Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

TWENTIETH ORDER ON RECONSIDERATION

Adopted: April 6, 2000 Released: April 7, 2000

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

I. INTRODUCTION

1. In this Order, we clarify certain aspects of the new high-cost universal service support mechanism for non-rural carriers adopted in the *Ninth Report and Order* on October 21, 1999.[1] Specifically, we clarify the method by which quarterly line count data will be incorporated in the new high-cost mechanism for purposes of calculating and targeting support amounts.[2] We also clarify that, until the Commission adopts new line count input values, forward-looking costs for universal service support purposes shall be estimated using the line count input values adopted in the *Tenth Report and Order*.[3] This clarification does not alter the methodology adopted in the *Ninth Report and Order* except to account for line growth when the wire center line count data reported quarterly by the carriers differs from the input values used to estimate forward-looking cost. Finally, we clarify that high-cost support shall be available on a regular quarterly basis for competitive eligible telecommunications carriers serving lines in areas served by non-rural incumbent local exchange carriers.

II. BACKGROUND

2. <u>New High-Cost Mechanism.</u> On October 21, 1999, the Commission adopted two orders completing its implementation plans for a new high-cost universal service support

[1] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306 (rel. Nov. 2, 1999) (*Ninth Report and Order*).

[2] The distribution of forward-looking support and the targeting of hold-harmless support were deferred until the third quarter of 2000. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Nineteenth Order on Reconsideration, FCC 99-396 (rel. Dec. 17, 1999) (*Nineteenth Reconsideration Order*).

[3] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Tenth Report and Order, FCC 99-304 (rel. Nov. 2, 1999) (*Tenth Report and Order*).

mechanism for non-rural carriers.[4] The new mechanism is based on the forward-looking economic cost of providing the services eligible for support,[5] as determined by the Commission's cost model.[6] The forward-looking support mechanism takes the costs generated by the cost model, compares them to a national benchmark, and provides support for costs exceeding that benchmark. Specifically, for each state, the cost model calculates the average forward-looking cost per line incurred by non-rural carriers to provide supported services. The forward-looking support mechanism provides support to non-rural carriers in those states that have a statewide average forward-looking cost per line greater than the national benchmark, which is set at 135 percent of the national average forward-looking cost per line.[7]

3. In addition to the new forward-looking high-cost support mechanism for non-rural carriers, the Commission also adopted an interim hold-harmless provision.[8] Under this transitional provision, no non-rural carrier will receive less support under the forward-looking mechanism than it would have received if we had continued to provide support under the previous high-cost support mechanism based on a carrier's book (embedded) costs.[9]

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4 *See Ninth Report and Order*, FCC 99-306; *Tenth Report and Order*, FCC 99-304.

5 The services eligible for federal universal service support are listed in section 54.101 of the Commission's rules. 47 C.F.R. § 54.101.

6 The cost model consists of: (1) a model platform, which contains a series of fixed assumptions about network design and engineering; and (2) input values for the model platform, such as the cost of network components, e.g., cables and switches, as well as various capital cost parameters. The Commission adopted the model platform in the *Fifth Report and Order* released in October 1998. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Fifth Report and Order, 13 FCC Rcd 21323 (1998) (*Fifth Report and Order*). In the *Tenth Report and Order*, we adopted the input values to be used in the model. *See Tenth Report and Order*, FCC 99-304. In the *Ninth Report and Order*, we adopted the methodology for calculating support amounts based on these forward-looking costs. *See Ninth Report and Order*, FCC 99-306.

7 *Ninth Report and Order*, FCC 99-306 at paras. 10, 55. The forward-looking support mechanism provides support for all intrastate costs in states in which the average cost exceeds the benchmark. *Ninth Report and Order*, FCC 99-306 at paras. 60-63. Intrastate costs account for 76 percent of all forward-looking costs estimated by the model. *Ninth Report and Order*, FCC 99-306 at para. 63. Therefore, the forward-looking mechanism provides support for 76 percent of the forward-looking costs that exceed the benchmark. *Ninth Report and Order*, FCC 99-306 at para. 63.

8 *Ninth Report and Order*, FCC 99-306 at paras. 78-88. The Commission stressed that the interim hold-harmless provision is a transitional measure. *Ninth Report and Order*, FCC 99-306 at para. 88. The Commission requested that, on or before July 1, 2000, the Joint Board provide the Commission with a recommendation on how the interim hold-harmless provision can be phased out or eliminated without causing undue disruption to consumer rates in high-cost areas. *Ninth Report and Order*, FCC 99-306 at para. 88. *See also Federal-State Joint Board on Universal Service Seeks Comment on the Interim Hold-Harmless Provision of the Commission's High-Cost Support Mechanism*, CC Docket No. 96-45, Public Notice, FCC 99J-2 (rel. Nov. 3, 1999).

9 *Ninth Report and Order*, FCC 99-306 at paras. 78-88.

4. To ensure that support is provided to the areas that need it most, the Commission determined that both forward-looking support and hold-harmless support should be targeted to high-cost wire centers.[10] Under the targeting approach, the amount of support available per line in a particular wire center depends on the relative costs in that wire center, as estimated by the cost model.

5. Model Lines. In the *Tenth Report and Order*, we adopted as input values for the model the most current publicly available wire center line count data, line counts generated by PNR Associates trued-up to1998 ARMIS access line counts by study area (model lines).[11] These line counts were used in the model to estimate non-rural carriers' forward-looking costs of providing the services eligible for universal service support. Based on the costs generated by the cost model as well as the model line counts, the forward-looking mechanism produced estimated support amounts, which the Bureau announced on November 2, 1999, and revised on January 20, 2000.[12] In the *Jan. 20 Public Notice*, the Bureau emphasized that these were estimated support amounts based on model lines and that these support estimates would be superceded by estimates that would incorporate quarterly line count data filed by carriers.

6. Reported Lines. In order to implement the wire center targeting approaches for both the forward-looking support mechanism and the interim hold-harmless provision on a going-forward basis, the Commission must know the number of lines served by a carrier in a particular wire center. In the *Ninth Report and Order*, we required non-rural incumbent local exchange carriers and competitive eligible telecommunications carriers seeking to receive support to report on a quarterly basis the number of lines they serve in each wire center in their service areas.[13] Specifically, we amended sections 36.611 and 36.612 of the Commission's rules to require non-rural incumbent local exchange carriers to file line counts quarterly at the wire center level.[14] In addition, we amended section 54.307 of the Commission's rules to require competitive eligible telecommunications carriers serving a non-rural incumbent local exchange carrier's service area to

[10] *Ninth Report and Order*, FCC 99-306 at paras. 70-75, 82-85.

[11] *See Tenth Report and Order*, FCC 99-304 at para. 61. The line counts were trued-up to the access line counts in the ARMIS Report 43-08, Table III, Access Lines in Service by Customer.

[12] *Common Carrier Bureau Releases State-by-State Universal Service High-Cost Support Amounts for Non-Rural Carriers and Forward-Looking Cost Model Results*, Public Notice, CC Docket Nos. 96-45, 97-160, DA 99-2399 (rel. Nov. 2, 1999); *Common Carrier Bureau Announces Procedures for Releasing High-Cost Support Amounts for Non-Rural Carriers and Revised Model Results*, Public Notice, CC Docket Nos. 96-45, 97-160, DA 00-110 (rel. Jan. 20, 2000) (*Jan. 20 Public Notice*).

[13] *Ninth Report and Order*, FCC 99-306 at para. 87, 92, Appendix C; s*ee also* 47 C.F.R. §§ 36.611, 36.612, 54.307. Competitive eligible telecommunications carriers only need to file such data if they want to receive universal service support.

[14] *See* 47 C.F.R. §§ 36.611, 36.612. Previously, section 36.611 required all incumbent local exchange carriers to report lines annually at the study area, rather than the wire center, level. Section 36.612 permitted, but did not require, incumbent local exchange carriers to update the annual line counts on a quarterly basis.

file quarterly wire center line counts in order to receive support.[15] The first submissions containing line counts at the wire center level were filed with the National Exchange Carrier Association (NECA) and the Universal Service Administrative Company (USAC) on December 30, 1999,[16] and seven of thirteen non-rural carriers sought confidential treatment of these data.[17]

III. DISCUSSION

7. In general, there are four stages in the forward-looking high-cost mechanism for non-rural carriers where line count information is required: (1) to estimate forward-looking costs of providing supported services; (2) to determine statewide support amounts; (3) to target those statewide support amounts to individual wire centers; and (4) to determine the per-line support amounts in individual wire centers. In addition, the interim hold-harmless provision uses line counts to target carrier-by-carrier hold-harmless support amounts to individual wire centers. The interim hold-harmless provision also uses line counts to determine the per-line support amounts in individual wire centers. As discussed below, we provide specific guidance on how these line counts are used in the four stages of the forward-looking mechanism and the interim hold-harmless provision.

8. Estimating Forward-Looking Costs. We clarify that the line counts used in the model to estimate forward-looking economic costs shall be used to calculate average forward-looking costs in all the cost calculations in the methodology adopted in the *Ninth Report and Order* for determining support. This approach is consistent with the Commission's and the Federal-State Joint Board's decision to use a cost model. The model estimates the forward-looking costs of providing the supported services in each wire center served by non-rural carriers. We clarify that model lines shall be used in determining the wire center average cost per line, the statewide average cost per line, the nationwide average cost per line, and the national cost benchmark. The statewide average cost per line is determined by adding the costs in the wire centers in the state and dividing by the number of non-rural model lines in the state. Similarly, the nationwide average cost per line is determined by adding the costs in all states and dividing by the total number of non-rural model lines. The national benchmark equals 135 percent of the nationwide average cost.

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[15] *See* 47 C.F.R. § 54.307. Previously, section 54.307 required competitive eligible telecommunications carriers, in order to receive universal service support, to report lines annually at the study area level, and did not permit quarterly updates.

[16] Under section 36.611 and 36.612 of the Commission's rules, incumbent LECs file loop count data with NECA. NECA, in turn, filed the data with the Commission on Feb. 1, 2000. Competitive eligible telecommunications carriers, in order to receive universal service support, file loop count data with USAC pursuant to section 54 .307 of the Commission's rules. *See* 47 C.F.R. §§ 36.611, 36.612, 54.307.

[17] Anchorage Telephone Utility, Bell Atlantic, BellSouth, GTE, SBC (including Ameritech), Sprint, and US West requested confidential treatment. Aliant, Cincinnati Bell, Frontier, North State, Puerto Rico Telephone Company, and Roseville did not seek confidential treatment of the December 30, 1999 submissions.

9. Calculating Statewide Support Amounts. We clarify that, to the extent that the reported line counts differ from the line counts used in the model to estimate forward-looking costs, statewide support amounts shall be adjusted to reflect any changes between the number of model lines and the number of reported lines.[18] This ensures that the new mechanism provides sufficient support and that support is portable. We shall incorporate the number of lines reported by non-rural carriers on a quarterly basis in calculating statewide support amounts. Statewide support amounts shall be determined by calculating the average per-line support amount in the state and multiplying this support amount by the number of lines reported by non-rural carriers in the state.[19]

10. This clarification of the methodology can be illustrated by using the example in the *Ninth Report and Order* illustrating the targeting of forward-looking support.[20] We assume, in that example, that there are 30 lines in the state, the average cost per line is $30 and thus the total statewide cost as estimated by the model is $900. We assume further that the national benchmark equates to $25 per line. Using the statewide methodology adopted in the *Ninth Report and Order*, the total amount of support provided to carriers in the state would be ($30 - $25) x 30 lines x 76%[21] = $114 or $3.80 per line of untargeted support. In order to adjust the total statewide support amount to reflect quarterly line counts, we clarify that the average per-line amount of untargeted support shall be multiplied by the number of lines reported by non-rural carriers in the state. For example, assume that non-rural carriers in the state report that they have 35 lines, rather than the 30 lines used in the model to estimate forward-looking costs. Basing support on reported lines, the statewide support amount would be $3.80 x 35 = $133, rather than $3.80 x 30 = $114.

11. Targeting Forward-Looking Support. After statewide forward-looking support is calculated as described above, that statewide support amount must be targeted to individual wire centers. Under this targeting approach, we clarify that the line counts used in the model to estimate forward-looking economic costs shall be used to target support to high-cost wire

[18] The Commission committed to initiating a proceeding to study how the model should be used in the future (e.g., how often inputs data should be updated) and how the model itself should change to reflect changing circumstances. We anticipate releasing a further notice of proposed rulemaking on these issues later this year. *See Tenth Report and Order*, FCC 99-304 at para. 28; *Ninth Report and Order*, FCC 99-306 at para. 40.

[19] The number of lines reported by non-rural carriers in a state includes the lines filed by non-rural incumbent LECs and by competitive eligible telecommunications carriers serving lines in the service area of a non-rural incumbent LEC. *See supra* para. 6.

[20] *See Ninth Report and Order*, FCC 99-306 at para.73.

[21] The forward-looking support mechanism provides support for all intrastate costs in states in which the average cost exceeds the benchmark, which account for 76 percent of all forward-looking costs estimated by the model. *See supra* note 7. Thus, in this example, we subtract the $25 benchmark from the $30 average cost per line in the state, multiply the $5 average cost above the benchmark by the 30 lines, which is $150, then multiply by 76 percent, for a total support amount of $114. By dividing $114 by the 30 lines in the model, we get the $3.80 average per-line support amount of untargeted support.

centers. This approach is consistent with the Commission's and the Federal-State Joint Board's decision to use a cost model. The model estimates the forward-looking costs of providing the supported services in each wire center served by non-rural carriers. From this information, we identify the high-cost wire centers. Although we do not alter the targeting methodology adopted in the *Ninth Report and Order*, we now clarify that the model is used to estimate relative costs among wire centers, rather than relative support amounts. We also clarify how the per-line targeted support amount should be calculated.

12. As discussed above, we have concluded that support amounts should be adjusted to reflect the number of lines reported by non-rural carriers, in those situations when the number of lines used in the model to estimate forward-looking costs differs from the number of reported lines. The example used to illustrate targeting in the *Ninth Report and Order* was based on the assumption that the number of model lines and the number of reported lines did not differ, so we clarify how the targeting calculations will be made, even if the line counts differ. In identifying high-cost wire centers for purposes of targeting support, instead of using pro rata factors based on wire center scale support, we will calculate ratios based on the wire center's cost above the national cost benchmark. As explained below, this approach does not change support amounts.

13. This clarification of the methodology is best provided by using the example in the *Ninth Report and Order* to illustrate the targeting of forward-looking support and the example for determining statewide support discussed above. Assume that the estimated total cost of $900 in the state is derived from the costs in three wire centers as follows: Wire Center 1 has 10 lines, with an average cost of $20 per line, and a total cost in the wire center of $200; Wire Center 2 has 10 lines, with an average cost of $30 per line, and a total cost of $300; and Wire Center 3 has 10 lines, with an average cost of $40 per line, and a total cost of $400. As in the example above, the statewide average cost per line is $30, the national benchmark is $25, and the statewide support amount is based on an average untargeted support amount of $3.80 per line. Because the number of lines reported by non-rural carriers in the state is assumed to be 35, the statewide support amount is $133. The proportion of the statewide support amount targeted to each wire center is determined by first calculating the ratio of the wire center's estimated cost above the benchmark to the total cost above the benchmark in the state. Therefore, the estimated costs above the benchmark would be as follows: Wire Center 1 has an average cost below the benchmark, so the cost above the benchmark is $0; Wire Center 2 has an estimated cost above the benchmark of ($30 - $25) x 10 model lines = $50; Wire Center 3 has an estimated cost above the benchmark of ($40 - $25) x 10 model lines = $150; and the total estimated cost above the benchmark in the state is $0 + $50 + $150 = $200. Then the ratios used to determine the percentage of statewide support each wire center will receive are calculated as follows: Wire Center 1 receives $0 / $200 = 0%; Wire Center 2 receives $50 / $200 = 25%; and Wire Center 3 receives $150 / $200 = 75%. Thus, of the $133 of support the state receives, Wire Center 1 receives $0 support; Wire Center 2 receives 25% x $133 = $33.25; and Wire Center 3 receives 75% x $133 = $99.75.[22]

[22] Note that these percentages are the same as the percentages in the example in the *Ninth Report and Order*, in which the total statewide support amount is $114, based on 30 lines. In that example, support in Wire Center 2 is $28.50 ($2.85 x 10 lines), which is 25% of $114. Support in Wire Center 3 is $85.50 ($8.55 x 10 lines), which is 75% of $114.

14. We clarify that we shall use the number of reported lines, rather than model lines, to calculate the targeted per-line support amount available in the wire center. Otherwise, support amounts could differ depending upon whether the line is provided by an incumbent local exchange carrier or by a competitive eligible telecommunications carrier. Using the example above, we know that, of the $133 statewide support amount, $33.25 is targeted to Wire Center 2, and $99.75 targeted to Wire Center 3. Assume that the 35 reported lines are distributed as follows: Wire Center 1 has 15 reported lines; Wire Center 2 has 6 reported lines; and Wire Center 3 has 14 reported lines. Dividing the support amounts available in each wire center, by the number of reported lines results in the following per-line support amounts: Wire Center 1 receives $0 per line; Wire Center 2 receives $33.25 / 6 = $5.54 per line; and Wire Center 3 receives $99.75 / 14 = $7.125 per line. This methodology produces a competitively neutral result, whereas, using model lines to calculate the per-line support would not. This can be illustrated with one of the wire centers in the example. If model lines were used to calculate the per-line support amount in Wire Center 3, the per-line amount would be $99.75 / 10 = $9.975. If the incumbent local exchange carrier were serving all lines, the incumbent, in effect, would be receiving $99.75 / 14 = $7.125 per line. If a competitor were serving one line and receiving $9.975 in support, the incumbent local exchange carrier would receive $6.905 per line for serving the remaining 13 lines (($99.75 - $9.975 = $89.775) / 13). To ensure that all non-rural carriers in a wire center receive the same per-line support amount for the lines they serve, we clarify that the total wire center support amount shall be divided by the number of reported lines in that wire center.

15. Targeting Hold-Harmless Support. We similarly clarify how hold-harmless support is targeted to high-cost wire centers. Although hold-harmless support is not based upon costs estimated by the model, it is consistent with our decision to target hold-harmless support to high-cost wire centers to use model lines in identifying high-cost wire centers, as we do for targeting forward-looking support. In addition, we clarify that the portable per-line amount of targeted hold-harmless support shall be determined by dividing the total hold-harmless support amount targeted to the wire center by the number of lines reported in that wire center.

16. We use the example presented in the *Ninth Report and Order* to illustrate the targeting of hold-harmless support. We use model lines to determine relative costs among wire centers and reported lines to determine the per-line support amount available in each wire center. We assume that a state has a single carrier with three wire centers in the state. Assume that the model estimates the average forward-looking cost per line in each wire center as follows: Wire Center 1 - $15, Wire Center 2 - $20, Wire Center 3 - $25. Assume that these cost estimates were based on input values of 10 lines in each wire center. Thus, the statewide average cost per line is ($150 + $200 + $250) / 30 lines = $20. Assume further that the national benchmark equates to $22 per line, and therefore the carrier receives no support under the forward-looking methodology in Part 54 of our rules, which averages costs at the statewide level. Also assume that the carrier receives a total of $90 of interim hold-harmless support as determined pursuant to Part 36 of our rules. Under the targeting approach, the hold-harmless support is distributed first

to the wire center that the model estimates to have the highest costs in the state until that wire center's average costs, net of support, equal the average costs in the next most expensive wire center. This process continues in a cascading fashion until all support has been distributed. In this example, the first $50 of hold-harmless support would be distributed to Wire Center 3, so that the average forward-looking cost in Wire Center 3, net of hold-harmless support, is reduced to $250 - $50 = $200, an average cost of $200 / 10 lines = $20 per line. This places Wire Center 3 on equal footing with Wire Center 2, which also has an average cost of $200 / 10 lines = $20 per line. The remaining hold-harmless support, $90 - $50 = $40, would be divided between the wire centers, so that the average cost as estimated by the model, net of hold-harmless support, would be the same in Wire Center 2 and Wire Center 3, that is, $18 per line. Thus, Wire Center 2 would receive a total of $20 in support and Wire Center 3 would receive a total of $50 + $20 = $70 in support. The average forward-looking cost in Wire Center 2, net of hold-harmless support, is reduced to $200 - $20 = $180, an average cost of $180 / 10 lines = $18 per line. The average forward-looking cost in Wire Center 3, net of hold-harmless support, is reduced to $250 - $70 = $180, an average cost of $180 / 10 lines = $18 per line. Now assume that the carrier reports that Wire Center 2 has 6 lines and that Wire Center 3 has 14 lines. The portable per-line support amount in Wire Center 2 would be $20 / 6 lines = $3.33 per line. The portable per-line support amount in Wire Center 3 would be $70 / 14 lines = $5.00 per line.

17. Reporting Quarterly Line Counts. As discussed above, the line counts used in the model to estimate forward-looking costs are trued-up to 1998 ARMIS line counts. As of December 30, 1999, non-rural incumbent local exchange carriers and competitive eligible telecommunications carriers seeking to receive support are now required to file updated line counts every quarter.[23] USAC shall determine statewide support amounts by calculating the average per-line support amount in the state and multiplying the average support amount by the number of lines reported by non-rural carriers in the state.[24] For the year 2000, forward-looking support will be distributed for the first and second quarters of the year 2000 based on the line counts non-rural carriers filed on December 30, 1999.[25] Similarly, forward-looking support for the third and fourth quarters of the year 2000, will be based on the line counts non-rural carriers file on March 30, 2000, and July 31, 2000, respectively.[26]

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[23] The line counts filed on December 30, 1999, report lines as of June 30, 1999. Similarly, line counts filed on March 30, 2000, July 31, 2000, and September 30, 2000, will report lines as of September 30, 1999, December 31, 1999, and March 30, 2000, respectively.

[24] *See supra* note 19.

[25] Because wire center line count data were filed for the first time December 30, 1999, this filing must be used to calculate support in both the first and second quarters of 2000. In the normal sequence, the line counts filed on September 30 would be used to distribute support in the first quarter of the following year.

[26] Because the July 31 line counts are filed a month later than the usual cycle, the support estimates for the fourth quarter that USAC files on August 1 will necessarily be estimates and will be trued-up in the subsequent USAC filing.

18. Although section 54.307(b) of the Commission's rules refers to an annual July 31st deadline for the submission of competitive eligible telecommunications carriers' line count data, we clarify that high-cost support shall be available on a regular quarterly basis for competitive eligible telecommunications carriers serving lines in areas served by non-rural incumbent local exchange carriers.[27] In the *Ninth Report and Order*, the Commission adopted uniform, mandatory quarterly reporting requirements for all carriers seeking support for serving lines in non-rural areas.[28] To ensure "equitable, non-discriminatory, and competitively neutral treatment[,]" support must be available to all eligible telecommunications carriers on a quarterly basis, rather than on an annual basis.[29] Therefore, competitive eligible telecommunications carriers serving lines in non-rural areas may submit line count data under the filing schedule described in section 54.307(c) and receive support on a regular quarterly basis. This approach is consistent with our decision to require uniform quarterly reporting and is essential to ensure portability of support among carriers.[30] We amend section 54.307 accordingly.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act Certification

19. The Regulatory Flexibility Act (RFA)[31] requires an Initial Regulatory Flexibility Analysis (IRFA)[32] whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA)[33] whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such

[27] Prior to the amendment adopted herein, section 54.307(b) provided, in pertinent part, that: "In order to receive support pursuant to this Subpart, a competitive eligible telecommunications carrier must report to the Administrator on July 31st of each year the number of working loops it serves in a service area as of December 31st of the preceding year, subject to the updates specified in subsection (c)." 47 C.F.R. § 54.307(b) (1999).

[28] *See Ninth Report and Order*, FCC 99-306 at para. 92. Formerly, competitive eligible telecommunications carriers seeking support were required to submit annual reports on July 31st of each year, and not permitted to submit quarterly updates.

[29] *Id.* Otherwise, for example, a competitive eligible telecommunications carrier submitting initial line-count data after the July 31st deadline would have to wait an additional year to receive support.

[30] *See id.*

[31] *See* 5 U.S.C. § 601 *et. seq*. The RFA was amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Title II of the Contract with America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 87 (1996).

[32] 5 U.S.C. § 603.

[33] 5 U.S.C. § 604.

certification.[34] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[35] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[36] A small business concern is one which: (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).[37] The SBA defines a small telecommunications entity in SIC code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.[38]

20. In the *Ninth Report and Order,* the Commission certified pursuant to the RFA[39] that the final rules adopted in that order would not have a significant economic impact on a substantial number of small entities.[40] We concluded that the *Ninth Report and Order* adopted a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. In a companion Further Notice of Proposed Rulemaking adopted in this docket, the Commission prepared an IRFA seeking comment on the economic impacts on small entities.[41] No comments were received in response to that IRFA.

21. The rule changes adopted by this order implement our clarifications to the *Ninth Report and Order,* as described in the text of this *Twentieth Order on Reconsideration*. The changes adopted in this order will affect only non-rural LECs. As mentioned above, non-rural LECs generally do not fall within the definition of a small business concern. Therefore, we certify pursuant to Section 605(b) of the RFA, that the final rules adopted in this order will not have a significant economic impact on a substantial number of small entities.[42] The Consumer

[34] 5 U.S.C. § 605(b).

[35] 5 U.S.C. § 601(6).

[36] 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, 15 U.S.C. § 632).

[37] Small Business Act, 15 U.S.C. § 632.

[38] 13 C.F.R. § 121.201.

[39] 5 U.S.C. § 605(b).

[40] *See Ninth Report and Order*, FCC 99-306 at Appendix C. Most non-rural carriers serve study areas reporting more than 200,000 working loops.

[41] *See Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 97-160, FCC 99-120 at paras. 257-271 (rel. May 28, 1999).

[42] 5 U.S.C. § 605(b).

Information Bureau, Reference Information Center, will send a copy of the *Twentieth Order on Reconsideration*, including a copy of this final certification, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA.[43] In addition, this certification and order will be published in the Federal Register.[44] Finally, the Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the *Twentieth Order on Reconsideration*, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[45]

B. Effective Date of Final Rules

22. We conclude that the amendments to our rules adopted herein shall be effective immediately upon publication in the Federal Register. In this order, we make minor amendments to the rules adopted in the *Ninth Report and Order*, which implement a new forward-looking high-cost support mechanism, effective January 1, 2000. Making the amendments effective 30 days after publication in the Federal Register would jeopardize the implementation of the new mechanism. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the Federal Register.[46]

IV. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 214, 218-220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 218-220, 254, 303(r), 403, and 410, and section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, the TWENTIETH ORDER ON RECONSIDERATION IS ADOPTED.

24. IT IS FURTHER ORDERED that Part 54 of the Commission's Rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix A hereto, effective immediately upon publication in the Federal Register.

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[43] *See* 5 U.S.C. § 605(b).

[44] *Id*.

[45] *See* 5 U.S.C. § 801(a)(1)(A).

[46] *See* 5 U.S.C. § 553(d)(3).

25. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this TWENTIETH ORDER ON RECONSIDERATION, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

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

PART 54 - UNIVERSAL SERVICE

Subpart D - Universal Service Support for High Cost Areas

1. Section 54.307 is amended to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) * * *

(b) In order to receive support pursuant to this Subpart, a competitive eligible telecommunications carrier must report to the Administrator the number of working loops it serves in a service area pursuant to the schedule set forth in subsection (c). For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in section 51.5 of this Chapter, the carrier must report the number of working loops it serves in the service area. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must report the number of working loops it serves in the service area and the number of working loops it serves in each wire center in the service area. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service.

(c) For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in section 51.5 of this Chapter, the carrier must submit no later than July 31st of each year the data required pursuant to subsection (b) as of December 30th of the previous calendar year, and the carrier may update on a quarterly basis the data required pursuant to subsection (b) according to the schedule below. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must submit the data required pursuant to subsection (b) according to the schedule below.

(1) No later than July 31 of each year, submit data as of December 30th of the previous calendar year;

(2) No later than September 30th of each year, submit data as of March 30th of the existing calendar year;

(3) No later than December 30th of each year, submit data as of July 31st of the

existing calendar year;

(4) No later than March 30th of each year, submit data as of September 30th of the previous year.

2. Section 54.309 is amended to read as follows:

§ 54.309 Calculation and distribution of forward-looking support for non-rural carriers.

(a) * * *

(1) For each State, the Commission's cost model shall determine the statewide average forward-looking economic cost (FLEC) per line of providing the supported services. The statewide average FLEC per line shall equal the total FLEC for non-rural carriers to provide the supported services in the State, divided by the number of switched lines used in the Commission's cost model. The total FLEC shall equal average FLEC multiplied by the number of switched lines used in the Commission's cost model.

(2) The Commission's cost model shall determine the national average FLEC per line of providing the supported services. The national average FLEC per line shall equal the total FLEC for non-rural carriers to provide the supported services in all States, divided by the total number of switched lines in all States used in the Commission's cost model.

(3) * * *

(4) Support calculated pursuant to this section shall be provided to non-rural carriers in each State where the statewide average FLEC per line exceeds the national cost benchmark. The total amount of support provided to non-rural carriers in each State where the statewide average FLEC per line exceeds the national cost benchmark shall equal 76 percent of the amount of the statewide average FLEC per line that exceeds the national cost benchmark, multiplied by the number of lines reported pursuant to sections 36.611, 36.612, and 54.307 of this Chapter.

(5) * * *

(b) * * *

(1) The Commission's cost model shall determine the percentage of the total amount of support available in the State for each wire center by calculating the ratio of the wire center's FLEC above the national cost benchmark to the total FLEC above the national cost benchmark of all wire centers within the State. A wire center's FLEC above the national cost benchmark shall be equal to the wire center's average FLEC per line above the national cost benchmark, multiplied by

the number of switched lines in the wire center used in the Commission's cost model;

(2) The total amount of support distributed to each wire center shall be equal to the percentage calculated for the wire center pursuant to subsection (b)(1) multiplied by the total amount of support available in the State;

(3) The total amount of support for each wire center pursuant to subsection (b)(2) shall be divided by the number of lines in the wire center reported pursuant to sections 36.611, 36.612, and 54.307 of this Chapter to determine the per-line amount of forward-looking support for that wire center;

(4) The per-line amount of support for each wire center pursuant to subsection (b)(3) shall be multiplied by the number of lines served by a non-rural incumbent local exchange carrier in that wire center, or by an eligible telecommunications carrier in that wire center, as reported pursuant to sections 36.611, 36.612, and 54.307 of this Chapter, to determine the amount of forward-looking support to be provided to that carrier.

(c) * * *

CONSOLIDATED DISSENTING STATEMENT
OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: Federal-State Joint Board on Universal Service, Twentieth Order on Reconsideration and Order in CC Docket No. 96-45.

As I have made quite clear, I do not support this Commission's approach to implementing section 254's universal service provisions. The line-count data that is the subject of the two orders released today will be incorporated into a universal service support mechanism that is inherently flawed. I therefore disagree with the Commission's requirement that carriers submit these line-count data, with the manner in which the Commission has decided to use this information, and with its decision to make these data public.