

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

In the Matter of
Federal-State Joint Board on
Universal Service
1998 Biennial Regulatory Review – Streamlined
Contributor Reporting Requirements Associated
with Administration of Telecommunications Relay
Service, North American Numbering Plan, Local
Number Portability, and Universal Service Support
Mechanisms
Telecommunications Services for Individuals with
Hearing and Speech Disabilities, and the
Americans with Disabilities Act of 1990
Administration of the North American Numbering
Plan and North American Numbering Plan Cost
Recovery Contribution Factor and Fund Size
Number Resource Optimization
Telephone Number Portability

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioner Ness issuing a statement.

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## I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we seek comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers.<sup>1</sup> Section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act),<sup>2</sup> requires carriers providing interstate telecommunications services to contribute to universal service.<sup>3</sup> Under the current universal service rules, carriers' contributions are assessed as a percentage of their interstate and international end-user telecommunications revenues.<sup>4</sup> For carriers electing to recover their universal service contributions from their customers, the Commission generally has not specified a particular method of recovery. Rather, the Commission has required that contributors not shift more than an equitable share of their contributions to any customer or group of customers, and that carriers provide accurate, truthful, and complete information regarding the nature of the charge.<sup>5</sup>

2. In this Notice, we seek comment on whether and how to streamline and reform the universal service contribution methodology. We seek comment on specific proposals to require carriers to contribute based on a percentage of collected revenues, or to contribute on the basis of a flat-fee charge, such as a per-line charge.<sup>6</sup> Additionally, we seek comment on limiting the manner in which carriers recover their contribution costs from their customers. If carriers choose to recover universal service contributions from their customers through line items, we propose to require carriers to do so through a uniform universal service line item that corresponds to the contribution assessment on the carrier.

3. We believe that we may need to revisit the concepts underlying the existing contribution

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<sup>1</sup> For purposes of this Notice, the term "carrier" is synonymous with all filers of universal service contribution worksheets.

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, et seq.

<sup>3</sup> 47 U.S.C. § 254.

<sup>4</sup> See 47 C.F.R. §§ 54.706, 54.709, 54.711. For purposes of this Order and unless otherwise stated, the term "end-user revenues" shall refer to a contributor's interstate and international end-user telecommunications revenues.

<sup>5</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9199, para. 829, 9211, para. 855 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997) *aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999) *cert. denied* 2000 WL 684656 (U.S. Sup. Ct. May 30, 2000) (*Universal Service Order*). We note that the Commission has developed guidelines for incumbent local exchange carrier (LEC) recovery of universal service contributions. See 47 C.F.R. § 69.158 (limiting recovery of universal service contributions by price cap incumbent LECs); *Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket No. 96-45, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 96-45, Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679, 1693, para. 33 (1999) (*Universal Service Remand Order*) (detailing universal service contribution recovery options for incumbent local exchange carriers).

<sup>6</sup> See *infra* paragraph 29 for a discussion of the potential impact of assessing contributions on a flat-fee basis on low-volume customers.

system, in light of current market trends, to ensure that providers of interstate telecommunications services continue to “contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>7</sup> Since the Commission’s initial implementation of section 254 of the Act in 1997, we have seen many significant developments in the interstate telecommunications marketplace. We have witnessed the entry of new providers into the long distance market, including Regional Bell Operating Companies (RBOCs) that have received approval under section 271 of the Act to provide interstate telecommunications.<sup>8</sup> We also are seeing certain wireline interexchange carriers suffer declining revenues in light of growing competition.<sup>9</sup> Growth in the wireless telecommunications sector, as well as the advent of Internet Protocol (IP) telephony, has changed the dynamics of the interstate telecommunications market.<sup>10</sup> Furthermore, many carriers are bundling services together in creative ways, such as offering flat-rate packages that include both interstate and intrastate telecommunications and non-telecommunications products and services.

4. Changes to the universal service contribution methodology may be necessary to simplify and streamline the contribution process for carriers. For example, although not mandated by the Commission, many carriers choose to recover most, if not all, of their universal service contributions through line items on their customers’ bills.<sup>11</sup> Even though the Commission sets a uniform contribution factor for universal service, carriers may decide to boost this factor in order to account for “uncollectible” revenue and other variables. We believe that this process may require carriers to engage in complex calculations in order to fully recover their contribution costs through a line item on customer bills.

5. We also have concerns about the extent to which the universal service line item fee varies from one carrier to the next, even though the contribution factor set by the Commission is uniform across carriers. For example, in the fourth quarter 2000, the Commission established a contribution factor of 5.6688 percent.<sup>12</sup> The major interexchange carriers, however, imposed line-item fees on residential and business customers ranging from approximately 5.9 percent to 8.6 percent.<sup>13</sup> For the second quarter of

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<sup>7</sup> 47 U.S.C. § 254(d).

<sup>8</sup> 47 U.S.C. § 271.

<sup>9</sup> For example, in its most recent annual filing with the Securities and Exchange Commission, AT&T reported that its consumer services revenue declined 13.2%, or \$2.9 billion, in 2000. *See* AT&T Corp., S.E.C. Form 10-K405, filed April 2, 2001, at 99.

<sup>10</sup> *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Fifth Report, 15 FCC Rcd 17660, 17663-66, 17673-74 (2000) (discussing growth of wireless telecommunications sector and increased competition between wireless and wireline telecommunications service providers) (*Fifth CMRS Competition Report*).

<sup>11</sup> We note that the recovery of universal service contributions through line items on customer bills is consistent with competitive markets, in which suppliers generally pass such costs on to their customers.

<sup>12</sup> *See Proposed Fourth Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 00-2065 (rel. Sep. 8, 2000).

<sup>13</sup> The residential fee in the fourth quarter 2000 for Verizon was 5.6688 percent and for AT&T and Sprint was 8.6 percent. *See* Verizon Select Services, Inc., Tariff F.C.C. No. 1, Section 2.13, issued September 29, 2000; AT&T Tariff F.C.C. No. 27, Sections 3.5.12.B and 24.1.18.B, issued February 18, 2000; Sprint Tariff F.C.C. No. 1, Section 3.11.8, issued October 31, 2000. The business fee in the fourth quarter 2000 for Verizon was 5.6688 (continued....)

2001, after the Commission established a contribution factor of 6.8823%,<sup>14</sup> one interexchange carrier raised its residential line item to 12%.<sup>15</sup> This discrepancy between the contribution factor and the amount carriers charge consumers is inexplicable to the casual observer. Moreover, it appears that some carriers have chosen to recover universal service contributions through a line item on only certain classes of customers. Some carriers may be recovering universal service contributions from pre-subscribed customers through line items that are well in excess of the contribution factor, while recovering, through service rates, an unidentified amount of such costs from other customers of services such as pre-paid calling cards or dial-around service. The end result may be that certain customer classes are bearing a disproportionate share of the carrier's cost of universal service contributions, which could, in some circumstances, be inconsistent with the Commission's directive that contributors not shift more than an equitable share of their contributions to any customer or group of customers.<sup>16</sup>

6. The Commission has an obligation to ensure that the universal service contribution system remains consistent with the statute, is reflective of current market trends, is simple for carriers to administer, and does not shift more than an equitable share of carrier contributions to any class of customers. We therefore conclude that we should revisit the issue of how contributions to the universal service fund are assessed on carriers and how carriers may recover such contribution costs from consumers. In this Notice, we seek comment on how to streamline the assessment and recovery of universal service contributions, especially in light of recent developments in the telecommunications marketplace, while maintaining a universal service fund that is consistent with the requirements of the Act. We welcome input from all segments of the industry, consumer groups, state commissions, and the members of the Federal-State Joint Board on Universal Service (Joint Board).

## II. BACKGROUND

### A. The Act

7. The assessment and recovery of universal service contributions are governed by a statutory framework established by Congress in the Act.<sup>17</sup> In section 254 of the Act, Congress instructed the Commission to establish support mechanisms with the goal of ensuring the delivery of affordable telecommunications service to all Americans, including consumers in high-cost areas, low-income consumers, eligible schools and libraries, and rural health care providers.<sup>18</sup> Section 254(d) of the Act requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient

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percent and for AT&T and Sprint was 6.6 percent. *See Verizon Select Services, Inc.*, Tariff F.C.C. Nos. 2 and 3, Sections 2.12 and 2.17, respectively, issued September 29, 2000; *AT&T Tariff F.C.C. No. 1*, Section 2.5.9.C1, issued October 19, 1999, and January 10, 2001; *Sprint Tariff F.C.C. No. 1*, Section 3.11.8, issued October 31, 2000.

<sup>14</sup> *See Proposed Second Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 01-614 (rel. Mar. 9, 2001).

<sup>15</sup> *MCI Worldcom Tariff F.C.C. No. 1*, Section C 1.061212, issued March 22, 2001.

<sup>16</sup> *See Universal Service Order*, 12 FCC Rcd at 9199, para. 829.

<sup>17</sup> *See* 47 U.S.C. §§ 201, 202, 254.

<sup>18</sup> 47 U.S.C. § 254.

mechanisms established by the Commission to preserve and advance universal service.”<sup>19</sup> In addition to the specific universal service provisions of section 254, sections 201(b) and 202(a) of the Act also govern carrier services and charges.<sup>20</sup> Section 201(b) requires that all carrier charges, practices, classifications, and regulations “for and in connection with” interstate communications service be just and reasonable, and gives the Commission jurisdiction to enact rules to implement that requirement.<sup>21</sup> Section 202(a) of the Act prohibits “unjust or unreasonable discrimination” in connection with the provision of communications services. Section 202(a) also prohibits carriers from making or giving “any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”<sup>22</sup> Thus, our overarching goal in this Notice is to explore ways to reform and streamline the universal service contribution methodology so that it remains consistent with the objectives of section 254, while ensuring that carrier conduct regarding universal service stays within the bounds of reasonableness that Congress established in sections 201 and 202.

## B. The Current Methodology

8. In the *Universal Service Order*, the Commission decided to assess contributions on carriers’ end-user telecommunications revenues.<sup>23</sup> The Commission did so after considering the Recommended Decision of the Joint Board and the record developed at that time.<sup>24</sup> Specifically, the Commission concluded that assessment based on end-user telecommunications revenues would be competitively neutral, easy to administer, and would eliminate some economic distortions associated with an assessment based on gross telecommunications revenues.<sup>25</sup> At that time, the Commission declined to adopt a mandatory end-user surcharge to collect contributions, agreeing with the state members of the Joint Board that a mandatory end-user surcharge “would dictate how carriers recover their contribution obligations and would violate Congress’s mandate.”<sup>26</sup> The Commission expressed concern that mandating recovery through an end-user surcharge might affect carriers’ flexibility to offer, for example, bundled services or new pricing options, possibly resulting in fewer options for consumers.<sup>27</sup> Instead, the

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<sup>19</sup> 47 U.S.C. § 254(d). *See also* 47 U.S.C. § 254(b)(4), (5) (Commission policy on universal service shall be based, in part, on the principles that contributions should be equitable and nondiscriminatory, and support mechanisms should be specific, predictable, and sufficient). The Commission adopted the additional principle that federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies. *Universal Service Order*, 12 FCC Rcd at 8801-03, paras. 46-51.

<sup>20</sup> *See* 47 C.F.R. §§ 201(b), 202(a).

<sup>21</sup> 47 C.F.R. § 201(b).

<sup>22</sup> 47 C.F.R. § 202(a).

<sup>23</sup> *See Universal Service Order*, 12 FCC Rcd at 9206, para. 844.

<sup>24</sup> *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 87 (1996).

<sup>25</sup> *Universal Service Order*, 12 FCC Rcd at 9206-09, paras. 844-50.

<sup>26</sup> *See id.* at 9210-11, para. 853.

<sup>27</sup> *See id.*

Commission allowed carriers to decide for themselves whether, how, and how much to recover from their customers.<sup>28</sup> The Commission required only that carriers not shift more than an equitable share of their contributions to any customer or group of customers, and that carriers provide accurate, truthful, and complete information regarding the nature of the charge.<sup>29</sup>

9. In the *Second Order on Reconsideration*, the Commission set forth the specific method of computation for universal service contributions.<sup>30</sup> The Commission also designated the Universal Service Administrative Company (USAC) as the entity responsible for administering the universal service support mechanisms, including billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.<sup>31</sup> To collect information from contributors about their end-user telecommunications revenues, the Commission required contributors to submit to USAC a Telecommunications Reporting Worksheet (Worksheet) semi-annually. Contributions were based on billed end-user telecommunications revenues from the prior year.<sup>32</sup> Therefore, the interval between the

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

<sup>29</sup> *Id.* at 9199, para. 829, 9211, para. 855.

<sup>30</sup> *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Second Order on Reconsideration*). See also 47 C.F.R. § 54.709. Section 54.709(a) provides, in relevant part, that contributions to the universal service support mechanisms shall be based on contributors' interstate and international end-user telecommunications revenues and a contribution factor determined quarterly based on information submitted by the Administrator of the fund, the Universal Service Administrative Company (USAC). The quarterly contribution factor is based on the ratio of total projected quarterly expenses of the universal service support mechanisms to total end-user telecommunications revenues. Thus, contributions are the product of a contributor's end-user telecommunications revenues multiplied by a quarterly contribution factor that is equal to the ratio of total projected quarterly expenses of the universal service support mechanisms to total end-user telecommunications revenues.

<sup>31</sup> See *Second Order on Reconsideration*, 12 FCC Rcd at 18423-24, para. 41; see also 47 C.F.R. § 54.701.

<sup>32</sup> *Second Order on Reconsideration*, 12 FCC Rcd 18400, Appendix B; see also 47 C.F.R. 54.711(a). ("Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet. The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator [USAC] on a semi-annual basis. . ."). See *Second Order on Reconsideration*, 12 FCC Rcd at 18424, para. 43, 18442, para. 80, 18501-02, Appendix C. The Commission adopted the Worksheet and attached it as Appendix C to the *Second Reconsideration Order*. Subsequent to its issuance of the *Second Order on Reconsideration*, in an effort to reduce administrative burdens on contributors, the Commission consolidated the reporting requirements for the universal service mechanisms, the Telecommunications Relay Service Fund, the cost recovery mechanism for administration of the North American Numbering Plan, and the cost recovery mechanism for administration of long-term number portability into the FCC Form 499 Telecommunications Reporting Worksheet. *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket 98-171, Report and Order, FCC 99-175 (1999); see also *Common Carrier Bureau Announces Release of September Version of Telecommunications Reporting Worksheet (FCC Form 499-S) for Contributions to the Universal Service Support Mechanisms*, CC Docket No. 98-171, Public Notice, DA 99-1520 (rel. July 30, 1999); see also *Common Carrier Bureau Announces Release of Telecommunications Reporting Worksheet (FCC Form 499-A) for April 1, 2000 Filing by All Telecommunications Carriers*, CC Docket No. 98-171, Public Notice, DA 00-471 (rel. Mar. 1, 2000).

accrual of revenues by carriers and the assessment of universal service contributions based on those revenues was 12 months.<sup>33</sup>

10. In order to ensure that universal service contributions are assessed on revenue data that is more reflective of current market conditions, we recently reduced the interval between the accrual of revenues by carriers and assessment of universal service contributions based on those revenues from 12 months to an average interval of six months.<sup>34</sup> We concluded that the shortened interval allows contributions to better reflect market trends influencing carrier revenues, such as the entry of new providers into the interstate marketplace.<sup>35</sup>

11. The Commission also has implemented rules and guidelines meant to reduce administrative burdens for certain categories of carriers. For example, the Commission established an interim safe harbor for calculating the percentage of interstate revenues of wireless telecommunication providers for universal service contribution purposes. Instead of reporting their actual interstate and international end-user telecommunications revenues, wireless carriers may simply report a fixed percentage of revenues, which ranges from one to 15 percent.<sup>36</sup> In addition, our rules provide that interstate telecommunications service providers whose annual universal service contribution is expected to be less than \$10,000 are not required to contribute to the universal service mechanisms.<sup>37</sup> Our rules also provide a limited exception to universal service contribution requirements for carriers with interstate end-user telecommunications revenues that constitute less than eight percent of their combined interstate and international end-user telecommunications revenues.<sup>38</sup>

### C. Market Conditions

12. As discussed above, the telecommunications marketplace has undergone dramatic changes that may necessitate a reexamination of the way in which we recover universal service contributions. For example, we have seen considerable growth in the wireless telecommunications sector. Because of growth in the offering of bundled local and long distance wireless services, many consumers have increased their

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<sup>33</sup> For example, contributions based on carriers' revenues accrued in January through June of one year were assessed on carriers in January through June of the next year.

<sup>34</sup> See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, FCC 01-85, at para. 2 (rel. Mar. 14, 2001) (*Quarterly Reporting Order*).

<sup>35</sup> See *id.* at para. 9.

<sup>36</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258-59, paras. 13-15 (1998) (*Wireless Safe Harbor Order*).

<sup>37</sup> See 47 C.F.R. § 54.708. Section 254(d) of the Act states that the Commission may exempt a carrier or class of carriers from contributing to the universal service mechanisms "if the carrier's contribution to the preservation and advancement of universal service would be *de minimis*."

<sup>38</sup> See 47 C.F.R. § 54.706(c).

use of wireless long-distance service.<sup>39</sup> The number of wireless telephony subscribers rose from 55 million in 1997 to 86 million in 1999.<sup>40</sup> Total interstate and international revenues for the wireless telecommunications industry rose from approximately \$2.3 billion in 1997 to over \$5.3 billion in 1999.<sup>41</sup> In light of the increase in the use of wireless services and bundled local and long distance wireless offerings, it is possible that the actual percentage of interstate wireless telecommunications revenues may now significantly exceed the Commission's interim safe harbor percentages.<sup>42</sup>

13. Other trends in the telecommunications marketplace also may have implications for the existing contribution methodology. Carriers increasingly are bundling interstate and intrastate services, as well as telecommunications and non-telecommunications services. Bundling services in this way may affect carriers' ability to allocate interstate telecommunications services properly for contribution purposes.<sup>43</sup> In addition, the development of "voice over Internet" technology may have effects on the amount of total revenues reported under the current system.<sup>44</sup> Finally, there may be additional legal, technological and market developments that could significantly impact the manner in which universal service contributions should be made, many of which we cannot even foresee today.<sup>45</sup>

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<sup>39</sup> See, e.g., *Fifth CMRS Competition Report*, 15 FCC Rcd at 17675-76 (discussing growth of national wireless calling plans, such as AT&T's Digital-One-Rate plan, Sprint's Free & Clear plan and Verizon Wireless's SingleRate plan).

<sup>40</sup> See *id.* at 17746.

<sup>41</sup> See *Telecommunications Industry Revenues: 1999*, available at [http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/lec.html](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/lec.html), at Table 6 (Ind. Anal. Div. rel. Sept. 25, 2000); *Telecommunications Industry Revenue: 1997*, available at [http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/lec.html](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/lec.html), at Table 6 (Ind. Anal. Div. rel. Oct. 8, 1998).

<sup>42</sup> See *supra* discussion at para. 11.

<sup>43</sup> See, e.g., *Policy and Rules Concerning Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, FCC 01-98, at paras. 47-54 (rel. Mar. 30, 2001) (*Bundling Order*).

<sup>44</sup> The Commission previously has observed that, to the extent that certain Internet-based services, such as Internet Protocol (IP) telephony, could be characterized as "telecommunications services," those services would fall within the Act's mandatory requirement that providers of interstate telecommunications service contribute to universal service mechanisms. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11508, para. 14 (1998). The Commission determined that certain forms of "phone-to-phone" IP telephony services lacked the characteristics that would render them "information services" within the meaning of the statute, and instead bear the characteristics of "telecommunications services." The Commission, however, did not find it appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings. See *id.* at 11541, para. 83.

<sup>45</sup> For example, the Commission has not yet addressed the issue of whether cable operators that provide broadband transmission service over cable systems are providing "telecommunications service" and, thus, absent forbearance, should be subject to universal service obligations. See, e.g., *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, Notice of Inquiry, 15 FCC Rcd 19287, 19295-96, para. 20 (2000).

14. We also recently have seen several significant developments in the interstate telecommunications marketplace that may impact the effectiveness of the existing contribution methodology, which is based on historical end-user telecommunications revenues. For example, certain carriers have argued that a contribution methodology based on historical revenues may give a competitive advantage to new entrants to the long distance marketplace, particularly the RBOCs. These new entrants are not required to contribute to universal service for six months because they have no historical revenues upon which to base contributions. Accordingly, these new entrants may be able to undercut the prices offered by established providers who are contributing to universal service. In subsequent years, to the extent that new entrants increase their long distance market share and recover contributions against current end-user revenues, the revenue base against which they recover contributions would remain greater than the revenue base against which their contributions are assessed, creating a potential for a continuing competitive advantage.<sup>46</sup>

15. An assessment mechanism based on historical revenues also may create a competitive disadvantage for carriers with decreasing interstate revenues. Recently, we have seen a decline in wireline revenue for certain interexchange carriers.<sup>47</sup> To the extent that interexchange carriers continue to lose market share, they may have to recover from a declining current revenue base their universal service contributions assessed against a larger revenue base from a prior period.<sup>48</sup>

### III. ISSUES FOR COMMENT

16. We seek comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service mechanisms and the manner in which carriers may recover those costs from their customers. Specifically, we seek comment on whether and how to modify the current universal service contribution methodology. We also seek comment on whether to develop a new methodology for assessing and recovering universal service contributions. Proposed methodologies should be adaptable to changes in the marketplace, competitively neutral, and relatively simple to administer. Although we have specific proposals for the assessment and recovery of universal service contributions, as detailed below,<sup>49</sup> we seek comment on a broad range of ideas about universal service contributions in general.

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<sup>46</sup> See *Federal-State Joint Board on Universal Service; Petition for Forbearance from Enforcement of Sections 54.709 and 54.711 of the Commission's Rules by Operator Communications, Inc. d/b/a Oncor Communications, Inc.*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking and Order, FCC 00-359, para. 9 (rel. Oct. 12, 2000) (*Contribution Further Notice*).

<sup>47</sup> See, e.g., AT&T Corp., S.E.C. Form 10-K405, filed April 2, 2001, at 99 (consumer services revenue declined 13.2%, or \$2.9 billion, in 2000). AT&T, for example, reports that recent reductions in consumer services revenues primarily are "due to a decline in traditional voice services, such as Domestic Dial 1, reflecting the ongoing competitive nature of the consumer long distance industry, which has resulted in pricing pressures and a loss of market share. Also negatively impacting revenue was product substitution and market migration away from direct-dial wireline and higher-priced calling-card services to rapidly growing wireless services and lower-priced prepaid-card services." AT&T predicts that competition and product substitution will continue to negatively impact its consumer services revenue. *Id.*

<sup>48</sup> *Contribution Further Notice* at para. 10.

<sup>49</sup> See *infra* discussion at paras. 18-30.

## A. Assessment of Universal Service Contributions

17. As described above, section 254 of the Act requires providers of “interstate telecommunications services” to contribute to universal service on an equitable and nondiscriminatory basis.<sup>50</sup> Thus, in establishing a universal service contribution methodology, the Commission must choose a way to measure the amount of interstate telecommunications services provided by each carrier, so that the Commission can equitably and nondiscriminatorily assess contributions. As previously mentioned, the Commission has chosen revenues to gauge the amount of interstate telecommunications service provided. Below, we seek comment on whether to continue using revenues as a measure of interstate telecommunications service and, if so, how to ensure that a revenues-based methodology remains consistent with the Act over time. We also seek comment on alternative ways to measure the amount of interstate telecommunications service provided, such as a flat “per-unit” assessment (e.g., a fixed monetary assessment per-line, per-account, etc.).<sup>51</sup> In commenting on the proposals outlined below, we ask parties to consider the universal service principles of the Act, as well as the burdens on contributors, consumers, the Commission, and USAC.

### 1. Assessment on a Revenue Basis

18. Under the current universal service rules, the interval between the reporting of gross-billed end-user revenues and the assessment of carrier contributions based on those revenues is approximately six months.<sup>52</sup> Although the Commission previously concluded that assessment based on gross-billed end-user telecommunications revenues is competitively neutral, easy to administer, and eliminates some economic distortions associated with an assessment methodology based on gross telecommunications revenues,<sup>53</sup> additional modifications to the current assessment methodology may be warranted in light of rapid changes in the telecommunications marketplace. We therefore seek comment on whether modifications should be made to the manner in which the Commission assesses universal service contributions.

19. We ask commenters to take a fresh look at how the universal service contribution system should operate, especially in light of changing market conditions. We seek comment on ways to simplify for carriers the assessment and recovery of universal service contributions. Commenters should put forth proposals that would satisfy the Act’s mandate of equitable and nondiscriminatory contributions, but also would perhaps decrease or streamline reporting requirements, or enable carriers to simplify the manner in which they calculate line-item fees. In order to relieve contributors from having to recover additional amounts over their assessed contributions in order to cover, for example, costs associated with uncollectibles and credits, we seek comment on whether universal service contributions should be based on revenues other than gross-billed end-user telecommunications revenues.

20. Some carriers have argued that the existing mechanism, which is based on historical revenues, may give competitive advantages to certain new entrants, while disadvantaging carriers with

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<sup>50</sup> See 47 U.S.C. § 254(e).

<sup>51</sup> We note that the Consumer Energy Council of America recently issued a report that addresses alternative methods for assessing universal service contributions. See The Consumer Energy Council of America, *Universal Service: Policy Issues for the 21<sup>st</sup> Century*, March 2001, at 23-27 (CECA Report).

<sup>52</sup> See *supra* discussion at para. 10.

<sup>53</sup> *Universal Service Order*, 12 FCC Rcd at 9206-09, paras. 844-50.

declining revenues.<sup>54</sup> In order to further reduce the interval between the reporting of revenues and the assessment of contributions, we seek comment on whether to assess universal service contributions based on current or projected revenues. As discussed above, the interval between the reporting of revenues and the assessment of carrier contributions based on those revenues is approximately six months.

21. We also seek comment on measures that should be taken to ensure that the current contribution methodology better reflects changing market conditions. We seek comment, for example, on whether to consider modifying the interim safe harbor for the reporting of interstate and international end-user revenues by wireless telecommunications providers. We also seek comment on whether to modify or eliminate the so-called *de minimis* exception, which exempts interstate telecommunications service providers whose annual universal service contribution is expected to be less than \$10,000 from contributing to the universal service mechanisms.<sup>55</sup> We seek comment on how to allocate revenues for bundled interstate and intrastate telecommunications and non-telecommunications services.<sup>56</sup> Parties also are encouraged to propose other modifications to the assessment of universal service contributions.

22. We specifically seek comment on a proposal to require carriers to contribute to the universal service mechanisms based on a percentage of their collected, instead of gross-billed, interstate and international end-user telecommunications revenues.<sup>57</sup> Each quarter, the Commission would calculate a percentage contribution factor, based either on projected or historical carrier end-user revenues reported to USAC either on a quarterly or annual basis.<sup>58</sup> Carriers then would be required to contribute, on a monthly basis, an amount equal to the percentage contribution factor multiplied by collected interstate and international end-user telecommunications revenue.<sup>59</sup> To enable the Commission to monitor compliance with the contribution rules and to enable carriers to ‘true-up’ contribution amounts, carriers might be required to report their collected revenues on a regular basis.

23. We seek comment on the relative advantages of this proposal over the current system for assessing contributions. We specifically seek comment on whether such a proposal would simplify the assessment and recovery of universal service contributions for carriers and consumers. Under the proposed mechanism, for example, carriers no longer would need to engage in complex calculations to account for such variables as uncollected revenues, credits, and the need to recover universal service contributions from a declining revenue base. Because the proposed methodology would be based on collected, as opposed to

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<sup>54</sup> See *supra* discussion at para. 14.

<sup>55</sup> See *infra* discussion at para. 31.

<sup>56</sup> See also *Bundling Order* at paras. 47-54 (providing options for allocating universal service reporting revenues for bundled telecommunications services and Customer Premises Equipment (CPE)/enhanced services).

<sup>57</sup> By “collected end-user” revenues we mean end-user revenues excluding uncollectibles and credits, but including revenues from the recovery of universal service contributions through the line-item. Carriers would continue to include pass-through charges, if any, as part of their reporting of collected end-user revenues. The carrier’s contribution base revenue, however, would equal collected end-user revenue divided by one plus the contribution rate. This, in effect, would impute pass-through charges for all carriers and would remove the imputed amounts from the carrier’s contributions base.

<sup>58</sup> See *infra* discussion of reporting requirements at paras. 37-38.

<sup>59</sup> Carriers might have the option of contributing based on actual collections or billed revenues less estimates of uncollectibles.

gross-billed revenues, it should eliminate a carrier's need to recover from customers amounts in addition to the assessed contribution percentage. We seek comment on whether the assessment of contributions based on a percentage of collected revenues would relieve carriers of the need to recover such additional amounts. Furthermore, because a carrier's assessment amount would be dependent on current collected revenues, rather than historical gross-billed revenues, the proposal would eliminate concerns about the interval between the reporting of revenues and the assessment of universal service contributions. The proposed mechanism therefore would not place carriers with declining interstate end-user telecommunications revenues at a competitive disadvantage to carriers with increasing revenues. We seek comment on this aspect of the proposal. We also ask commenters to generally address the issue of whether this proposal would satisfy the Act's requirement that mechanisms be sufficient and predictable.<sup>60</sup> We also seek comment on whether this proposal is competitively neutral.

24. If an assessment methodology based on a percentage of collected revenues is adopted, we seek comment on whether to continue using the Commission's interim safe harbor for calculating the percentage of interstate revenues for wireless telecommunications providers. As discussed above, the rules provide a safe harbor for wireless telecommunications providers when calculating the percentage of interstate revenues for universal service contribution purposes.<sup>61</sup> The Commission currently does not seek supporting data from cellular, broadband personal communications service (PCS), and certain types of Specialized Mobile Radio (SMR) providers<sup>62</sup> regarding their reported percentage of interstate telecommunications if they report at least 15 percent of their cellular, broadband PCS, and SMR telecommunications revenues as interstate.<sup>63</sup> The interim safe harbor percentages for paging providers and SMR providers that do not primarily provide wireless telephony are 12 percent and one percent, respectively.<sup>64</sup> Because wireless telecommunications providers increasingly are offering bundled local and long distance wireless services in a one-rate package, many consumers may be shifting their long distance calling from traditional wireline service to wireless service.<sup>65</sup> It is possible therefore that the actual percentage of interstate telecommunications may now significantly exceed the safe harbor percentages. We seek comment on whether to increase the safe harbor percentages and alternative methods for allocating

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<sup>60</sup> See 47 U.S.C. § 254(b)(5).

<sup>61</sup> See *Wireless Safe Harbor Order*, 13 FCC Rcd at 21257-60, paras. 10-15. The interim safe harbor for the reporting of revenues by wireless telecommunications providers was adopted in response to concerns raised by certain wireless telecommunications providers regarding difficulties associated with distinguishing between their interstate and intrastate revenues. *Id.* at 21254-58, paras. 5-12. The Commission concluded, at that time, that the interim safe harbor percentages reasonably approximated the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. *Id.* at 21257, para. 11. The safe harbor for cellular, broadband personal communications service (PCS), and certain types of Specialized Mobile Radio (SMR) providers, for example, approximated the nationwide average percentage of interstate wireline traffic. *Id.* at 21259, para. 13. The Commission emphasized that the safe harbor guidelines were adopted on an interim basis and sought comment on any needed changes to the safe harbor provisions. *Id.* at 21258, para. 12.

<sup>62</sup> The Commission currently does not seek supporting data from SMR providers that primarily provide wireless telephony rather than dispatch or other mobile services.

<sup>63</sup> *Id.* at 21258-59, para. 13.

<sup>64</sup> *Id.* at 21259-60, paras. 14-15.

<sup>65</sup> See *supra* discussion at para. 12.

interstate and intrastate revenues for wireless telecommunications providers. We also seek comment on whether all SMR providers should be subject to the same safe harbor percentage as cellular and broadband PCS providers. If an increase in the interim safe harbor percentage is proposed, we seek comment on what the new percentage should be.

## 2. Assessment on a Flat-Fee Basis

25. We also seek comment on a proposal to assess universal service contributions on a flat-fee basis, such as a per-line or per-account charge.<sup>66</sup> The Commission would calculate a flat per-line or per-account assessment on a quarterly basis using projected or historical line-counts or numbers of accounts reported to USAC either on a quarterly or annual basis.<sup>67</sup> Each month, carriers would be required to contribute on a flat-fee basis, based on the carriers' current line counts or number of accounts. The amount of the per-line or per-account charge would be the same regardless of the level of interstate revenue or traffic associated with a given line or account. We therefore seek comment on whether levels of interstate revenues are relevant in a flat-fee environment. To enable the Commission to monitor compliance with the contribution rules and to enable carriers to 'true-up' contribution amounts, carriers might be required to periodically report their line counts or number of accounts.

26. We seek comment on the relative advantages of assessing contributions on a flat-fee basis. We specifically seek comment on whether the assessment and recovery of contributions on a flat-fee basis would be simpler for carriers. Similar to the assessment of contributions based on a percentage of collected revenues, assessment on a flat-fee basis may eliminate the need for complex calculations to determine whether to recover amounts in addition to contribution assessments. If we adopted a methodology that required carriers to contribute based on their current line counts or number of accounts, the assessment of contributions on a flat-fee basis also may eliminate concerns associated with the existing mechanism's interval between the reporting of revenues and the assessment of universal service contributions. We expect that the proposed mechanism therefore would not place competitors with declining interstate end-user telecommunications revenues at a competitive disadvantage compared to competitors with increasing revenues. We seek comment on this proposal.

27. We seek comment on the extent to which a flat "per-unit" assessment would reduce the administrative burden for carriers by requiring them only to file line-counts or number of accounts by service and customer category and by relieving them of their obligation to periodically report their revenues. We seek comment on how frequently carriers should report their line or account information. We also seek comment on the administrative impact of a flat-fee assessment methodology on USAC as the administrator of the universal service fund.

28. We also seek comment on the resulting consumer benefits of a flat "per-unit" assessment. As discussed below, to the extent that we adopt carrier recovery limitations, carriers choosing to recover through line items on bills would have identical flat-fee line items on their bills.<sup>68</sup> We seek comment on whether a flat-fee assessment would result in more equitable recovery of universal service contributions because all carriers would have the same line-item amount across the board. To the extent that the flat-fee assessment is reflected as a line item on customer bills, we also seek comment on whether this methodology

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<sup>66</sup> See, e.g., *CECA Report* at 26.

<sup>67</sup> See *infra* discussion of reporting requirements at paras. 37-38.

<sup>68</sup> See *infra* discussion at para. 42.

would make it easier for consumers to compare carrier rates.

29. We additionally seek comment on whether there are any disadvantages to this proposal. We note, for example, that unlike a revenues-based assessment methodology, a flat per-line or per-account assessment methodology would not be usage based. Customers would be charged the same amount regardless of the overall size of their bill. We seek comment on whether this proposal might shift a disproportionate share of the carrier's universal service contributions to certain customers or classes of customers, such as low-volume users.<sup>69</sup> Furthermore, the Commission previously decided not to adopt proposals to calculate universal service contributions entirely on non-revenues-based measures, such as on a flat-fee basis.<sup>70</sup> The Commission expressed concern that a non-revenues-based approach may not be competitively neutral because it may inadvertently favor certain services or providers over others.<sup>71</sup> We therefore seek comment on whether such a proposed methodology would be competitively neutral in today's marketplace.

30. In order to address some of these competitive concerns, we also seek comment on how a flat "per-unit" assessment should be calculated and whether such assessment should vary for different types of lines and different types of users.<sup>72</sup> In particular, we seek comment on whether there should be different flat-fee assessments for residential subscribers (primary and secondary lines), single-line businesses, and multi-line businesses. We seek comment on how flat fees should be assessed when there is more than one provider associated with a particular line, such as a local service provider and a presubscribed interexchange carrier. We also seek comment on whether there should be different assessments for different types of service offerings, and how those categories should be defined. Finally, we seek comment on whether there should be different assessments for different types of service providers, such as wireline and wireless telecommunications providers, or subcategories of providers such as paging providers. Commenters should address whether treating different categories of customers differently will perpetuate or exacerbate any problems that may have arisen under the traditional approach of pricing local services differently based on the category of customer. In particular, we seek comment on whether treating different customers differently would be consistent with the Commission's universal service, access, and other pro-competitive reforms.

### 3. *De Minimis* Carriers

31. We seek comment on the impact of these proposals on the current *de minimis* exemption to the universal service contribution requirement. Under section 54.708 of the Commission's rules, interstate telecommunications service providers whose annual universal service contribution is expected to be less than \$10,000 are not required to contribute to the universal service mechanisms.<sup>73</sup> In support of the *de*

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<sup>69</sup> See *infra* proposal to prohibit the recovery of universal service contributions from Lifeline customers at para. 45.

<sup>70</sup> See *Universal Service Order*, 12 FCC Rcd at 9210, para. 852.

<sup>71</sup> See *id.*

<sup>72</sup> See *CECA Report* at 26.

<sup>73</sup> See 47 C.F.R. § 54.708. Section 254(d) of the Act states that the Commission may exempt a carrier or class of carriers from contributing to the universal service mechanisms "if the carrier's contribution to the preservation and advancement of universal service would be *de minimis*." See 47 U.S.C. § 254(d).

*minimis* exemption, the Commission concluded that compliance costs associated with contributing to the universal service mechanisms should not exceed contribution amounts.<sup>74</sup> To the extent that the administrative costs of contributing to the universal service mechanisms have declined over time, we seek comment on whether the *de minimis* exemption should be modified or eliminated. In particular, we seek comment from *de minimis* carriers on the administrative burdens associated with requiring them to contribute to the universal service mechanisms. We request comment from USAC on the administrative burdens associated with processing additional filings from *de minimis* carriers. We also seek comment on whether and how carriers should true-up contribution amounts to reflect changes in their *de minimis* status during the relevant reporting period.

#### 4. Limited International Revenues Exception

32. We also seek comment on whether to modify the limited exception to our contribution requirements for carriers with a low percentage of interstate end-user telecommunications revenues. Under section 54.706(c) of our rules, a provider of interstate and international telecommunications is not required to contribute based on its international telecommunications end-user revenues if its interstate end-user telecommunications revenues constitute less than eight percent of its combined interstate and international end-user telecommunications revenues.<sup>75</sup> The rule is intended to exclude from the contribution base the international end-user telecommunications revenues of any telecommunications provider whose annual contribution, based on the provider's interstate and international end-user telecommunications revenues, would exceed the amount of the provider's interstate end-user telecommunications revenues.<sup>76</sup> When the rule was implemented in November 1999, the universal service contribution factor was 5.8995 percent,<sup>77</sup> and the Commission anticipated that the universal service contribution factor would not exceed eight percent in the near future.<sup>78</sup> As discussed previously, the Commission recently established a universal service contribution factor of 6.8823 percent.<sup>79</sup> We therefore seek comment on whether to increase the percentage threshold for carriers to qualify for the limited international revenue exception to our universal service contribution requirements. We also seek comment on whether and how to modify the limited

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<sup>74</sup> See *Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5465, para. 295 (1997).

<sup>75</sup> See 47 C.F.R. § 54.706(c); see also *Federal-State Joint Board on Universal Service, Access Charge Reform*, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 94-45, Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679-80, 1687, para. 19 (1999). The Commission concluded that the rule is consistent with the determination of the United States Court of Appeals for the Fifth Circuit that requiring a carrier to pay more universal service contributions than it derives from interstate revenues violates the requirement in section 254(d) of the Act that universal service contributions be equitable and nondiscriminatory. See *id.* (citing *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 434-35).

<sup>76</sup> *Id.*

<sup>77</sup> See *Proposed Fourth Quarter 1999 Universal Service Contribution Factor for November and December 1999*, CC Docket No. 96-45, Public Notice, DA 99-2109 (rel. Oct. 8, 1999).

<sup>78</sup> *Id.*

<sup>79</sup> See *Proposed Second Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 01-614 (rel. Mar. 9, 2001).

international revenue exception if we adopt a proposal to assess contributions on a flat-fee basis. We specifically seek comment from carriers with a low percentage of interstate end-user telecommunications revenues.

## 5. Fund Sufficiency

33. We seek comment on ways to ensure fund sufficiency under the proposed assessment methodologies. The current assessment methodology, which uses historical revenue data from a prior quarter, does not raise significant fund sufficiency issues because the Commission knows the exact amount of the revenue base when it calculates carrier contribution assessments.<sup>80</sup> The streamlined assessment proposals would require the Commission to calculate the quarterly contribution factor based on an estimate of universal service funding requirements (as it does now) and an estimate of collected revenues, line counts, or accounts in the next quarter. Because the Commission cannot predict with complete accuracy the collected revenues, line counts, or accounts in each quarter, the proposals create the possibility, however remote, of an occasional shortfall in the universal service fund. We seek comment on which of these approaches, a revenues-based proposal or a flat-fee proposal, is more likely to result in a shortfall in the fund, and on the likely magnitude of a shortfall. We emphasize that commenters should address the issue of whether these proposals would satisfy the Act's requirement that universal service mechanisms be sufficient and predictable.<sup>81</sup>

34. We ask commenters to address whether a reserve should be established to guard against an unexpected shortfall in the fund that may result if Commission estimates are not correct. To the extent that a reserve fund is appropriate, we seek detailed comment on the appropriate size of such a reserve, factors impacting its size, and how a reserve fund should be collected and maintained.

35. We also seek comment on an alternative method to ensure fund sufficiency that would not require the creation of a reserve fund. Currently, USAC allocates collected contributions into separate accounts for the different universal service mechanisms (i.e., High-Cost, Low-Income, Schools and Libraries, and Rural Health Care). In the event of a shortfall in a particular account, we seek comment on a proposal to cover the shortfall using available funds from a different mechanism's account. We ask for comment on whether this alternative would be appropriate or useful and whether a reserve fund might still be necessary.

36. We also seek comment on the methodology the Commission should use, for purposes of establishing a quarterly contribution factor, to estimate collected revenues, line counts, or accounts. For example, we seek comment whether estimates of collected revenues, line counts, or accounts should be based on historical data or trends from prior periods or on future projections. As an alternative to the Commission estimating carrier revenues, line counts, or accounts, we seek comment on whether to require carriers to submit annual and/or quarterly estimates of their collected interstate and international end-user revenues, line counts, or accounts, which would serve as the basis for quarterly assessments. We seek comment on the advantages and/or disadvantages of basing quarterly assessments on the carriers' own estimates as opposed to the Commission's estimates.

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<sup>80</sup> We note that there still are fund sufficiency issues under the current assessment methodology when, for example, carriers are delinquent on their debts to USAC.

<sup>81</sup> See 47 U.S.C. § 254(b)(5).

## 6. Carrier Reporting

37. We seek comment on whether and how these proposals would reduce existing carrier reporting requirements. Under the revised methodology we recently adopted, carriers will report their gross-billed end-user telecommunications revenues on a quarterly basis in FCC Form 499-Q, and on an annual basis in FCC Form 499-A.<sup>82</sup> We seek comment on whether carrier reporting requirements should be modified consistent with these proposals, and on the administrative burdens such changes would impose on carriers. In particular, we seek comment on whether carriers should report their collected revenues, line counts, or number of accounts on a quarterly and/or annual basis. We additionally seek comment on the administrative burdens associated with requiring carriers to submit quarterly and/or annual reports of their projected or historical collected revenues, line counts, or number of accounts. Where possible, commenters, especially small businesses, should quantify the costs and benefits of various approaches. We also seek comment on whether USAC should use the data submitted by carriers on a quarterly and/or annual basis to perform true-ups on contributions.

38. We further note that the revenue information currently reported in FCC Form 499-A also is used for the Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs.<sup>83</sup> Any changes to the information submitted in FCC Form 499-A could impact these other programs. We seek comment on such impact, as well as proposals to minimize this impact. Commenters should address whether changes in information submitted would be inconsistent with any statutory or other requirements for these non-universal service programs.

## 7. Enforcement & Auditing

39. Commenters are invited to address whether we should require additional steps to ensure that, under the measures proposed herein, carriers accurately report the relevant information and contribute in a timely manner. For example, we seek comment on whether USAC should have additional oversight responsibilities to monitor carrier compliance with reporting and contribution requirements. In addition, we seek comment on proposals that would minimize the potential for carrier gaming and on the extent to which fund sufficiency could be affected by a carrier's ability to underreport in the early months of a reporting period in order to reduce current contribution obligations.<sup>84</sup>

## 8. Administrative Burdens on USAC

40. We additionally seek comment on the administrative burdens associated with modifying the current mechanism for assessing universal service contributions. In particular, we ask USAC to quantify the administrative burdens associated with the above-described proposals. For example, we seek comment from USAC on the administrative costs associated with carrier reporting obligations under the proposed

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<sup>82</sup> See *supra* para. 10; see also *Quarterly Reporting Order* at paras. 10-15.

<sup>83</sup> Carriers currently report this information on the FCC Form 499-A.

<sup>84</sup> Because the assessment of universal service contributions currently is based on gross-billed revenues reported on a quarterly basis and because the contribution factor changes from quarter to quarter, carriers may have an incentive under our current contribution methodology to underreport revenues in one quarter and overreport revenues in another quarter in order to minimize contribution obligations. We note, however, that such underreporting does not result in a fund shortfall because the same revenue base is used to calculate the contribution factor and assess contributions.

assessment methodologies. We also ask USAC to comment on the costs associated with ensuring that carriers accurately report revenues, lines, or accounts and contribute in a timely manner.

## 9. Transition

41. We also seek comment on how to transition from the existing contribution assessment methodology to the proposed regimes. In particular, we ask commenters to address the timing of such transitions, including when carriers should be required to begin contributing to the universal service mechanisms under the new regime, and how to “close-out” the assessment of contributions under the existing methodology.

### B. Recovery of Universal Service Contributions

42. To ensure that carrier recovery of universal service contributions remains within the bounds of reasonableness as prescribed by sections 201 and 202 of the Act,<sup>85</sup> we also propose to limit the flexibility previously afforded carriers in the recovery of universal service obligations. Under our proposal, carriers would still have flexibility to recover their universal service contributions from end users, should they choose to do so, either through rates or through a line-item or “surcharge” on end user bills. If a carrier chooses to recover its contributions through a line-item charge on customer bills, however, we propose to require carriers to do so through a uniform line-item that corresponds to the prescribed percentage, per-line, or per-account assessment established by the Commission on a quarterly basis. To the extent that the line item appears on customer bills, carriers would be required to impose the line item on a uniform basis. We further propose to require carriers to describe the line item on customers’ bills as the “Federal Universal Service Charge.”<sup>86</sup> Carriers would not be permitted to represent any other line item on end-user customer bills as a federal universal service charge.

43. We seek comment on the relative advantages of this proposal over our current rules regarding the recovery of universal service contributions. In particular, we invite commenters to address whether the uniform line-item would benefit consumers by requiring carriers that choose to pass the costs of their contributions on to customers as a line-item to do so in a uniform manner. We also invite commenters to address whether this recovery approach will prevent carriers from recovering through the line item more than the carriers’ universal service contribution obligations deriving from that customer. We additionally ask commenters to address whether the proposal will result in bills that are simpler and easier to understand. We particularly seek comment from consumer groups on the benefits of this proposal.

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<sup>85</sup> See *supra* discussion at para. 7.

<sup>86</sup> In the truth-in-billing proceeding, the Commission adopted a guideline requiring carriers to use clear, standardized labels on telephone bills to refer to line-item charges associated with federal regulatory action. *Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, 14 FCC Rcd 7492, 7522-33, paras. 49-64 (1999) (*TIB Order and FNPRM*), *reconsideration granted in part*, Order on Reconsideration, 15 FCC Rcd 6023 (2000), Errata, 15 FCC Rcd 16544 (Com. Car. Bur. 2000). The Commission adopted truth-in-billing principles and guidelines to improve consumers’ understanding of their telephone bills. We note that, in the *TIB Order and FNPRM*, the Commission sought comment on specific standard labels to be used on bills when referring to various line-item charges relating to federal regulatory action, including local number portability and subscriber line charges, in addition to charges attributed to the universal service fund. *TIB Order and FNPRM*, 14 FCC Rcd at 7537, para. 71.

44. We also seek comment on whether there are any disadvantages to requiring carriers that recover universal service contributions through a line-item on customer bills to do so through a uniform line-item that corresponds to the prescribed assessment amount. We particularly seek comment from carriers on whether this proposal imposes any costs and whether these costs outweigh the benefits. We also seek comment on whether our proposed recovery limitation would unnecessarily reduce carriers' pricing flexibility, resulting in fewer options for consumers.<sup>87</sup>

### 1. Lifeline Exception

45. We also seek comment on whether all carriers should be prohibited from recovering universal service contributions from Lifeline customers.<sup>88</sup> The Commission's Lifeline support program is designed to increase subscribership by reducing qualifying low-income consumers' monthly basic local service charges.<sup>89</sup> Under current rules, price cap LECs may not recover universal service contributions from Lifeline customers.<sup>90</sup> Under this proposal, however, all carriers would be prohibited from recovering universal service contributions from low-income consumers receiving Lifeline discounts, but would continue to be permitted to recover contributions from other low-income and/or low-volume consumers. We seek comment on whether this proposal would address concerns that a flat-fee assessment methodology might shift a disproportionate share of carriers' universal service contributions to low-volume users, who may also be low-income customers, or whether additional action is needed. We seek comment on whether prohibiting recovery of universal service contributions from Lifeline customers is consistent with statutes and regulations governing the assessment and recovery of universal service contributions. In particular, we invite comment on whether this proposal will promote equitable and nondiscriminatory universal service contributions.<sup>91</sup> We also seek comment on whether this proposal would increase the likelihood of a shortfall in the fund, and, if so, how to minimize the likelihood of such a fund shortfall. For example, we seek comment on whether to exclude Lifeline customer revenues, lines, or accounts from the contribution base. We seek comment on whether to require carriers to separately report their Lifeline customer revenues, lines, or accounts in their reports to USAC, and on any administrative burdens that such a requirement would impose on carriers and USAC.<sup>92</sup> We also invite comment on whether non-LECs would be able identify Lifeline customer revenues, lines, or accounts. To the extent that non-LECs may be unable to identify Lifeline customer revenues, lines, or accounts, we seek comment on whether to only extend this

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<sup>87</sup> As discussed in paragraph 49 *infra*, the Commission has previously expressed concern about limiting carriers' pricing flexibility.

<sup>88</sup> See 47 C.F.R. §§ 54.401, 54.403 (describing Lifeline program).

<sup>89</sup> See *Universal Service Order*, 12 FCC Rcd at 8952-53, para. 329. Lifeline customer eligibility criteria are outlined in section 54.409 of our rules. See 47 C.F.R. § 54.409.

<sup>90</sup> See 47 C.F.R. § 69.158; see also *Access Charge Reform*, Sixth Report and Order in CC Docket No. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193, at paras. 218-220 (rel. May 31, 2000) (*Interstate Access Universal Service Order*).

<sup>91</sup> See 47 C.F.R. § 254(d).

<sup>92</sup> See *supra* discussion of carrier reporting requirements at paras. 37-38.

requirement to non-price cap LEC providers of services to Lifeline customers.<sup>93</sup> We additionally ask commenters to describe how carriers that recover universal service contributions from end-users through their rates would exclude such contributions from Lifeline customer rates. We ask commenters to address any other administrative burdens associated with this proposal. Finally, we seek comment on other proposals that would ensure that low-income customers would not be unfairly burdened under our contribution and recovery proposals.

## 2. Recovery Limitations for Incumbent Local Exchange Carriers

46. We also seek comment on the impact of our proposed recovery limitation on existing guidelines governing incumbent LEC recovery of universal service contributions.<sup>94</sup> Rate-of-return incumbent LECs are permitted to recover universal service contributions through access charges or through end-user charges.<sup>95</sup> The Commission recently adopted separate rules governing price cap LEC recovery of universal service contributions.<sup>96</sup> If a price cap LEC recovers some or all of its universal service contributions, the price cap LEC shall recover those contributions through a charge to end users other than Lifeline users.<sup>97</sup> Price cap LECs may recover this rate element on a per-line basis or as a percentage of interstate end-user revenues, and, at the option of the carrier, it may be combined for billing purposes with other end-user rate elements.<sup>98</sup> We recently sought comment on whether to impose similar requirements on rate-of-return LECs.<sup>99</sup> We therefore seek comment on whether any new recovery limitation should apply to incumbent LECs.

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<sup>93</sup> See 47 C.F.R. § 54.405 (obligating eligible telecommunications carrier to offer Lifeline services). As discussed above, price cap LECs already are prohibited from recovering universal service contributions from Lifeline customers.

<sup>94</sup> See *supra* discussion at n. 5.

<sup>95</sup> See *Universal Service Remand Order*, 15 FCC Rcd at 1693, para. 33.

<sup>96</sup> See *Access Charge Reform*, Sixth Report and Order in CC Docket No. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193, at para. 218-220 (rel. May 31, 2000) (*Interstate Access Universal Service Order*).

<sup>97</sup> See 47 C.F.R. § 69.158.

<sup>98</sup> *Id.*

<sup>99</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Notice of Proposed Rulemaking, FCC 00-448, at para. 18 (rel. Jan. 5, 2001) (“Should we adopt a provision similar to that included in the *CALLS Order* for recovery of universal service contributions through a separate rate element or line item?”). We additionally note that the United States Court of Appeals for the Fifth Circuit recently held that, under section 254(e) of the Act, the Commission may not permit incumbent LECs to recover implicit universal service subsidies through interstate access charges. See *Comsat Corp., et al. v. FCC*, No. 00-60044, at 22 (5<sup>th</sup> Cir. May 3, 2001).

### 3. Legal Authority

47. We seek comment on our authority to impose these constraints on carriers' recovery of universal service contributions from their customers. We seek comment on whether sections 4(i), 201, 202, and 254 of the Act provide sufficient authority to adopt these proposals.<sup>100</sup> We also ask commenters to address whether these proposals raise First Amendment or other constitutional concerns, and, if so, how we should address those concerns? Would these proposals be consistent with the Commission's other policies and regulations, including the Commission's goals of promoting competition, deregulation, innovation, and universal service?

48. We specifically invite commenters to address whether the recovery limitation proposal described above is consistent with the requirements of section 254(d) of the Act, including the requirement that "[e]very telecommunications carrier" contribute to the federal universal service mechanisms.<sup>101</sup> We believe that the modifications to the recovery of universal service contributions that we propose today are consistent with section 254(d) of the Act. Under the proposal, the obligation to contribute to universal service would remain with providers of interstate telecommunications services, as the statute envisions. The requirement that carriers impose a uniform prescribed line-item on customer phone bills would only be triggered if the carrier chose to pass its contribution costs through to its customers as a line item.

49. We believe that our proposal to limit recovery is distinguishable from the mandatory end-user surcharge that was rejected by the Commission in the *Universal Service Order*. In the 1997 *Universal Service Order*, the Commission declined to adopt a mandatory end-user surcharge to collect contributions to the universal service support mechanisms.<sup>102</sup> The Commission agreed with the state members of the Joint Board that a mandatory end-user surcharge "would dictate how carriers recover their contribution obligations and would violate Congress's mandate."<sup>103</sup> At that time, the Commission was concerned that mandating recovery through an end-user surcharge might affect carriers' pricing flexibility, resulting in fewer options for consumers.<sup>104</sup> The Commission also stated that "an end-user surcharge is not necessary to ensure that contributions be explicit."<sup>105</sup> As explained above, we are not proposing to mandate that carriers recover their universal service contributions through an end-user surcharge. Rather, should a carrier elect to recover its contributions directly from its customers in the form of a line item on the bill, we would merely limit the amount, and the labeling, of the line item.<sup>106</sup> Carriers would retain the flexibility to

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<sup>100</sup> See 47 U.S.C. §§ 154(i), 201, 202, 254.

<sup>101</sup> 47 U.S.C. § 254(d).

<sup>102</sup> See *Universal Service Order*, 12 FCC Rcd at 9210, para. 853 ("we agree with the Joint Board and reject commenters' suggestions that the Commission mandate that carrier recover contributions through an end-user surcharge").

<sup>103</sup> See *id.*

<sup>104</sup> See *id.*

<sup>105</sup> See *id.* at 9211, para. 854.

<sup>106</sup> In the truth-in-billing proceeding, the Commission adopted guidelines requiring carriers to provide full and non-misleading descriptions of line-item charges on telephone bills. See *TIB Order and FNPRM*, 14 FCC Rcd at 7522-7533, paras. 49-64. The Commission focused primarily on three types of line-item charges that result from federal regulatory action: (1) universal service-related fees; (2) subscriber line charges; and (3) local number portability charges. See *id.* at 7523-25, paras. 51-52.

recover their universal service contributions through their rate structure.<sup>107</sup>

#### IV. PROCEDURAL ISSUES

##### A. Ex Parte

50. This 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>108</sup>

##### B. Initial Paperwork Reduction Act of 1995 Analysis

51. This Notice contains either a proposed or modified information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due 60 days from the date of publication of this Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

##### C. Initial Regulatory Flexibility Act Analysis

52. As required by the Regulatory Flexibility Act (RFA),<sup>109</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. 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 Notice provided below in section IV.D. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>110</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>111</sup>

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<sup>107</sup> See *supra*, para. 40. See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Second Recommended Decision, 13 FCC Rcd 24744, 24771-72, paras. 69-70 (Jt. Bd. 1998).

<sup>108</sup> See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

<sup>109</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been 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>110</sup> See 5 U.S.C. § 603(a).

<sup>111</sup> See *id.*

## 1. Need for and Objectives of the Proposed Rules

53. The Commission seeks comment in this Notice as a part of its implementation of the Act's mandate that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."<sup>112</sup> Specifically, we seek comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers.<sup>113</sup> We seek comment on whether and how to revise the universal service contribution methodology. We seek comment on specific proposals to require carriers to contribute based on a percentage of collected revenues, or to contribute on the basis of a flat-fee charge, such as a per-line charge. Additionally, we seek comment on limiting the manner in which carriers recover contribution costs from end users. If carriers choose to recover universal service contributions from their end users through line items, we propose to require carriers to do so through a uniform universal service line item that corresponds to the contribution assessment on the carrier.

## 2. Legal Basis

54. The legal basis as proposed for this Notice is contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 4(i), 4(j), 201-205, 254, 403.

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

55. The Commission's contributor reporting requirements apply to a wide range of entities, including all telecommunications carriers and other providers of interstate telecommunications services that offer telecommunications services for a fee.<sup>114</sup> Thus, we expect that the rules adopted in this proceeding could have a significant economic impact on a substantial number of small entities. Of the estimated 5,000 filers of the Telecommunications Reporting Worksheet, FCC Form 499, we do not know how many are small entities, but we offer below a detailed estimate of the number of small entities within each of several major carrier-type categories.

56. To estimate the number of small entities that could be affected by these proposed rules, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small

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<sup>112</sup> 47 U.S.C. § 254(d). *See also* 47 U.S.C. § 254(b)(4),(5) (Commission policy on universal service shall be based, in part, on the principles that contributions should be equitable and nondiscriminatory, and support mechanisms should be specific, predictable, and sufficient).

<sup>113</sup> *See supra* discussion at paras. 2-3.

<sup>114</sup> 47 C.F.R. §§ 52.17 (applying to all telecommunications carriers), 54.703 (applying to every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and certain payphone providers), and 64.604(c)(4)(iii)(A) (applying to every carrier providing interstate telecommunications services). We note that the Commission's rules for universal service exempt certain small contributors, i.e., contributors that have revenue below a stated threshold. 47 C.F.R. § 54.705.

governmental jurisdiction.”<sup>115</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>116</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>117</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>118</sup>

57. 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>119</sup> We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

58. 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>120</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>121</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

59. The most reliable source of information regarding the total numbers of common carrier

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<sup>115</sup> 5 U.S.C. § 601(6).

<sup>116</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>117</sup> Small Business Act, 15 U.S.C. § 632.

<sup>118</sup> 5 U.S.C. § 601(4).

<sup>119</sup> 13 C.F.R. § 121.201. Categories 4812 and 4813 have recently been reclassified as NAICS codes 513321, 513322, 51331, and 51334.

<sup>120</sup> 5 U.S.C. § 601(3).

<sup>121</sup> Letter from Jere W. Glover, SBA, to Chmn. William E. Kennard, FCC, dated 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. See, *e.g.*, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Trends in Telephone Service* report.<sup>122</sup> According to data in the most recent report, there are 4,822 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

60. *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>123</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>124</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, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

61. *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>125</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>126</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 rules adopted in this Order.

62. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers,*

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<sup>122</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (December 2000) (*Trends Report*).

<sup>123</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>124</sup> 15 U.S.C. § 632(a)(1).

<sup>125</sup> 1992 Census, *supra*, at Firm Size 1-123.

<sup>126</sup> 13 C.F.R. § 121.201, SIC Code 4813.

*Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>127</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 on the Form 499-A. According to our most recent data, there are 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers and 541 resellers.<sup>128</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 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers that may be affected by the decisions and rules adopted in this Order.

63. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>129</sup> According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.<sup>130</sup> Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends Report*, 806 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.<sup>131</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 806 small cellular service carriers that may be affected by the proposed rules, if adopted.

64. *220 MHz Radio Service -- Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more

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<sup>127</sup> 13 C.F.R. § 121.210, SIC Code 4813.

<sup>128</sup> See *Trends Report* at Table 16.3. The total for resellers includes both toll resellers and local resellers. The category for CAPs also includes competitive local exchange carriers (CLECs) (total of 129 for both).

<sup>129</sup> 13 CFR 121.201, SIC code 4812.

<sup>130</sup> 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

<sup>131</sup> *Trends Report*, Table 16.3.

than 1,500 persons.<sup>132</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>133</sup> If this general ratio continues in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

65. *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 and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>134</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. 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>135</sup> The SBA has approved these definitions.<sup>136</sup> An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>137</sup> Two auctions of Phase II licenses have been conducted. In the first auction, nine hundred and eight (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. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>138</sup>

66. *Private and Common Carrier Paging.* In the *Paging 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>139</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

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<sup>132</sup> 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

<sup>133</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>134</sup> 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291- 295 (1997).

<sup>135</sup> 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, para. 291.

<sup>136</sup> See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

<sup>137</sup> See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecommunications Bureau, October 23, 1998).

<sup>138</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>139</sup> 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paragraph 291-295 (1997).

that are not more than \$3 million for the preceding three years.<sup>140</sup> The SBA has approved these definitions.<sup>141</sup> An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000.<sup>142</sup> Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends Report*, 427 carriers reported that they were engaged in the provision of paging and messaging services.<sup>143</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 427 small paging carriers that may be affected by the decisions and rules adopted in this Order. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

67. *Broadband Personal Communications Service (PCS)*. The broadband PCS spectrum is divided into six frequency 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>144</sup> For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>145</sup> These regulations defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.<sup>146</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.<sup>147</sup> On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as

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<sup>140</sup> *220 MHz Third Report and Order*, 12 FCC Rcd 11068-69, at paragraph 291 (1997).

<sup>141</sup> See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (January 6, 1998).

<sup>142</sup> See generally Public Notice, “220 MHz Service Auction Closes,” Report No. WT 98-36 (Wireless Telecommunications Bureau (October 23, 1998).

<sup>143</sup> *Trends Report*, Table 16.3.

<sup>144</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 Sections 57-60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); see also 47 CFR § 24.720(b).

<sup>145</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 Sections 60 (released June 24, 1996), 61 FR 33859 (July 1, 1996)

<sup>146</sup> See, e.g., 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>147</sup> FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

68. *Narrowband PCS.* To date, two auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of \$40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*.<sup>148</sup> A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. These definitions have been approved by the SBA. In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

69. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>149</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>150</sup> We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>151</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

70. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.<sup>152</sup> We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>153</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of

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<sup>148</sup> In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92-100, Docket No. PP 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 15 FCC Rcd 10456 (2000).

<sup>149</sup> The service is defined in section 22.99 of the Commission's Rules, 47 CFR § 22.99.

<sup>150</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR §§ 22.757, 22.759.

<sup>151</sup> 13 CFR 121.201, SIC code 4812.

<sup>152</sup> The service is defined in section 22.99 of the Commission's Rules, 47 CFR § 22.99.

<sup>153</sup> 13 CFR 121.201, SIC code 4812.

them qualify as small under the SBA definition.

71. *Specialized Mobile Radio (SMR)*. Pursuant to 47 CFR Section 90.814(b)(1), the Commission has defined “small business” for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of \$15 million or less in the three preceding calendar years.<sup>154</sup> The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the \$15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 EA licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

72. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

73. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

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

74. Any decisions on rule changes adopted in this proceeding potentially could modify the reporting and recordkeeping requirements of telecommunications service providers regulated under the Communications Act. As discussed previously, we potentially could require telecommunications service providers to file additional and/or different monthly or quarterly reports.<sup>155</sup> In addition, we seek comment on whether to modify or eliminate the interim safe harbor for wireless telecommunications carriers.<sup>156</sup> We also seek comment on whether to eliminate the *de minimis* exemption from universal service contribution requirements.<sup>157</sup> Any such reporting requirements potentially could require the use of professional skills, including legal and accounting expertise. Without more data, we cannot accurately estimate the cost of compliance with a carrier surcharge by small telecommunications service providers. In this Notice, we

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<sup>154</sup> 47 CFR § 90.814(b)(1).

<sup>155</sup> See *supra* discussion at paras. 37-38.

<sup>156</sup> See *supra* discussion at paras. 24.

<sup>157</sup> See *supra* discussion at para. 31.

therefore seek comment on the frequency with which carriers subject to a carrier surcharge should submit reports to USAC, the types of burdens carriers will face in periodically submitting reports to USAC, and whether the costs of such reporting are outweighed by the potential benefits of a carrier surcharge. Entities, especially small businesses, are encouraged quantify the costs and benefits of carrier surcharge reporting requirement proposals.

## 5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

75. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>158</sup>

76. As discussed previously, this Notice seeks comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers.<sup>159</sup> We seek comment on whether and how to revise the universal service contribution methodology. We seek comment on specific proposals to require carriers to contribute based on a percentage of collected revenues, or to contribute on the basis of a flat-fee charge, such as a per-line charge. Additionally, we seek comment on limiting the manner in which carriers recover contribution costs from end users. If carriers choose to recover universal service contributions from their end users through line items, we propose to require carriers to do so through a uniform universal service line item that corresponds to the contribution assessment on the carrier. The Notice also seeks comment on any other mechanisms for the assessment and recovery of universal service contributions.

77. Wherever possible, the Notice proposes general rules, or alternative rules to reduce the administrative burden and cost of compliance for small telecommunications service providers. As discussed above, under the current universal service contribution rules interstate telecommunications service providers whose annual universal service contribution is expected to be less than \$10,000 are not required to contribute to the universal service mechanisms.<sup>160</sup> In this Notice, we seek comment on the impact of the proposed contribution assessment methodologies on the current *de minimis* exemption to the universal service contribution requirement. We specifically seek comment on whether to retain, modify, or eliminate the *de minimis* exemption. We also more generally seek comment from small businesses on the costs and benefits of reporting requirements associated with the various proposed universal service assessment methodologies.<sup>161</sup> Finally, the Notice seeks comment on measures to avoid significant economic impact on small business entities, as defined by section 601(3) of the Regulatory Flexibility Act.

## 6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed

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<sup>158</sup> 5 U.S.C. § 603(c).

<sup>159</sup> See *supra* discussion at paras. 2-3.

<sup>160</sup> See *supra* discussion at para. 31; see also 47 C.F.R. § 54.708.

<sup>161</sup> See *supra* discussion at para. 37.

**Rules.**

78. None.

**D. Comment Filing Procedures**

79. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments 30 days or fewer from publication in the Federal Register, and reply comments 45 days or fewer from publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.<sup>162</sup>

80. 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 comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

81. 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 appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

82. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Sheryl Todd, Accounting Policy Division, 445 12th Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case 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 pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

83. Written comments by the public on the proposed and/or modified information collections are due on or before thirty days after the date of publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov) and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C. 20503.

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<sup>162</sup> See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

**V. ORDERING CLAUSES**

84. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403, this Notice of Proposed Rulemaking IS ADOPTED.

85. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

**SEPARATE STATEMENT OF  
COMMISSIONER SUSAN NESS**

*Re: Federal-State Joint Board on Universal Service (CC Docket No. 96-45)*

I support initiating this proceeding to revisit the manner in which carriers contribute to the universal service mechanisms. Periodic reviews can ensure not only that the universal service programs are meeting their critical objectives, but also that we fund the mechanisms in a manner that is fair and understandable for consumers, as well as simple for carriers to implement.

I write separately to urge the Commission to incorporate the input of the Joint Board into the decision-making process as we move forward with this and other universal service proceedings. A continuing dialogue with our state colleagues is vital as the Commission works through issues affecting universal service.