHARGES**

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APR 28 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	
	)	
Forward-Looking Mechanism	)	CC Docket No. 97-160
for High Cost Support	)	

**PROPOSAL OF THE ARIZONA CORPORATION COMMISSION  
FOR DISTRIBUTION OF FEDERAL USF FUNDS TO ESTABLISH  
SERVICE TO LOW-INCOME CUSTOMERS IN UNSERVED AREAS, OR IN THE  
ALTERNATIVE, FOR AMENDMENT OF THE MAY 8, 1997 REPORT AND ORDER  
TO PROVIDE FOR FEDERAL USF DISTRIBUTION FOR THIS PURPOSE**

**I. INTRODUCTION**

On April 15, 1998, the Common Carrier Bureau ("CCB") of the Federal Communications Commission ("FCC" or "Commission") released a Notice, DA 98-715, seeking comment on proposals to revise the methodology for determining federal universal service support.<sup>1</sup> The Notice states:

In the Report to Congress, the Commission states that prior to implementing the Commission's methodology for determining high cost support for non-rural carriers, the Commission will complete a reconsideration of its 25/75 decision and of the method of distributing high cost support. [footnote omitted]. The Commission also states that it will continue to work closely on these issues with states members

<sup>1</sup> Because of the time constraints for submitting a proposal, the Arizona Commission was unable to provide supporting data and to discuss these issues in depth. Therefore, the Arizona Commission will submit more extensive comments on its proposal in the comment phase of this proceeding.

of the Federal-State Joint Board on Universal Service (Joint Board), including holding an en banc hearing with participation by the Joint Board Commissioners. [footnote omitted].

The CCB encouraged interested parties to submit additional proposals for modifying the Commission's methodology, or updates to the proposals already a part of the record in this proceeding.

The Arizona Corporation Commission ("Arizona Commission") submits this proposal covering a very discrete issue which undermines the universal telephone service objective in several regions of this country including some western states such as Arizona, and upon which the federal funding mechanism has thus far been silent. Unlike the other proposals now before the FCC or likely to be filed with it in response to its notice, the Arizona Commission's proposal is not intended as a comprehensive alternative to the High Cost Fund Distribution Model but is directed to address an insidious problem found in regions of the United States including some western states, such as Arizona. That problem is the inability of low-income customers located in unserved areas to obtain telephone service because they cannot afford to pay the line extension or construction charges necessary to extend facilities to their homes.

The present distribution methodology for the High Cost Fund at the federal level does not provide any vehicle or method of assistance to help the "unserved" rural low-income customer to obtain service; rather support has traditionally and still is only directed towards keeping the rates low for rural customers who already have telephone service. The Arizona Commission urges the FCC to give some recognition to this problem at the federal level and to work with states to resolve it. These Americans are in reality the essence of what a "universal telephone service" fund should be all

about.

The Arizona Commission proposes that a fixed proportion of federal funds be set aside to begin to address the problem of unserved areas and the inability of low-income customers to obtain telephone service because they cannot afford to pay the required line extension or construction charges. This portion of the fund would be used solely to partially offset the line extension or construction charges required to put facilities in place to reach these low-income or Lifeline customers. The Arizona Commission proposes that distribution of these funds would be in accordance with fixed federal and state guidelines.

The underlying tenet of this proposal is that a "one-size-fits-all" solution is rarely the answer in instances such as this, when faced with an issue as complex and multifaceted as universal telephone service in 50 states with the diverse and varying terrain and demographics. The Arizona Commission submits that the federal High Cost Fund, if it is to truly be effective, must address this sort of variance between the states.

## **II. BACKGROUND AND NATURE OF THE PROBLEM.**

Arizona's population is clustered primarily around its two largest urban centers, Phoenix and Tucson. U S WEST Communications, Inc. is the largest local exchange carrier in the state, with approximately 2.2 million access lines. U S WEST is the incumbent local exchange carrier (ILEC) in Phoenix and Tucson's metropolitan areas, as well as large parts of the remainder of the state. Most of the other regions of the state are divided between the other ILECs. The Arizona Commission has also certificated approximately 15 competitive local exchange carriers in Arizona. Because Arizona's population is largely urban in nature, it has never been a large recipient of the federal High Cost Funds. In Arizona, there are unserved regions located both within and outside the exchange

boundaries of many ILECs.

Most ILECs have construction charge and line extension charge tariffs that apply when new service is requested in an unserved area. When an unserved customer within the certificated area of an ILEC requests service, the ILEC will typically do an engineering study to determine the cost of putting the necessary facilities in place to provide service. As an example of how an ILECs line extension tariffs generally operate, if the ILEC puts a six-pair cable in, the actual cost to the ILEC may be \$20,000. Most ILEC line extension tariffs then allocate only a portion of this cost over the number of projected customers necessary to achieve full capacity on the facility. Thus, in this case where a six-pair cable is utilized, the line extension charges to the individual customer may be around \$2,000.

In one recent situation in Arizona, a low-income elderly woman had requested service back in 1993 and was provided with a line extension estimate of approximately \$2,700. She could not afford to have local service connected and is still without telephone service. This customer was recently given a new estimate of \$1,500. However, even with options such as deferred payment that may be acceptable for the average American, this is no option for low-income customers because they simply cannot afford to make the payments, even over time, to get the facilities in place.

### **III. EXISTING MEASURES DO NOT ADDRESS THIS PROBLEM.**

First, the provision of the Federal Act relating specifically to unserved areas, e.g. Section 214(e)(3), does not apply here. In the example given above, the ILEC was willing to provide service to the customer. Thus, this is not a case that would fall under the provision of Section 214(e)(3) since the carrier is willing to provide service. In other words, this is not a situation where a state commission would order the company to provide service, because the company is already willing to

do so. Rather, in these cases, the low-income customer simply cannot afford to pay the line extension charges required by the Company's tariffs.

Second, as already discussed, the focus of the High Cost Fund has in the past been and continues to be upon keeping the monthly phone rates of rural subscribers affordable. Thus, its sole focus is upon keeping the rates low of rural customers who already have phone service.

Third, the Lifeline Program subsidizes the monthly rates of low-income customers. Recently, the FCC's expanded Lifeline and Link Up programs went into effect. In Arizona alone, it is estimated that approximately 177,000 low-income customers qualify under the federal default criteria for participation in the program. However, because some of these low-income customers in Arizona are unable to pay to have the facilities connected to them, they are unable to take advantage of the important program and the lower monthly rates.

Fourth, the Commission's Link Up Program is limited to providing a reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence. 47 C.F.R. § 54.411(a)(1). The reduction is half of the customary charge or \$30.00, whichever is less. *Id.* In addition, the Commission's Link Up Program also waives the interest charges for a period of one year for connection charges up to \$200. While this provides some measure of relief, it is wholly inadequate in most instances.

Fifth, existing measures at the state level are also inadequate to address this problem in many instances. As already explained, the approved line extension tariffs of most companies already provide for a reduced and pro-rated cost to the customer.

Sixth, while the Rural Utilities Service (RUS) provides low interest loans to companies for the purpose of bringing facilities into remote areas, this has not solved the problem by any means.



Finally, cellular or wireless technologies are not a viable option at this time either since the networks do not yet exist in remote areas or in some instances wireless cannot be provided due to geographical constraints. In some extreme cases, the customer may not have electricity yet. In other cases, the cost of cellular calls is still extremely expensive, so from an economic perspective, it is not the functional equivalent of wireline service yet.

**IV. COOPERATION AND COORDINATION BETWEEN STATES AND FCC ARE NECESSARY TO RESOLVE THIS PROBLEM.**

The Arizona Commission strongly believes that cooperation and coordination between the states and the FCC are necessary to resolve this problem.

The Arizona Commission has recently, through a Task Force, begun to reexamine its own state universal service rules to address issues such as this. The Task Force has had a series of meetings, which have included representation by individuals living in unserved areas. The Task Force's efforts recently culminated in proposed revisions to the Arizona Commission's own USF Rules. Many of these revisions attempt to provide some incentive to carriers to construct facilities to unserved areas. The Arizona Commission Staff has asked for a further round of Task Force comments on the proposed revisions. Once revised, the Task Force will present them to the full Arizona Commission.

Nonetheless, given the seriousness of the problem, the Arizona Commission believes that some recognition of this problem and action by the Joint Board and FCC is also necessary.

**V. ARIZONA COMMISSION'S PROPOSAL FOR MODIFYING THE EXISTING FEDERAL DISTRIBUTION MODEL TO ADDRESS THIS PROBLEM.**

**A. Defining the Problem and Recognition of the Problem as a Universal Service Issue at the Federal Level and the Need for Action to Remedy It.**

The first step in the Arizona Commission's proposal involves defining the problem. We must recognize that low income citizens without telephone service and unable to get it is as serious a problem and as critical a threat to universal service as people living in rural areas faced with the prospect of higher than average telephone rates. Then, it must be recognized that some action is necessary to remedy the problem.

**B. Determining the Extent of this Problem in States Affected by it.**

A recent article in *U.S. News & World Report* reported that:

Yet a study by state utility regulators last summer revealed that there are some 5,000 involuntary phoneless souls like the Womacks in Arizona alone. Though no overall national figures exist, interviews with phone companies big and small, as well as with consultants, regulators, and other government officials, suggest there are thousands of other Americans in mostly rural areas who cannot get phone service. February 2, 1998 Business and Technology Section, pp. 39-40.

As this passage indicates, no one is aware of the true extent of this problem. The Arizona Commission does not know the real extent of this problem in Arizona. The Arizona Commission is at the present time attempting to gather information on the extent of this problem in Arizona so that it can attempt to address this issue at the state level more effectively on an ongoing basis.

The Arizona Commission suggests that the Joint Board and the Commission attempt to gather similar information to provide a basis to determine the extent of the problem on a national level.

**C. Focus Upon Low-Income Customers Who Meet the Federal Lifeline Default Eligibility Criteria.**

The problem of unserved areas is not limited to the low-income. However, the Arizona Commission suggests that federal efforts focus upon low-income customers, as defined either by the federal Lifeline default eligibility criteria or state established Lifeline criteria.

**D. Allocation of Fixed Amount of Federal USF Funds to Be Used to Partially Offset Line Extension Charges And/or Line Construction Charges Associated with Establishing Service to Low-income Customers.**

The Arizona Commission recommends that the Joint Board and FCC allocate a fixed amount of federal USF funds to be used to partially offset the line extension or construction charges associated with establishing service to these low-income customers. State USF funds, such as the Arizona AUSF, would then also provide assistance for this purpose.

Allocation of a fixed amount on an annual basis for use by all states would minimize the burden on the federal High Cost Fund, as would contributions from state universal service funds.

**E. Federal and State Guidelines Setting Criteria and Standards for Distribution of Funds.**

The Arizona Commission also recommends the establishment of federal and state guidelines and criteria for the distribution of these funds, with the Joint Board having the initial responsibility for setting federal guidelines.

**F. State Examination of Cases on an Individual Basis.**

Individual states should be responsible for administering the program, as is already the case with the Commission's Lifeline and Link Up programs. The states would examine cases on an individual basis, and if they believed the appropriate standards had been met, they would recommend distribution of funds from both the federal and state USF funds.

**VI. MAXIMUM STATE FLEXIBILITY IN UTILIZING FEDERAL UNIVERSAL SERVICE FUNDS IS IN THE PUBLIC INTEREST.**


A one-size-fits-all solution to the universal service issue is **not** as effective as one tailored to

meet the diverse and multifaceted needs of the individual states. Consequently, the more flexibility states are given to utilize federal universal service funds to meet the needs of their individual jurisdictions, the more effectively states and the FCC can address the universal service issue.

**VII. CONCLUSION.**

The Arizona Commission respectfully requests that the Joint Board and the FCC modify the federal USF distribution methodology to provide a partial offset of line construction or extension charges for low-income customers living in unserved areas.

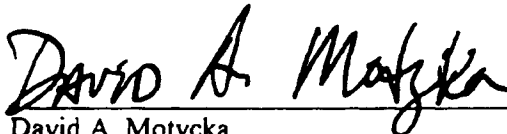
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**APPENDIX F: INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS*****1. Objectives***

190. In the 1996 Act, Congress directed the Commission to take steps to reform our existing universal service support mechanisms.<sup>365</sup> Specifically, Congress directed the Commission to devise methods to ensure that consumers in "all regions of the Nation," including "low-income consumers and those in rural, insular and high cost areas" have access to "telecommunications and information services."<sup>366</sup> Through decisions adopted over the past two years, the Commission has been striving to ensure that federal universal service support mechanisms for high-cost areas, low-income consumers, schools and libraries, and rural health care providers, enable consumers to obtain telecommunications services that would otherwise be prohibitively expensive.<sup>367</sup> Notwithstanding these efforts, certain areas of the nation remain unserved or underserved, particularly insular and Indian tribal lands. Telephone penetration rates and facilities deployment in certain high-cost areas, including tribal and insular areas, lag behind the penetration rates in the rest of the country. In this Further Notice, the Commission seeks comment on proposals designed to increase deployment of facilities necessary to provide the services supported by federal universal service support mechanisms in unserved and underserved areas and to increase subscribership among low-income consumers in certain high-cost areas.

***2. Legal Basis***

191. The Commission, in compliance with sections 1, 4, 214, 254, and 403 of the Act,<sup>368</sup> issues this Further Notice to examine mechanisms to promote deployment and subscribership in unserved and underserved areas, including tribal and insular areas.

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<sup>365</sup> 47 U.S.C. § 254.

<sup>366</sup> 47 U.S.C. §254(b)(3).

<sup>367</sup> *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking and Order Establishing a Joint Board, 12 FCC Rcd 18092 (1996) (*May 1996 Notice*); Recommended Decision, 12 FCC Rcd 87 (Jt. Bd. 1996) (*First Recommended Decision*); Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (1997) (*First Report and Order*), as corrected by Errata, CC Docket No. 96-45 (rel. June 4, 1997); Order on Reconsideration, 12 FCC Rcd 10095 (1997); Second Order on Reconsideration, 12 FCC Rcd 18400 (1997); Third Order on Reconsideration, 12 FCC Rcd 22801 (1997); Fourth Order on Reconsideration, 13 FCC Rcd 2372 (1997); Fifth Order on Reconsideration, 13 FCC Rcd 14915 (1998); Order and Order on Reconsideration, 13 FCC Rcd 13749 (1997); Second Recommended Decision, 13 FCC Rcd 24744 (1998); Sixth Order on Reconsideration, 13 FCC Rcd 22908 (1998); Seventh Order on Reconsideration, 13 FCC Rcd 19397 (1998); Eighth Order on Reconsideration, 13 FCC Rcd 25058 (1998); Ninth Order on Reconsideration, 14 FCC Rcd 377 (1998); Tenth Order on Reconsideration, FCC 99-46 (rel. Apr. 2, 1999); Eleventh Order on Reconsideration, FCC 99-49 (rel. May 28, 1999); Twelfth Order on Reconsideration, FCC 99-121 (rel. May 28, 1999); Thirteenth Order on Reconsideration; FCC 99-119 (rel. May 28, 1999); *affirmed in part, remanded in part and reversed in part, Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir. Jul. 30, 1999).

<sup>368</sup> 47 U.S.C. §§ 151, 154, 214, 254, 403, and 410.

### ***3. Description and Estimate of the Number of Small Entities To Which the Proposed Action May Apply***

192. 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 proposed rules, if adopted.<sup>369</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>370</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>371</sup> 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).<sup>372</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>373</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>374</sup> 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."<sup>375</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>376</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>377</sup> 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.

193. As noted, under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>378</sup> 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.<sup>379</sup> We first

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<sup>369</sup> 5 U.S.C. § 603(b)(3).

<sup>370</sup> *Id.* § 601(6).

<sup>371</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>372</sup> Small Business Act, 15 U.S.C. § 632.

<sup>373</sup> 5 U.S.C. § 601(4).

<sup>374</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>375</sup> 5 U.S.C. § 601(5).

<sup>376</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>377</sup> *Id.*

<sup>378</sup> 15 U.S.C. § 632. *See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

<sup>379</sup> 13 C.F.R. § 121.201.



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.

194. The most reliable source of information regarding the total numbers of common carrier 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).<sup>380</sup> According to data in the most recent report, there are 3,604 interstate carriers.<sup>381</sup> These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

195. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>382</sup> 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.<sup>383</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

196. *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.<sup>384</sup> 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."<sup>385</sup> 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,

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<sup>380</sup> FCC, *Carrier Locator: Interstate Service Providers*, Figure 1 (Jan. 1999) (*Carrier Locator*). See also 47 C.F.R. § 64.601 *et seq.* (TRS).

<sup>381</sup> *Carrier Locator* at Fig. 1.

<sup>382</sup> 5 U.S.C. § 601(3).

<sup>383</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

<sup>384</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

<sup>385</sup> 15 U.S.C. § 632(a)(1).

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 actions considered in the Further Notice.

197. *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.<sup>386</sup> According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.<sup>387</sup> 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 actions considered in the Further Notice.

198. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition of 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.<sup>388</sup> 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).<sup>389</sup> According to our most recent data, there are 1,410 LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers.<sup>390</sup> 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 1,410 small entity LECs or small incumbent LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers that may be affected by the decisions and actions considered in the Further Notice.

199. *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.<sup>391</sup> According to

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<sup>386</sup> 1992 Census, *supra*, at Firm Size 1-123.

<sup>387</sup> 13 C.F.R. § 121.201, SIC Code 4813.

<sup>388</sup> 13 C.F.R. § 121.210, SIC Code 4813.

<sup>389</sup> See 47 C.F.R. § 64.601 *et seq.*; *Carrier Locator* at Fig. 1.

<sup>390</sup> *Carrier Locator* at Fig. 1. The total for resellers includes both toll resellers and local resellers. The TRS category for CAPs also includes competitive local exchange carriers (CLECs) (total of 129 for both).

<sup>391</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.<sup>392</sup> 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 actions considered in the Further Notice.

200. *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.<sup>393</sup> To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 732 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.<sup>394</sup> 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 below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the decisions and actions considered in the Further Notice.

201. *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.<sup>395</sup> 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.<sup>396</sup> These regulations defining "small entity" in the context of

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<sup>392</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>393</sup> *Id.*

<sup>394</sup> *Carrier Locator* at Fig. 1.

<sup>395</sup> *See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, FCC 96-278, WT Docket No. 96-59, ¶¶ 57-60 (June 24, 1996), 61 FR 33859 (July 1, 1996); *see also* 47 C.F.R. § 24.720(b).

<sup>396</sup> *Id.*, at ¶ 60.

broadband PCS auctions have been approved by SBA.<sup>397</sup> 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% 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.

202. *SMR Licensees.* Pursuant to 47 C.F.R. § 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,<sup>398</sup> and approval for the 900 MHz SMR definition has been sought. The proposed 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 actions considered in the Further Notice.

203. 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 actions considered in the Notice 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 actions considered in the Further Notice.

204. *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

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<sup>397</sup> *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

<sup>398</sup> *See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

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.<sup>399</sup> 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.<sup>400</sup> 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.

205. *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* 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.<sup>401</sup> 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.<sup>402</sup> An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>403</sup> 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% of the Regional licenses, and 54% 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.<sup>404</sup> A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses.<sup>405</sup> As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

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<sup>399</sup> 13 C.F.R. § 121.201, SIC Code 4812. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

<sup>400</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

<sup>401</sup> 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291- 295 (1997). The SBA has approved these definitions. See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

<sup>402</sup> 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, para. 291.

<sup>403</sup> See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

<sup>404</sup> Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

<sup>405</sup> Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," Report No. AUC-99-24-E, DA No. 99-1287 (Wireless Telecom. Bur. July 1, 1999).

206. *Paging.* On June 7, 1999, the Wireless Telecommunications Bureau announced the first in a series of auctions of paging licenses, the first to commence on December 7, 1999.<sup>406</sup> The Bureau has proposed that the first auction be composed of 2,499 licenses.<sup>407</sup> The Commission utilizes a two-tiered definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services.<sup>408</sup> A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. The SBA has approved this definition.<sup>409</sup> At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. In addition, according to the most recent *Carrier Locator* data, 137 carriers reported that they were engaged in the provision of either paging or messaging services, which are placed together in the data.<sup>410</sup> Because the auction has yet to occur, we do not have data specifying the number of winning bidders that will meet the above small business definition. Also, we will assume that there currently are 137 or fewer small business paging carriers.

207. *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 IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

208. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>411</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>412</sup> We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>413</sup> There are approximately 1,000 licensees in the Rural

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<sup>406</sup> Public Notice, "First Paging Service Spectrum Auction Scheduled for December 7, 1999," Report No. AUC-99-26-A, DA No. 99-1103 (Wireless Telecom. Bur. June 7, 1999).

<sup>407</sup> *Id.*

<sup>408</sup> See 47 C.F.R. § 20.9(a)(1) (noting that private paging services may be treated as common carriage services).

<sup>409</sup> See Letter from A. Alvarez, Administrator, SBA, to A.J. Zoslov, Chief, Auctions Division, Wireless Telecommunications Bureau, FCC (Dec. 2, 1998).

<sup>410</sup> *Carrier Locator* at Fig. 1.

<sup>411</sup> The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

<sup>412</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 C.F.R. §§ 22.757, 22.759.

<sup>413</sup> 13 C.F.R. § 121.201, SIC Code 4812.

Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

209. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.<sup>414</sup> Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>415</sup> 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.

210. *Private Land Mobile Radio (PLMR).* PLMR systems, also known as Private Mobile Radio Service (PMRS) systems, serve an essential role in a range of industrial, business, land transportation, and public safety activities.<sup>416</sup> These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of, if any, small businesses that could be impacted by the proposed rules. However, the Commission's 1994 Annual Report on PLMRs<sup>417</sup> indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact any small U.S. business that chooses to become licensed in this service. On July 21, 1999, the Wireless Telecommunications Bureau requested public comment on whether the licensing of PMRS frequencies in the 800 MHz band for commercial SMR use would serve the public interest.<sup>418</sup>

211. *Fixed Microwave Services.* Microwave services include common carrier,<sup>419</sup> private-operational fixed,<sup>420</sup> and broadcast auxiliary radio services.<sup>421</sup> At present, there are

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<sup>414</sup> The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

<sup>415</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>416</sup> See 47 C.F.R. § 20.9(a)(2) (noting that certain Industrial/Business Pool service may be treated as common carriage service).

<sup>417</sup> Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

<sup>418</sup> Public Notice, "Wireless Telecommunications Bureau Incorporates Nextel Communications, Inc. Waiver Record into WT Docket No. 99-87: Seeks Comment on Licensing of PMRS Channels in the 800 MHz Band for Use in Commercial SMR Systems," DA 99-1431 (Wireless Telecom. Bureau July 21, 1999).

<sup>419</sup> 47 C.F.R. § 101 *et seq.* (formerly, Part 21 of the Commission's rules).

<sup>420</sup> Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>421</sup> Auxiliary Microwave Service is governed by Part 74 of the Commission's Rules. See 47 C.F.R. § 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

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.<sup>422</sup> 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.

212. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.<sup>423</sup> At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

213. *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 actions considered in the Further Notice includes these eight entities.

214. *Rural Health Care Providers.* Neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term "health care provider" and sets forth the seven categories of health care providers eligible to receive universal service support.<sup>424</sup> We estimate that there are: (1) 625 "post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools," including 403 rural community colleges,<sup>425</sup> 124 medical schools with rural programs,<sup>426</sup> and 98 rural teaching hospitals;<sup>427</sup> (2) 1,200 "community health centers or health centers providing health care to migrants";<sup>428</sup> (3) 3,093 "local health departments or agencies" including 1,271 local

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<sup>422</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>423</sup> This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 C.F.R. §§ 22.1001 - 22.1037.

<sup>424</sup> *See* 47 U.S.C. § 254(h)(5)(B).

<sup>425</sup> Letter from Kent A. Phillippe, American Association of Community Colleges to John Clark, FCC, dated March 31, 1997 (AACC March 31 ex parte at 2).

<sup>426</sup> Letter from Donna J. Williams, Ass'n of American Medical Colleges, to John Clark, FCC, dated September 9, 1996 (AAMC September 9 ex parte).

<sup>427</sup> Letter from Kevin G. Serrin, Ass'n of American Medical Colleges, to John Clark, FCC, dated September 5, 1996 (AAMC September 5 ex parte).

<sup>428</sup> Letter from Richard C. Bohrer, Division of Community and Migrant Health, HHS, to John Clark, FCC, dated March 31, 1997 (HHS March 31 ex parte at 2).



health departments<sup>429</sup> and 1,822 local boards of health;<sup>430</sup> (4) 2,000 "community mental health centers";<sup>431</sup> (5) 2,049 "not-for-profit hospitals";<sup>432</sup> and (6) 3,329 "rural health clinics."<sup>433</sup> We do not have sufficient information to make an estimate of the number of consortia of health care providers at this time. The total of these categorical numbers is 12,296. Consequently, we estimate that there are fewer than 12,296 health care providers potentially affected by the actions proposed in this Further Notice. According to the SBA definition, hospitals must have annual gross receipts of \$5 million or less to qualify as a small business concern.<sup>434</sup> There are approximately 3,856 hospital firms, of which 294 have gross annual receipts of \$5 million or less. Although some of these small hospital firms may not qualify as rural health care providers, we are unable at this time to estimate with greater precision the number of small hospital firms which might be affected by the proposals, if adopted. Consequently, we estimate that there are fewer than 294 hospital firms that might ultimately be affected by this Further NPRM.

#### ***4. Description of Projected Reporting, Record-keeping, and Other Compliance Requirements***

215. The measures under consideration in this Further Notice may, if adopted, result in additional reporting or other compliance requirements for telecommunications carriers, including small entities, as described below.

216. Certain measures under consideration in this Further Notice may, if adopted, result in increased federal universal service support obligations for telecommunications carriers required to contribute to federal universal service support mechanisms. Specifically, in this Further Notice, the Commission seeks comment on the possibility of allowing carriers to form separate tribal study areas;<sup>435</sup> lifting the cap on the high-cost fund to allow for growth resulting from the use of tribal study areas;<sup>436</sup> amending the consumer qualification criteria for determining eligibility for Lifeline;<sup>437</sup> expanding LinkUp to include facilities based line-extension charges or other construction costs;<sup>438</sup> providing support for intrastate toll-calling;<sup>439</sup>

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<sup>429</sup> Telephone contact by John Clark, FCC, with Carol Brown, National Association of County Health Officials, May 2, 1997.

<sup>430</sup> Letter from Ned Baker, Nat'l Ass'n of Local Boards of Health, to John Clark, FCC, dated April 2, 1997 (Nat'l Ass'n of Local Boards of Health April 2 ex parte).

<sup>431</sup> Telephone contact by John Clark, FCC, with Mike Weakin, Center for Mental Health Services, HHS, on May 2, 1997.

<sup>432</sup> American Hospital Association Center for Health Care Leadership, A Profile of Nonmetropolitan Hospitals 1991-95 at 5 (1997).

<sup>433</sup> Letter from Patricia Taylor, ORHP/HHS, to John Clark, FCC, dated May 2, 1997 (ORHP/HHS May 2 ex parte).

<sup>434</sup> 13 C.F.R. § 121.201, SIC 8060.

<sup>435</sup> See paras. 63-65.

<sup>436</sup> See paras. 66-67.

<sup>437</sup> See paras. 71-72.

<sup>438</sup> See paras. 118-120.

<sup>439</sup> See paras. 121-122.

and providing support for the deployment of infrastructure necessary to provide rural health care providers with access to telehealth and telemedicine initiatives.<sup>440</sup>

217. Certain measures under consideration in this Further Notice may, if adopted, result in additional obligations for carriers filing petitions pursuant to section 214(e)(6) of the Act or subject to proceedings conducted pursuant to section 214(e)(6) of the Act. Section 214(e)(3) of the Act authorizes the Commission to designate carriers not subject to the jurisdiction of a state commission as an eligible telecommunications carriers. Specifically, carriers may be required to provide an analysis of the Commission's jurisdiction in conjunction with filing petitions under this provision. Section 214(e)(3) of the Act authorizes the Commission to identify the carrier or carriers best able to provide the services supported by federal universal service support mechanisms in unserved areas, and to order that carrier or carriers to provide such service. One option under consideration is for the Commission to conduct a fact-based inquiry of the common carriers serving areas near the unserved area to determine where existing facilities are deployed, to estimate the costs for each carrier to provide the supported services, and to consider other factors that may be relevant to the determination. This proposal could result in rules requiring carrier to submit information to the Commission that is needed in making this determination.<sup>441</sup>

218. Finally, certain measures raised in this Further Notice could result in additional compliance requirements for carriers designated as eligible telecommunications carriers. Specifically, the Commission seeks comment on the possibility of expanding the provision of toll limitation offerings<sup>442</sup> and on requiring additional publicity for the availability of low-income support.<sup>443</sup>

##### ***5. Significant Alternatives To Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives***

219. With respect to the possibility of increased universal service contribution requirements, the primary alternative to the proposals contained in the Further Notice which would minimize the economic impact on small entities would be to determine not to provide an increased amount of support. In this proceeding, the Commission will consider whether the alternative – not to provide the additional support -- would nevertheless accomplish its stated objectives. We observe that section 254(d) of the Act requires that all telecommunications carriers contribute to the federal universal service support mechanisms on “an equitable and nondiscriminatory basis.” As a result, the Commission may not propose alternatives specifically designed to minimize the economic impact on small entities. We note, however, that the Commission has established a *de minimis* exception from universal service contribution obligations for carriers whose interstate end-user telecommunications revenues in a given is less than \$10,000.<sup>444</sup> This exception should lessen the burden on telecommunications carriers that meet the definition of small entities.

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<sup>440</sup> See paras. 128-133.

<sup>441</sup> See para. 95.

<sup>442</sup> See para. 123.

<sup>443</sup> See paras. 124-127.

<sup>444</sup> See 47 C.F.R. §54.705.

220. With respect to the information that may need to be submitted in conjunction with petitions filed pursuant to section 214(e)(6) and proceedings conducted pursuant to section 214(e)(3), the primary alternative would be for the Commission to determine that the information is not required or to conclude that it could obtain the information from alternative sources. In seeking comment on this issue, the Commission intends to develop a record to determine whether the information is necessary and the appropriate source for obtaining it. In addition, with respect to proceedings conducted pursuant to section 214(e)(6), the Commission seeks comment on the possibility of providing an exception for carriers that meet the definition of small entities.<sup>445</sup> Moreover, the Commission seeks comment on the possibility of using a voluntary competitive bidding mechanism instead of the more cumbersome, fact-based inquiry. If the competitive bidding proposal adopted, the compliance requirements for all carriers, including carriers that meet the definition of small entities, could be avoided.

221. Finally, with respect to the additional compliance requirements for carriers designated eligible telecommunications carriers, the Commission does not seek comment on whether an exception for carriers meeting the definition of small entities is appropriate. In setting the standard for what services carriers designated as eligible telecommunications carriers must provide, the Commission has established a uniform, nationwide standard for the services to which all Americans should have access. Individual carriers, however, may obtain a waiver of the Commission's rules if good cause is shown therefor.<sup>446</sup>

***6. Federal Rules that May Duplicate, Overlap, or Conflict With the Notice***

222. None.

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<sup>445</sup> See para. 95.

<sup>446</sup> See 47 C.F.R. §1.3

**SEPARATE STATEMENT OF  
COMMISSIONER HAROLD FURCHTGOTT-ROTH  
DISSENTING IN PART**

*Re: Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket 96-45.*

I support many of the worthwhile goals of today's Order. Although I write separately to express limited concerns about this item, I commend my colleagues and the members of the Commission staff who have worked so diligently on this important action.

First, I object to the item's apparent invention of a new classification described as "underserved areas." This classification does not appear in the Communications Act. In fact, the Act specifically refers to a category of "unserved areas" for which Congress directed the Commission and the States to take specific action. *See* Section 214(e)(3). Congress, however, did not create a category of "underserved areas," and the Commission has no authority to create one on its own motion. I believe the Commission can achieve the goals set forth in this item without inventing new terms and, as a result, placing at risk the goals we seek to serve in this item.

Section 214(e)(6) directs the Commission to designate a common carrier as an eligible telecommunications carrier for purposes of receiving universal service support when, *inter alia*, the common carrier is not subject to the jurisdiction of a State commission. Although the goals of today's Order are worthwhile, meeting these goals should not result in overbroad results. I thus object to the tentative conclusion that this section should be interpreted such that the determination of whether a carrier is subject to the jurisdiction of a State commission depends on the geographic area in which the service is being provided (e.g. tribal lands) *or* the nature of the service provided (e.g. satellite or terrestrial wireless). *Supra.* at par. 78. I am concerned that such a conclusion will ultimately lead to the federal government designating satellite and terrestrial wireless carriers as eligible telecommunications carriers outside of tribal areas. I dissent from this tentative conclusion, because I do not believe that this outcome is supported by section 214(e)(6).

Finally, I question the decision to solicit comment regarding whether the Commission should establish national guidelines by which states must make the determination of which carriers are best able to provide services to unserved areas. *Supra.* at par. 93. The Fifth Circuit only last month reversed a Commission order interpreting a very similar statutory provision in which the Commission attempted to prohibit States from developing their own requirements when designating carriers as eligible for federal universal service support pursuant to section 214(e)(2).<sup>447</sup> When the Commission solicits comment on a topic, it encourages members of the

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<sup>447</sup> *Texas Office of Public Utility Counsel, et al., v. FCC*, United States Court of Appeals for the Fifth Circuit, No. 97-60421, rel. July 30, 1999.

public to expend resources responding to that solicitation. I believe it is irresponsible to encourage such a use of resources when Commission action is unlikely because a federal appeals court has called into significant doubt the legality of the proposal at issue.

## **Separate Statement of Commissioner Gloria Tristani**

*Re: Federal-State Joint Board on Universal Service: Promoting Deployment and  
Subscribership in Unserved and Underserved Areas, CC Docket No. 96-45; Extending  
Wireless Telecommunications Services, WT Docket No. 99-266.*

I write separately to underscore my support for these items. Both Notices of Proposed Rulemaking are intended to address and remedy the dearth of telecommunications in Indian country and other unserved and underserved areas. The facts are not in dispute. While Americans on average enjoy a telephone subscribership rate of 94%, many communities and areas throughout the land are not so fortunate. And Indians living on tribal lands are the least fortunate of all. Telephone subscribership rates on tribal lands fall under 50% in many instances and even under 30%, as in the case of the Navajo reservation.

These woeful statistics are not new, and this is not the first time that the federal government and others have taken notice. What is new, is that the Federal Communications Commission has not only taken notice, but is now embarked in taking concrete action to change these statistics. The items ask thoughtful, appropriate and insightful questions, including questions about the scope of the problem, the nature of the federal relationship with tribal sovereign governments, and the extent to which the FCC should act to remedy the problem.

But, more importantly, the items posit concrete suggestions – targeting universal service support, bolstering and/or tailoring the Lifeline and Linkup programs, using alternative technologies – on how to provide telecommunication services to Indian country and other unserved and underserved communities. These suggestions are good first steps but I hope commentors will not hesitate to suggest any other appropriate and innovative measures.

Finally, while I am proud to support these items, I believe it is our statutory and moral obligation to bring telecommunications to Indian country. Section 254 of the Telecommunications Act mandates that we assure that all Americans have access to telecommunications services. The federal trust relationship between tribal sovereign governments and the federal government suggests that we have an obligation to do even more. But history, notions of equality, and the principles on which this Nation was founded tell us that is unconscionable that Indians, the first Americans, remain the last Americans to enjoy the wonders and benefits of the Information Age. I trust that the small steps we take today will go a long way in changing this picture.