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

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

NOTICE OF PROPOSED RULEMAKING AND ORDER

Adopted: February 13, 2002 **Released: February 15, 2002**

Comment Date: 30 days from publication in the Federal Register.
Reply Comment Date: 45 days from publication in the Federal Register.

By the Commission:

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking and Order (NPRM), we seek comment on the issues from the *Ninth Report and Order*[1] remanded by the United States Court of Appeals for the Tenth Circuit.[2] The *Ninth Report and Order* established a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. The court remanded the *Ninth Report and Order* to the Commission for further consideration and explanation of its decision.[3] Specifically, the court remanded the *Ninth Report and Order* to the Commission to "establish an adequate legal and factual basis for the Ninth Order and, if necessary, to reconsider the operative mechanism promulgated in that Order."[4] In particular, the court concluded that the Commission did not (1) define adequately the key statutory terms "reasonably comparable" and "sufficient"; (2) adequately explain setting the funding benchmark at 135 percent of the national average; (3) provide inducements for state universal service mechanisms; or (4) explain how this funding mechanism will interact with other universal service programs.[5] We seek comment on the first three issues and refer the record collected in this proceeding to the Federal-State Joint Board on Universal Service (Joint Board) for a recommended decision.[6] As part of this referral, we also ask the Joint Board to begin a comprehensive review of the non-rural high-cost support mechanism. In light of the need to act expeditiously on these issues, we will delay initiation of a proceeding to consider future action on the rural high-cost support mechanism.

II. BACKGROUND

A. The 1996 Act

2. The Telecommunications Act of 1996 codified the Commission's historical commitment to promote universal service in order to help ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services.[7] In section 254 of the Act, Congress directed the Commission, after consultation with the Joint Board, to establish specific, predictable, and sufficient support mechanisms to preserve and advance universal service.[8] In addition, in section 254(b), Congress provided a list of principles upon which the

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1 *Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd. 20432 (1999) (*Ninth Report and Order*).

2 *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

3 *Id.* at 1195.

4 *Id.* at 1205.

5 *Id.* at 1201.

6 As explained in part IV below, the Commission will address the fourth issue on remand, explaining how the funding mechanism will interact with other universal service programs, at a later date.

7 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq*. (Communications Act or Act). References to section 254 in this NPRM refer to the universal service provisions of the 1996 Act, which are codified at 47 U.S.C. § 254 of the Act.

8 47 U.S.C. § 254 (a), (b)(5), (d), (e). *See also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, 11 FCC Rcd 18092 (1996) (*Universal Service NPRM*).

Commission must base policies for the preservation and advancement of universal service.[9] Among other things, section 254 states that consumers in high cost areas should have access to telecommunications services at rates that are "reasonably comparable to rates charged for similar services in urban areas."[10]

3. A major objective of universal service is to help ensure affordable access to telecommunications services to consumers living in areas where the cost of providing such services would otherwise be prohibitively high.[11] This objective has been achieved in the past by providing both implicit and explicit high-cost support to incumbent local exchange carriers to enable them to serve high-cost customers at below-cost rates.[12] In order to sustain the competitive marketplace envisioned by the 1996 Act, Congress directed the Commission to take steps necessary to establish explicit support mechanisms to ensure the delivery of affordable telecommunications service to consumers in all regions of the nation.[13]

B. Ninth Report and Order

4. Based on recommendations from the Joint Board and building on the framework set forth by the Commission in prior orders,[14] on October 21, 1999, the Commission adopted the *Ninth Report and Order*, establishing a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking costs.[15] With the *Ninth Report and Order*, the Commission sought to "adopt a new specific and predictable forward-looking mechanism that will provide sufficient support to enable affordable, reasonably comparable intrastate rates for customers served by non-rural carriers."[16]

5. The forward-looking mechanism implemented in the *Ninth Report and Order* determines the amount of federal support to be provided to each state by comparing the statewide average cost per line for non-rural carriers to a nationwide cost benchmark. The Commission determined that the statewide averaging approach was most consistent with the federal role of providing support for intrastate universal service to enable the states to ensure reasonable

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[9] 47 U.S.C. § 254 (b).

[10] 47 U.S.C. § 254(b)(3).

[11] *Ninth Report and Order*, 14 FCC Rcd at 20439 para. 12.

[12] *Id.*

[13] 47 U.S.C. § 254(e).

[14] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Erratum, 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 (5th Cir. 1999), *petition for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (*First Report and Order*). *Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8077 (1999), *petition for review filed sub nom. Vermont Department of Public Service v. FCC*, No. 99-60530 (5th Cir., filed June 23, 1999) (*Seventh Report and Order*).

[15] *Ninth Report and Order*, 14 FCC Rcd at 20434 para. 2.

[16] *Id.* at 20451 para. 34.

comparability of rural and urban rates.[17] The Commission acknowledged that states set intrastate rates and, therefore, hold the primary responsibility of ensuring reasonable comparability of rates within their borders.[18] The federal mechanism operates by transferring funds among jurisdictions and has the effect of shifting money from relatively low-cost states to relatively high-cost states.[19] No state with costs greater than the national benchmark would be forced to keep rates reasonably comparable without the benefit of federal support.[20]

6. The mechanism provides support for the percentage of the costs per line allocated to the intrastate jurisdiction that exceed a national benchmark of 135 percent.[21] The Commission concluded in the *Ninth Report and Order* that a benchmark of 135 percent of the national average balanced various goals under the statute, including sufficiency, specificity and predictability, as well as the need to achieve rate comparability.[22] In addition, the Commission attempted to ensure that the fund would be no larger than necessary in order to minimize burdens on carriers and consumers contributing to universal service mechanisms.[23]

7. Finally, the Commission determined that the support mechanism should examine underlying costs of carriers instead of their rates charged to consumers, reasoning that states generally have rate structures designed to keep rates comparable, although costs may not be comparable.[24] State rate designs have provided implicit high-cost support flowing from urban to rural areas, business to residential customers, vertical services to basic service, and/or long distance service to local service.[25] As competition develops, however, above-cost rates will not be sustainable.[26] The Commission concluded that comparing costs in different states, rather than rates, allows the federal mechanism to provide sufficient support to enable reasonably comparable rates without having to evaluate the myriad state policy choices that affect those rates.[27]

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[17] *Id.* at 20457-58 paras. 45-46

[18] *Id.* at 20458 para. 46.

[19] *Id.* at 20457 para. 45.

[20] *Id.* at 20457 para. 45.

[21] *See id.* at 20467-68 para. 63. The federal high-cost universal service support mechanism for non-rural carriers provides support for 76 percent of the costs that are above the national benchmark. The forward-looking mechanism calculates support based on 75 percent of forward-looking loop costs and 85 percent of forward-looking port costs, as well as 100 percent of all other forward-looking costs determined by the Commission's forward-looking high-cost model. Based on the percentage of forward-looking costs that the intrastate portion of each of the items represents, the Commission determined that together the items represent 76 percent of total forward-looking costs. *Id.*

[22] *Id.* at 20464 para. 55.

[23] *Id.* at 20464 para. 55.

[24] *Id.* at 20447 para. 25.

[25] *Id.* at 20441 para. 15.

[26] *Id.* at 20441 para. 16.

[27] *Id.* at 20438, n.19; *Seventh Report and Order*, 14 FCC Rcd at 8092-93 paras. 32-33.

C. Tenth Report and Order

8. In the *Tenth Report and Order*, the Commission finalized the model platform used to estimate the forward-looking costs of a non-rural carrier's operations under the high-cost universal service support mechanism adopted in the *Ninth Report and Order*.[28] Specifically, the Commission selected inputs (*e.g.*, the cost of network components such as cables and switches, customer locations, and line counts) for the model platform.[29] The Commission also reaffirmed the Common Carrier Bureau's authority to make changes to the model platform "as necessary and appropriate to ensure that" it operates as designed by the Commission.[30]

D. Tenth Circuit Remand

9. The court remanded the *Ninth Report and Order* to the Commission and affirmed the *Tenth Report and Order*.[31] In its remand of the *Ninth Report and Order*, the court determined that the Commission did not adequately explain its decision in certain respects.[32] The court observed that the Commission must base its universal service policies on the principles listed in section 254(b). In particular, the court found two principles in section 254(b) most relevant to the case: section 254(b)(3), which states that consumers in "rural, insular, and high cost areas" should have access to services "that are available at rates that are reasonably comparable to rates charged for similar services in urban areas,"[33] and section 254(b)(5), which states that "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."[34] The court also noted section 254(e), which states that any federal support for universal service "should be explicit and sufficient to achieve the purposes of this section."[35] The court noted that the Commission may exercise its discretion in balancing the principles in the 1996 Act against one another, but may not depart from the principles as a whole in order to achieve some other goal.[36] In addition, the court recognized that competing principles may exist in section 254 of the Act.[37] For example, the court states,

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[28] See Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, Tenth Report and Order, CC Docket Nos. 96-45, 97-160, 14 FCC Rcd 20156 (1999) affirmed, Qwest Corp. v. FCC, 258 F.3d 1191 (10th Cir. 2001) (Tenth Report and Order).

[29] Id. at 20159 para. 2. The model platform was adopted in the Fifth Report and Order. 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).

[30] *Tenth Report and Order,* 14 FCC Rcd at 20167 para. 20 (*quoting Fifth Report and Order*, 13 FCC Rcd 21329 para. 13).

[31] *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). The court consolidated three petitions for review filed under the *Ninth Report and Order* and the *Tenth Report and Order*. The court granted the petitions for review of the *Ninth Report and Order* and reversed and remanded the *Ninth Report and Order* to the Commission, but denied the petition for review of the *Tenth Report and Order* and affirmed that order.

[32] *Id.*

[33] 47 U.S.C. § 254(b)(3).

[34] 47 U.S.C. § 254(b)(5).

[35] 47 U.S.C. § 254(e).

[36] *Qwest Corp. v. FCC*, 258 F.3d 1191, 1199 (10th Cir. 2001).

[37] *Id.* at 1200.

"Arguably § 245(b)(1) encompasses the principle that long-distance services, as well as universal services, should be kept affordable, and thus excessive subsidization of universal services by long distance may violate the principal found in § 254(b)(1).[38]

10. The court determined that, although the *Ninth Report and Order* may have met relevant statutory goals, the Commission did not provide an adequate explanation for its decision that the federal high-cost universal service support mechanism for non-rural carriers achieved the statutory principles codified in section 254 of the Act.[39] Without such an explanation, the court could not review the rationality of the *Ninth Report and Order*.[40] The court remanded the *Ninth Report and Order* to the Commission to "establish an adequate legal and factual basis for the Ninth Order and, if necessary, to reconsider the operative mechanism promulgated in that Order."[41] In particular, the court concluded that the Commission did not (1) define and apply adequately the key statutory terms "reasonably comparable" and "sufficient"; (2) sufficiently explain setting the funding benchmark at 135 percent of the national average; (3) provide inducements for the state universal service mechanisms; or (4) explain how this funding mechanism will interact with other universal-service programs.[42]

11. In the same opinion, the court reviewed and upheld the forward-looking cost model finalized by the Commission in the *Tenth Report and Order*.[43] First, the court determined that the computer model at issue is "in the nature of a rate-making and deserves strong deference to agency expertise."[44] As such, the court deferred to the Commission's decision-making in such matters.[45] Second, the court upheld the cost model's estimates of the forward-looking cost of operation for non-rural companies.[46] Finally, the court stated that the Commission is not required to initiate a new notice-and-comment period when making minor technical amendments to the cost model to bring it into compliance with Commission decisions.[47]

III. ISSUES FOR COMMENT

12. We seek comment on a number of issues that will enable the Commission to better explain or modify the forward-looking high-cost universal service support mechanism implemented in the *Ninth Report and Order* consistent with the court's decision. Specifically,

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[38] *Id. See also Alenco Communications v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000). ("[E]xcessive funding may itself violate the sufficiency of the Act ….[E]xcess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.")

[39] *Qwest*, 258 F.3d at 1202.

[40] *Id.* at 1205.

[41] Id.

[42] *Id.* at 1201.

[43] *Id.* at 1207.

[44] *Id.* at 1206.

[45] *Id.*

[46] *Id.*

[47] *Id.* ("[T]he FCC is not required to begin a new notice-and-comment period every time it fixes a technical bug in its computer program.").

we seek comment on: (1) how the Commission should define certain key statutory terms; (2) whether, in light of the interpretation of those key statutory terms, the Commission can and should maintain the previously established benchmark or, in the alternative, should adopt a new benchmark or benchmarks; and (3) how the Commission should induce states to implement state universal service policies.

A. Definitions of "Reasonably Comparable" and "Sufficient"

13. Background. The court remand requires the Commission to define the terms "reasonably comparable" and "sufficient" more precisely and then assess whether the funding mechanism will be sufficient to make rural and urban rates reasonably comparable.[48] The court determined that the Commission failed to explain how the funding mechanism would achieve the statutory principles under section 254. In particular, the court concluded that the Commission failed to provide definitions of "reasonably comparable" and "sufficient" to enable the court to determine reasonable comparability of rates between urban and rural areas, as required under section 254(b)(3) of the Act, and sufficiency of the mechanism to preserve and advance universal service, under sections 254(b)(5) and (e).[49]

14. The court determined that the Commission's definitions of "reasonably comparable" and "sufficient" were inadequate.[50] The court concluded that the definitions provided by the Commission simply substitute different standards and fail to illuminate the questions that arise concerning reasonable comparability and sufficiency.[51] The Commission previously provided at least two definitions of reasonably comparable. In the *Seventh Report and Order*, the Commission adopted the Joint Board's recommendation of reasonably comparable as "a fair range of urban/rural rates both within a state's borders, and among states nationwide."[52] The Commission further elaborated on this definition in the *Seventh Report and Order* by interpreting the goal of maintaining a "fair range" of rates to mean that "support levels must be sufficient to prevent pressure from high costs and the development of competition from causing unreasonable increases in rates above current, affordable levels."[53] In the *Ninth Report and Order*, the Commission determined that "reasonably comparable must mean some reasonable level above the national average forward-looking cost per line, i.e., greater than 100 percent of the national average."[54] The court rejected these definitions of reasonably comparable because it did not find them to be reasonable interpretations of the statutory language, which calls for reasonable comparability between rural and urban rates.[55]

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48 *Id.* at 1202.

49 *See* 47 U.S.C. § 254(b)(3) and (5).

50 *Qwest*, 258 F.3d at 1202.

51 *Id.* at 1201.

52 *Seventh Report and Order*, 14 FCC Rcd at 8092 para. 30.

53 *Id.*

54 *Ninth Report and Order*, 14 FCC Rcd at 20463 para. 54.

55 *Qwest*, 258 F.3d at 1201.

15. The court also concluded that the Commission asserted without explanation that the mechanism implemented under the *Ninth Report and Order* would be sufficient, as required in section 254 of the Act.[56] The court declared the statement conclusory and, thus, "inadequate to enable appellate review of the sufficiency of the federal mechanism."[57] As with "reasonably comparable," the court required the Commission on remand to define "sufficient" more precisely so that the term can be reasonably related to the statutory principles, and then assess whether the funding mechanism will be sufficient for the principle of making all rates reasonably comparable to rates in urban areas.[58]

16. Issues for Comment. We seek comment on how the Commission should define reasonably comparable for the purpose of achieving reasonable comparability of rates. Section 254 of the Act suggests that rates in rural, insular and high cost areas should be compared to rates in urban areas to determine reasonable comparability.[59] We make a two step inquiry. First, when determining whether rates are reasonably comparable, we seek comment on what should be compared. For example, such a comparison could be: "urban" rates compared to all other rates, "rural" rates compared to all other rates, or specifically defined urban and rural rates compared to each other. We seek comment on appropriate definitions of urban and rural.[60] If commenters suggest that urban and/or rural should be defined by geographical areas, we request comment on the particular breakdown of such areas. For example, urban and rural could be defined in terms of population density. Urban and rural also could be defined by number of lines per wire center. If the line count per wire center is used, would small wire centers in large cities be defined as rural?[61] Is it possible to adequately define reasonable comparability without adopting a definition for urban and rural? Second, we seek comment on what a fair range of rates would be to determine whether rates are reasonably comparable. The court suggested that rates differing 70 to 80 percent would not be within a fair range of rates that could be considered reasonably comparable.[62] In this regard, we note that costs in rural areas may be one hundred times greater than costs in urban areas.[63] Taking into account such cost differences, what is a

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[56] *Qwest*, 258 F.3d at 1201. *See Ninth Report and Order*, 14 FCC Rcd at 20464 para. 56.

[57] *Qwest*, 258 F.3d at 1201.

[58] *Id.* at 1202.

[59] *See* 47 U.S.C. § 254(b)(3).

[60] We note that the Commission has defined "rural area" for purposes of the rural health care provisions of section 254(h)(1)(A) of the Act. *See* 47 U.S.C. § 254(h)(1)(A). "A 'rural area' is a non-metropolitan county or county equivalent, as so defined in the Office of Management and Budget's (OMB) Revised Standards for Defining Metropolitan Areas in the 1990s and identifiable from the most recent Metropolitan Statistical Area (MSA) list released by OMB, or any contiguous non-urban Census Tract or Block Numbered Area within an MSA-listed metropolitan county identified in the most recent Goldsmith Modification published by the Office of Rural Health Policy of the U.S. Department of Health and Human Services." 47 CFR § 54.5.

[61] For example, based on the most recent line count data, at least sixteen wire centers in New York City, twelve wire centers in Chicago, and nine wire centers in Washington, DC have fewer than 50,000 lines.

[62] *Qwest*, 258 F.3d at 1201. We note that the data presented by petitioners in support of their claim that the mechanism results in rural costs 70 to 80 percent above urban costs defined urban costs as the line-weighted average cost in wire centers with 50,000 or more lines, or in the alternative, 100,000 or more lines.

[63] See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and

(continued....)

reasonable range of rates? What other factors should be considered when determining reasonable comparability of rates? We seek empirical evidence of the range of rates in rural and urban areas based on the definition of those terms provided by commenters.

17. We also seek comment on what it means for federal support for universal service to be "sufficient." Specifically, if we determine that high-cost support results in rural rates that are reasonably comparable to urban rates, is that level of support sufficient under section 254 of the Act, or should we take a broader examination of sufficiency? In establishing the support mechanism, the Commission attempted to balance the goal of ensuring that consumers in high-cost areas have affordable access to quality service, against the goal of ensuring that the fund is no larger than necessary to minimize the burdens on the carriers that contribute. Because the Commission must weigh several principles in determining the sufficiency of its support, we seek comment on whether we should give more weight to the principle of reasonable comparability of rates, or should we continue to give weight equally to other principles listed in section 254(b) of the Act. In addition, assuming that states will implement mechanisms to support universal service, as suggested by the court and described below, we seek comment on whether sufficiency should be determined by considering federal support only, or state support as well.

B. Benchmark Issues

18. Background. The court determined that the Commission failed to explain how its 135 percent benchmark would help achieve the goals of reasonable comparability or sufficiency as required by section 254 of the Act.[64] The court recognized that the Commission's determination of a benchmark "will necessarily be somewhat arbitrary" and acknowledged that the Commission is entitled to deference when drawing a line in the case of a reasoned decision.[65] The court determined, however, that the Commission adopted the 135 percent benchmark value without establishing that it made an informed, rational choice based on the record.[66]

19. In its discussion about the national benchmark in the *Ninth Report and Order*, the Commission provided several justifications for setting the benchmark level at 135 percent, including: (1) the benchmark "falls within the range recommended by the Joint Board" of 115 percent to 150 percent; (2) the level is "consistent with the precedent of the existing support mechanism and comments received"; (3) the benchmark is "near the midpoint of the range" of the existing mechanism; and (4) the benchmark "is a reasonable compromise of commenters' proposals."[67] The court found these justifications insufficient, stating that "[m]erely identifying some range and then picking a compromise figure is not rational decision-making."[68] The court directed the Commission to address relevant data and provide adequate record support and

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Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304 para. 45 (rel. Nov. 8, 2001) (Rate-of-Return Access Charge Reform Order).

64 *Qwest*, 258 F.3d at 1202.

65 *Id.*

66 *Id.*

67 *Id.* at 1202. See *Ninth Report and Order*, 14 FCC Rcd at 20464 para. 55.

68 *Qwest*, 258 F.3d at 1202.

reasoning on remand.[69] Although the court rejected the Commission's justification for the benchmark, the court said that it likely would uphold the mechanism if the 135 percent benchmark actually produced urban and rural rates that are reasonably comparable, however those terms are defined.[70]

20. Issues for Comment. We seek comment on whether we should adopt a different benchmark or benchmarks or whether we should continue to use the 135 percent benchmark. If commenters suggest that we should adopt a new benchmark or benchmarks, we seek comment on how we should determine the new benchmark(s). Commenters should provide both reasoned analysis and empirical data to show that their proposed benchmarks support reasonable comparability of rates and sufficient high-cost support. We also note that the high-cost loop support mechanism for rural carriers does not use a single benchmark but, rather, uses a step function.[71] The step function has multiple benchmarks with greater percentages of support provided as costs increase. We seek comment on whether we should adopt a step function (or some formula that provides a larger percentage of support as costs increase) in the federal high-cost support mechanism for non-rural carriers as well. Commenters should describe precisely how the step function would operate, the range and intervals of steps, and provide the empirical support and analysis for how such a function would support reasonable comparability of rates and sufficiency of support. To the extent commenters advocate that we should retain the 135 percent benchmark, commenters should provide both reasoned analysis and empirical data to show that the 135 percent benchmark supports reasonable comparability of rates and sufficiency of support. In this regard, we note that the 135 percent benchmark is consistent with an average of the benchmarks used in the high-cost loop support mechanism, which previously provided support to all carriers (and currently provides support to rural carriers).[72] We seek comment on whether an average of these benchmarks is appropriate for the non-rural high-cost mechanism.

21. We also seek comment on whether we should continue to use a benchmark based on nationwide average cost and compare it to statewide average costs. Although the court rejected Qwest's argument that the use of statewide and national averages is necessarily inconsistent with section 254, the court suggested that such a comparison would not be consistent with the statutory comparison of urban and rural rates without evidence that the benchmark actually produced comparable rates.[73] If we continue to use nationwide and

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[69] *Id.* at 1203.

[70] *Id.* at 1202.

[71] *See, e.g., Ninth Report and Order*, 14 FCC Rcd at 20440 para. 13.

[72] Prior to the *Ninth Report and Order*, the high-cost support mechanism provided increasing amounts of explicit support for local loop and switching costs based on the amount an incumbent LEC's costs, as reflected in its books, exceeded the national average. In particular, the mechanism provided support for incumbent LECs with more than 200,000 working loops for loop costs between 115 percent and 160 percent, the initial range, of the national average. In addition, the mechanism provides support for carriers with less than 200,000 lines with loop costs between 115 percent and 150 percent, the initial range, of the national average. The mechanism provided gradually more support for the portion of carriers' loop costs exceeding the initial ranges for large and small carriers. Averages for the initial ranges for both mechanisms, for carriers with more than 200,000 lines and less than 200,000 lines, are 137.5 percent ((115% + 160%) ÷ 2) and 132.5 percent ((115% + 150%) ÷ 2) respectively. An average of the averages results in 135 percent ((137.5% + 132.5%) ÷ 2).

[73] *Qwest*, 258 F.3d at 1202 & n.9.

statewide averages, how should we measure reasonable comparability when rural costs are included in the nationwide average? In the alternative, should we use a benchmark or benchmarks based on urban-only costs? Will definitions of "urban" and "rural" be required to determine an urban-only benchmark? To the extent we decide to implement a benchmark based only on urban and/or rural costs, should this definition be the same as discussed above in section III.A.? We also seek comment on how the terms "urban" and "rural" should be defined -- e.g., by wire centers of a certain size, by certain density zones, urban versus non-urbanized areas, or some other criterion.[74] Commenters should provide empirical support and analysis showing how their proposed benchmark or benchmarks result in reasonably comparable urban and rural rates and define precisely the statutory terms, urban, rural, and reasonably comparable in their proposed methodology.

C. State Inducements

22. Background. The court determined that the Commission must develop mechanisms to induce state action to preserve and advance universal service.[75] The court stated that the Act "plainly contemplates a partnership between federal and state governments to support universal service"[76] and explicitly rejected the argument that the Commission alone must support the full costs of universal service.[77] Although the Commission does not have jurisdiction over intrastate service,[78] the court stated that "it is appropriate -- even necessary -- for the FCC to rely on state action" in supporting the cost of universal service.[79] The court required the Commission to "create some inducement -- a 'carrot' or a 'stick,' for example, or simply a binding cooperative agreement with the states -- for the states to assist in implementing the goals of universal service."[80] To fulfill the state inducement requirement, the court provided the examples of conditioning a state's receipt of federal funds on the development of an adequate state program or creating a binding cooperative agreement with states.[81] The court concluded that the Commission must develop mechanisms to induce adequate state action in order to assure reasonably comparable rates between rural and urban areas.[82]

23. In the *Seventh Report and Order*, the Commission adopted a federal support mechanism that would take into account the states' ability to support their individual universal

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[74] As noted above, the Commission has defined "rural area" for purposes of determining universal service support for rural health care providers in section 54.5 of the Commission's rules. *See supra* note 60.

[75] *Qwest*, 258 F.3d at 1204.

[76] *Id.* at 1202. *See, e.g.* 47 U.S.C. § 254(b)(5) ("There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."); 47 U.S.C. § 254(f) ("Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State.").

[77] *Id.* at 1203.

[78] *Id. See, e.g.*, 47 U.S.C. § 152(b).

[79] *Qwest,* 258 F.3d at 1203.

[80] *Id.* at 1204.

[81] *Id.*

[82] *Id.*

service needs.[83] Specifically, the Commission proposed imposing a requirement that each state assume a per-line share of the support obligation to ascertain a state's ability to achieve reasonable comparability of rates within its borders.[84] The need for support in a state would be calculated by comparing costs to a benchmark. The state's ability to enable reasonably comparable rates would then be estimated by multiplying the per-line figure by the total number of non-rural carrier lines in the states. If the perceived support needed exceeded the estimate of a state's own resources, federal support would cover the difference in accordance with the mechanism.[85] Subsequently, in the *Ninth Report and Order* the Commission eliminated the state share requirement adopted in the *Seventh Report and Order*.[86] The Commission determined that calculating support amounts for non-rural carriers in each state based on statewide average costs would more accurately reflect a state's ability to support universal service with its own resources.[87] The Commission concluded that the Joint Board's general recommendation for the Commission to abstain from conditioning federal high-cost universal service support on state action represented the "best policy choice at the time."[88]

24. Issues for Comment. We seek comment on how the Commission should induce states to implement mechanisms to support universal service. Specifically, we seek comment on whether the Commission should: (1) implement a state share requirement, similar to that of the *Seventh Report and Order*; (2) condition federal support on some form of state action; (3) enter into a binding cooperative agreement with states as suggested by the court; or (4) adopt some other form of state inducement. To the extent that commenters suggest the Commission should adopt one of these options, commenters should provide specific descriptions of their proposals and recommendations for implementation. If the Commission were to condition federal support on state action, in what manner and to what extent should federal support be so conditioned? We also seek comment on what kind of state action should be required. If the Commission were to enter into binding cooperative agreements with states, what form should the agreements take? Would the Commission enter into such an agreement with individual states or with the states collectively? How would such an agreement be enforced? In addition, how would the Commission induce and enforce the inducement of states to implement universal service support mechanisms in states that do not receive federal universal service support under the non-rural high-cost mechanism?

IV. THE COMMISSION'S PLAN FOR UNIVERSAL SERVICE AND JOINT BOARD REFERRAL

25. The court also determined that it was unable to assess the adequacy of support levels for all components of universal service in light of the issues on remand and certain pending policy decisions expected from the Commission.[89] For example, because the

[83] *See Ninth Report and Order*, 14 FCC Rcd at 20469 para. 65.

[84] *See id. See also Seventh Report and Order*, 14 FCC Rcd at 8109 para. 63.

[85] *Seventh Report and Order*, 14 FCC Rcd at 8130-31 para. 111.

[86] *Ninth Report and Order*, 14 FCC Rcd at 20469 para. 66.

[87] *Id.*

[88] *Id.* at 20469 para. 67.

[89] *Qwest Corp. v. FCC*, 258 F.3d 1191, 1204 (10th Cir. 2001).

Commission had reserved the possibility of applying a different funding mechanism for rural carriers, the court concluded that it could not evaluate the sufficiency of all federal universal service support.[90] Although the court did not require the Commission to resolve all of these issues "at once," it stated that, "[o]n remand, the FCC will have an opportunity to explain further its complete plan for supporting universal service."[91] The Commission now has largely completed its universal service reforms initiated following passage of the 1996 Act.[92] We embark on the next stage by responding to the court's remand, examining the current mechanism with a critical eye, and determining what further reforms are necessary.

26. The Joint Board has previously considered and given recommendations on many of these issues in this docket. We conclude further Joint Board input will be beneficial for our consideration of the issues on remand. Accordingly, we refer the issues described in this NPRM, and the record developed herein, to the Joint Board for a recommended decision.[93] Specifically, we ask the Joint Board to provide a recommended decision on (1) how the Commission should define the key statutory terms "reasonably comparable" and "sufficient"; (2) whether, in light of the interpretation of those key statutory terms, the Commission can and should maintain the previously established benchmark or, in the alternative, should adopt a new benchmark or benchmarks; and (3) how the Commission should induce states to implement state universal service policies. We intend these referral issues to encompass the review of the non-rural mechanism that the Commission previously stated would occur by January 1, 2003.[94] At their core, the issues on remand require an examination of the non-rural mechanism. We direct the Joint Board to base its recommended decision on the record developed from this NPRM and present its recommended decision to the Commission no later than August 15, 2002. The Commission will then expeditiously consider the Joint Board's recommendations and issue an order in response to the court's remand.

27. Finally, although the Commission has determined that all carriers will eventually receive universal service support based upon their forward-looking costs, it has allowed rural carriers to continue to calculate support under a modified version of the embedded cost mechanism for five years.[95] The Commission previously stated that it intended to refer the

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[90] *Id.* The court also noted that the Commission had not yet completed its reform of intrastate access charges to remove implicit universal service support. *Id.* This reform was accomplished in the Commission's recent *Rate-of-Return Access Charge Reform Order*. *Rate-of-Return Access Charge Reform Order*, FCC 01-304 (rel. Nov. 8, 2001).

[91] *Qwest*, 258 F.3d at 1205.

[92] First, the Commission finalized the methodology for determining high-cost support for non-rural carriers. Second, the Commission addressed the interstate access charge and universal service support system for price cap carriers. Third, the Commission reformed intrastate high-cost support for rural carriers. Finally, the Commission reformed the interstate access charge structure and universal support system for rate-of-return carriers. *See Rate-of-Return Access Charge Reform Order,* FCC 01-304 para. 2 (rel. Nov. 8, 2001) (summarizing the Commission's actions concerning universal service reform).

[93] We note, however, that the scope of the referral shall not include the Commission's plan for universal service generally described in the preceding paragraph.

[94] *See Seventh Report and Order*, 14 FCC Rcd at 8123 para. 94. In the *Ninth Report and Order*, the Commission reaffirmed this commitment. *See Ninth Report and Order*, 14 FCC Rcd 20478-79 para. 88.

[95] Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth (continued....)

complex issues surrounding rural high-cost support to the Joint Board, "no later than January 1, 2002" in order to begin the process of determining what regime should be in place upon the expiration of the Rural Task Force plan.[96] The Commission further stated that, "in the context of the Joint Board's consideration of an appropriate high-cost mechanism for rural telephone companies, [it anticipates] conducting a comprehensive review of the high-cost support mechanisms for rural and non-rural carriers as a whole to ensure that both mechanisms function efficiently and in a coordinated fashion."[97]

28. In light of the need to expeditiously address the issues remanded to us by the court, we now believe it appropriate to delay briefly our initiation of a comprehensive examination of how the rural and non-rural mechanisms function together. We will refer issues concerning the rural high-cost support mechanism and how that mechanism functions with the non-rural mechanism to the Joint Board at a later date.

V. PROCEDURAL ISSUES

A. Ex Parte Presentations

29. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.[98]

B. Initial Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[99] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. 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 NPRM provided in paragraph number 42 of the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[100] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register. [101]

(...continued from previous page)
Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11310 para. 168 (2001) (Rural High-Cost Order). See also First Report and Order, 12 FCC Rcd at 8889 para. 203.

96 *See Rural High Cost Order*, 16 FCC Rcd at 11310 para. 168; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00J-4 para. 21 (Jt. Bd. rel. Dec. 22, 2000).

97 *See Rural High Cost Order*, 16 FCC Rcd at 11310 para. 169.

98 *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206.

99 *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-11, Title II, 110 Stat. 857 (1996).

100 *See* 5 U.S.C. § 603(a).

101 See id.

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

31. In the *First Report and Order*, the Commission adopted a plan for universal service support for rural, insular, and high cost areas to replace longstanding federal subsidies to incumbent local telephone companies with explicit, competitively neutral federal universal service mechanisms. In doing so, the Commission adopted the recommendation of the Joint Board that an eligible carrier's support should be based upon the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the services supported by the federal universal service mechanism. In the *Ninth Report and Order* the Commission adopted a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. The U.S. Court of Appeals for the Tenth Circuit remanded the *Ninth Report and Order* to the Commission for further consideration and explanation of its decision.

32. In this NPRM, we seek comment on issues from the *Ninth Report and Order*[102] remanded by the United States Court of Appeals for the Tenth Circuit.[103] Specifically, we seek comment on: (1) how the Commission should define the key statutory terms "reasonably comparable" and "sufficient";[104] (2) whether, in light of the interpretation of those key statutory terms, the Commission can and should maintain the previously established benchmark or, in the alternative, should adopt a new benchmark or benchmarks; and (3) how the Commission should induce states to implement state universal service policies. The objective of the NPRM is to assemble a record, to refer the record collected in this proceeding to the Joint Board for a recommended decision, and to consider the record and Joint Board recommendations in formulating a response to the court's remand. We expect that upon receipt of a recommended decision from the Joint Board, the Commission will be able adopt an order implementing a high-cost support mechanism that will be sufficient to enable non-rural carriers' rates for service to remain affordable and reasonably comparable in all regions of the nation.

2. Legal Basis

33. This rulemaking action is supported by sections 1-4, 201-205, 214, 218-220, 254, 303(r), 403 and 410 of the Communications Act of 1934, as amended.[105]

3. Description and Estimate of the Number of Small Entities to Which the Notice will Apply

34. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small government jurisdiction."[106] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are

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[102] *Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*).

[103] *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

[104] *See* discussion *supra* part III.A.

[105] 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403.

[106] 5 U.S.C. § 601(6).

appropriate to its activities.[107] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[108]

35. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications Except Radiotelephone) to be a small entity when it has no more than 1,500 employees.[109]

36. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[110] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[111] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

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

37. With respect to reporting and recordkeeping, the NPRM seeks comment on issues concerning the *Ninth Report and Order* that have been remanded by the court, as described above. Changes in recordkeeping, if any, will primarily occur in the area of benchmark issues. If the Commission upholds the mechanism adopted in the *Ninth Report & Order*, there will be no changes. If the Commission changes the current high-cost support mechanism, however, adoption of new rules or requirements may require additional recordkeeping. For example, if the Commission adopts a mechanism that compares "urban" and/or "rural" costs or rates in order to determine an appropriate benchmark, additional information from all non-rural carriers may be necessary, such as line count information for urban and rural areas.

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[107] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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 in the Federal Register."

[108] 15 U.S.C. § 632. See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

[109] 13 C.F.R. § 121.201. The equivalent classification under the North American Industry Classification System (NAICS) is 51331.

[110] 15 U.S.C. § 632.

[111] Letter *from* Jere W. Glover, Chief Counsel for Advocacy, SBA, *to* William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

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

38. 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.[112]

39. The proposals resulting from this NPRM could have varying positive or negative impacts on telecommunications carriers, including any such small carriers. Public comments are welcomed in the NPRM that would reduce any potential impacts on small entities. Specifically, suggestions are sought on different compliance or reporting requirements that would take into account the resources of small entities. Comments are also sought on possibilities for clarification, consolidation, or simplification of compliance and reporting requirements for small entities that would be subject to the rules, and on whether waiver or forbearance from the rules for small entities would be feasible or appropriate. Comments should be supported by specific economic analysis.

40. We do not believe that any final result in any area of the proposed rules under consideration will have a differential impact on small entities. With the request for comments in this NPRM, however, the commenters may present the Commission with various proposals that may have varying impacts on small entities. We seek comment on whether any proposals, if implemented, may result in an unfair burden.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

41. None.

C. Comment Filing Procedures

42. We invite comment on the issues and questions set forth in the Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules,[113] interested parties may file comments on or before 30 days after Federal Register publication of this NPRM, and reply comments on or before 45 days after Federal Register publication of this NPRM. All filings should refer to CC Docket No. 96-45. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[114]

43. Comments filed through ECFS can be sent as an electronic file via the Internet to

[112] 5 U.S.C. § 603(c).

[113] 47 C.F.R. §§ 1.415, 1.419.

[114] See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

<http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is CC Docket No. 96-45. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to 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.

44. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Parties who choose to file by paper are hereby notified that effective December 18, 2001, the Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE, Suite 110, Washington, DC, 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD, 20743. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD, 20743. This location will be open 8:00 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC, 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method...	It should be addressed for delivery to...
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 a.m. to 7:00 p.m.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail	445 12th Street, SW Washington, DC 20554

All filings must be sent to the Commission's Acting Secretary: William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Suite TW-A325,

Washington, DC, 20554.

45. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street, SW, Room 5-B540, Washington, DC, 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft 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 pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554.

46. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington, DC, 20554. In addition, the full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail **qualexint@aol.com**.

47. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules.[115] We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

D. Further Information

48. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or bmillin@fcc.gov. This NPRM can also be downloaded in Microsoft Word and ASCII formats at http://www.fcc.gov/ccb/universal_service/highcost.

49. For further information, contact the Katie King at (202) 418-7491 or Jennifer Schneider at (202) 418-0425 in the Accounting Policy Division, Common Carrier Bureau.

[115] *See* 47 C.F.R. § 1.49.

VI. ORDERING CLAUSES

50. Accordingly, IT IS ORDERED that pursuant to 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, this NOTICE OF PROPOSED RULEMAKING AND ORDER is hereby ADOPTED.

51. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i) and (j), 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 254, and 410, that the issues specified herein are referred to the Federal-State Joint Board on Universal Service for a recommendation to be received by the Commission no later than August 15, 2002.

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

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary