PUBLIC NOTICE
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE SEEKS COMMENT ON CERTAIN OF THE COMMISSION'S RULES RELATING TO HIGH-COST UNIVERSAL SERVICE SUPPORT AND THE ETC DESIGNATION PROCESS

CC Docket No. 96-45

Released: February 7, 2003

Comment Date: 60 days from publication in the Federal Register
Reply Comment Date: 90 days from publication in the Federal Register

1. On November 8, 2002, the Federal Communications Commission (Commission) requested that the Federal-State Joint Board on Universal Service (Joint Board) "review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled."[1] In particular, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (ETC) is providing services, as well as the Commission's rules regarding support for second lines.[2] The Commission also asked the Joint Board to examine the process for designating ETCs.[3] By this Public Notice, the Joint Board initiates its review. As set forth below, we invite public comment on whether these rules continue to fulfill their intended purposes, whether modifications are warranted, and if so, how the rules should be modified.

I. BACKGROUND

2. Section 254(b) of the Act directs the Joint Board and Commission to base policies for the preservation and advancement of universal service on several general principles, including the principle that there should be specific, predictable, and sufficient federal and state universal service support mechanisms.[4] The Commission adopted the

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002) (*Referral Order*).

[2] *Id.*

[3] *Id.*

[4] *See generally* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq*. 47 U.S.C. § 254(b). These principles also include: (1) quality services should be available at just, reasonable, and affordable

additional principle that federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies.[5] Consistent with this principle and with the Joint Board's recommendation, the Commission determined in 1997 that federal universal service support should be made available, or "portable," to all ETCs that provide supported services, regardless of the technology used.[6]

3. Under the Commission's rules, a competitive ETC that serves a customer in an incumbent local exchange carrier's (LEC's) service area normally receives the same per-line amount of high-cost universal service support that the incumbent LEC would receive for serving that same customer.[7] However, a competitive ETC that provides supported services utilizing unbundled network elements (UNEs) receives the lesser of the UNE price or the per-line support amount available to the incumbent LEC.[8] In order to receive universal service support, competitors must obtain ETC status from the relevant state commission, or the Commission in cases where the state commission lacks jurisdiction.[9] Once ETC status is obtained, the rules provide support for all lines served by the ETC in its designated ETC service area.[10]

4. The federal high-cost support mechanisms that typically provide portable support in rural service areas include intrastate high-cost loop support, interstate common line support (ICLS), Long Term Support (LTS), and local switching support.[11] A competitive ETC serving customers in a rural service area will, in most cases, receive portable high-cost support based on the embedded costs of the incumbent LEC.[12] Rural

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rates; and (2) consumers in all regions of the Nation should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

[5] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, paras. 46-48 (1997) (*First Report and Order*). Section 254(b)(7) of the Act allows the Commission to add to the list of universal service principles "[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act." *See* 47 U.S.C. §254(b)(7).

[6] *First Report and Order*, 12 FCC Rcd at 8932-8934, paras. 286-290, 8944-8945, paras. 311-313. The Commission explained that "universal service [should] be sustainable in a competitive environment; this means both that the system of support must be competitively neutral and permanent and that all support must be targeted as well as portable among eligible telecommunications carriers." *Id*. at 8788, para. 19. *See also Alenco Communications, Inc. v. Federal Communications Commission*, 201 F.3d 608, 621-622 (5th Cir. 2000).

[7] 47 C.F.R. § 54.307(a).

[8] *See* 47 C.F.R. § 54.307(a)(2).

[9] *See* 47 U.S.C. § 254(e)(1), (e)(6).

[10] *See First Report and Order*, 12 FCC Rcd at 8928-8830, paras. 94-96. As part of the ETC designation process, the ETC must identify the service area for which it will provide service and seek federal support.

[11] *See* 47 C.F.R. §§ 36.601-36.631 (high-cost loop support), 54.301 (local switching support), 54.303 (Long Term Support), 54.901-54.904 (interstate common line support).

[12] The term "embedded costs" refers to a carrier's historic costs, as reflected in its books. We note that some small incumbent LECs (known as average schedule companies) receive high-cost support based on

incumbent LECs receive intrastate high-cost loop support based on the degree to which their average embedded loop costs exceed 115 percent of the national average loop cost.[13] Local switching support and LTS also are based on an incumbent LEC's embedded costs and other factors.[14] ICLS will eventually replace the carrier common line charge, and permits each rate-of-return carrier to recover its common line revenue requirement above the applicable subscriber line charge (SLC), while ensuring that its SLCs remain affordable to its customers.[15] Although these support mechanisms generally calculate support based on costs averaged at the study area level, the Commission's rules permit

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formulas developed by NECA using data from a sample group of average schedule carriers and from similarly situated companies that file cost data. *See, e.g., Federal-State Joint Board on Universal Service, National Exchange Carrier Association, Inc., Proposed 2002 Modification of Average Schedule Formulas*, CC Docket No. 96-45, Order, 17 FCC Rcd 14236, 14237, para. 3 (Wir. Comp. Bur. 2002); *Federal-State Joint Board on Universal Service, National Exchange Carrier Association, Inc. Proposed 2002 Modification of Average Schedule Formulas*, CC Docket No. 96-45, Order, DA 02-3587 (Wir. Comp. Bur. rel. Dec. 27, 2002).

[13] *See* 47 C.F.R. § 36.631. The terms "rural carrier" and "rural incumbent LEC" refer to incumbent LECs that meet the definition of a rural telephone company set forth in section 153(37) of the Act. 47 U.S.C. § 153(37). Under this definition, rural telephone companies are incumbent LECs that either serve study areas with fewer than 100,000 access lines or meet one of three additional criteria. For rural incumbent LECs, the national average loop cost has been frozen at $240.00. *See* 47 C.F.R. § 36.621.

[14] Local switching support provides explicit support to incumbent LECs that serve study areas with 50,000 or fewer access lines based on the portion of embedded switching costs that such carriers would have assigned to the interstate jurisdiction under the Dial Equipment Minute (DEM) weighting program. *See* 47 C.F.R. § 54.301. LTS provides explicit support to rate-of-return carriers that are members of the National Exchange Carrier Association (NECA) pool for interstate-allocated loop costs. *See* 47 C.F.R. § 54.303; *see also infra*, note 16. Rate-of-return carriers currently receive LTS based on the support received in the previous year, adjusted by inflation. *Id*.; *see also 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*, CC Docket Nos. 96-45, 00-256, Order and Second Order on Reconsideration, FCC 02-181, at para. 7 (rel. June 13, 2002). The Commission tentatively concluded that LTS should be merged into ICLS beginning July 1, 2003. *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket No. 98-77, Report and Order in CC Docket 98-166, 16 FCC Rcd 19613, 19725-19726, para. 274 (2001)(*MAG Order*), *recons. pending*.

[15] *See* 47 C.F.R. § 54.901. *See also MAG Order*, 16 FCC Rcd at 19673-19674, para. 142. The term "rate-of-return carrier" refers to incumbent LECs subject to rate-of-return regulation of interstate revenues. Most, but not all, rate-of-return carriers also meet the definition of rural telephone company. Rural carriers that are subject to price caps are not eligible to receive ICLS, and instead may receive interstate access support. A list of rural carriers subject to price caps is provided in the Universal Service Administrative Company's quarterly filing. *See* Universal Service Administrative Company, Federal Universal Service Mechanisms Fund Size Projections for the First Quarter of 2003, filed Nov. 1, 2002, at Appendix HC08, available at http://www.universalservice.org/overview/filings/. ICLS is calculated as the difference between a rate-of-return carrier's common line revenue requirement (i.e., the sum of its embedded common line costs and a prescribed rate of return) and the sum of its revenues from SLCs, transitional carrier common line charges, special access surcharges, line port costs in excess of basic analog services, and LTS.

disaggregation and targeting of per-line support to geographic areas below the study area level.[16]

5. The federal high-cost support mechanisms that typically provide portable support in non-rural service areas include forward-looking high-cost support and interstate access support.[17] The forward-looking support mechanism determines the amount of federal support to be provided to non-rural carriers in each state by comparing the statewide average cost per line, as estimated by the Commission's cost model, to a nationwide average cost benchmark.[18] The interstate access support mechanism provides price cap carriers with the support required to recover a portion of their price cap CMT revenues that cannot be recovered through SLCs.[19] Portable forward-looking support typically is targeted to non-rural incumbent LEC wire centers and interstate access support is targeted to UNE zones where such zones exist.[20]

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[16] *See* 47 C.F.R. §§ 54.307(a)(1); 54.315.

[17] *See* 47 C.F.R. § 54.309 (forward-looking support) and 54.801-54.809 (interstate access support).

[18] *See* 47 C.F.R. § 54.309. The term "non-rural carriers" refers to carriers that do not meet the definition of rural telephone company. *See supra*, note 13. The forward-looking support mechanism provides support for 76% of statewide average costs above a nationwide average cost benchmark of 135%. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*), *remanded, Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). The Commission is currently considering the Joint Board's recommendations regarding the remand of the *Ninth Report and Order*. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 02J-2 (rel. Oct. 16, 2002)(*Ninth Report and Order Joint Board Recommended Decision*). When the Commission established the forward-looking support mechanism for non-rural carriers, it adopted an interim hold-harmless provision under which non-rural carriers receive the greater of support calculated under either the forward-looking mechanism or high-cost loop support and LTS. *Ninth Report and Order*, 14 FCC Rcd at 20473-20479, para. 78-88; *see* 47 C.F.R. § 54.311. Beginning January 1, 2001, the Commission began phasing down interim hold-harmless support (excluding LTS), through annual $1.00 reductions to average monthly, per line high-cost loop support available to non-rural carriers. *See* 47 C.F.R. § 54.311(d).

[19] 47 C.F.R. § 54.804; *see Access Charge Reform, Price Cap Performance Review for LECs*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, Low-Volume Long-Distance Users, CC Docket No. 99-249, Eleventh Report and Order, 15 FCC Rcd 12962, 13049-55, paras. 206-13 (2000) (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part*, *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001). The term "price cap carrier" refers to carriers that are subject to price cap regulation of interstate revenues. The Commission implemented price cap regulation for the largest incumbent LECs in 1991. Almost all non-rural carriers are subject to price cap regulation. Non-rural carriers that are not subject to price caps may not receive interstate access support, and instead are eligible to receive ICLS. These carriers include Alaska Communications Systems – ATU, Alltel Ohio, Inc., North State Tel. Co. in North Carolina, Puerto Rico Tel. Co., and Roseville Tel. Co. in California. *See MAG Order*, 16 FCC Rcd 19676, para. 148, n. 405. The term "price cap CMT revenues" refers to a price cap incumbent LEC's common line, marketing, and transport interconnection charge revenues. 47 C.F.R. § 54.800. Interstate access support is based on the difference between a price cap carrier's study area average CMT revenue per line per month and the maximum allowable subscriber line charges. *Id.* at § 54.804. The total amount of interstate access support available for areas served by price cap carriers is limited to $650 million per year. *Id.* at § 54.801.

[20] *See* 47 C.F.R. §§ 54.309, 54.803. Some states have successfully petitioned the Commission to target forward-looking support to a geographic area different than the wire center (e.g., UNE zones). *See id.* at § 54.309(c).

6. In May 2001, after considering recommendations made by the Joint Board, the Commission modified its rules for the receipt of high-cost loop support by ETCs in rural carrier study areas for a period of five years.[21] The Commission's action was based on proposals made by the Rural Task Force.[22] The Commission concluded that adoption of the Rural Task Force's five-year plan would promote investment by both incumbents and competitors in rural America's telecommunications infrastructure.[23] The Commission recognized that the Rural Task Force's consensus proposals were the result of a compromise process in which divergent interests were aired, argued, and eventually accommodated.[24] Among other things, the Commission adopted the Rural Task Force's overall recommendation that rural incumbent LECs and competitive ETCs should continue receiving the same amount of per-line high-cost loop support when serving customers in the same study area, based on the embedded costs of the rural incumbent LECs.[25] The Commission did not adopt the Rural Task Force's specific proposal to freeze per-line high-cost loop support upon competitive entry into a rural carrier study area, but recognized that excessive growth in the fund might be possible during the life of the five-year plan under certain circumstances.[26] The Commission indicated its intent to

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[21] *See Federal-State Joint Board on Universal Service, and Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001) (*Rural Task Force Order*), *recon. pending*; *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 16 FCC Rcd at 6153 (Jt. Bd. rel. Dec. 22, 2000)(*Joint Board Rural Task Force Recommended Decision*).

[22] The Rural Task Force was established by the Joint Board in 1998 and was assigned the difficult task of developing a forward-looking high-cost universal service support mechanism for rural carriers. After over two years of exhaustive deliberations and considerable effort, including issuing six white papers, the Rural Task Force submitted its recommendations to the Joint Board. *See* Letter from William R. Gillis, Chair, Rural Task Force, to Magalie Roman Salas, Federal Communications Commission, dated September 29, 2000 (Rural Task Force Recommendation) (The Rural Task Force Recommendation is included as Appendix A to the *Joint Board Rural Task Force Recommended Decision,* 16 FCC Rcd at 6165-6223); *Rural Task Force Order*. The Rural Task Force's White Paper 5, "Competition and Universal Service," specifically addressed issues related to the portability of universal service support.

[23] *See Rural Task Force Order*, 16 FCC Rcd at 11256-11259, paras. 24-30.

[24] *See id.* at 11247-11248, paras. 5-6. The Rural Task Force included a group of individuals representing a broad range of interests, including rural telephone companies, competitive LECs, interexchange carriers, wireless providers, consumer advocates, and state and federal agencies.

[25] *See id.* at 11280, para. 86, 11291, para. 114, 11293-11299, paras. 120-135; *see also* Rural Task Force Recommendation at *Joint Board Rural Task Force Recommended Decision*, 16 FCC Rcd at 6188-6189. The Commission also agreed with the Rural Task Force that high-cost support for competitive ETCs should not be included within the cap on rural high-cost loop support. *See Rural Task Force Order*, 16 FCC Rcd at 11262-11266, paras. 40-47, 11268, para. 53, 11294-11295, para. 125; *see also* Rural Task Force Recommendation at *Joint Board Rural Task Force Recommended Decision*, 16 FCC Rcd at 6188.

[26] *See Rural Task Force Order*, 16 FCC Rcd at 11325-11327, paras. 207-211 ("[A]s an incumbent "loses" lines to a competitive eligible telecommunications carrier, the incumbent must recover its fixed costs from fewer lines, thus increasing its per-line costs. With higher per-line costs, the incumbent would receive greater per-line support, which would also be available to the competitive eligible telecommunications carrier for each of the lines that it serves. Thus a substantial loss of an incumbent's lines to a competitive

closely monitor these matters, consistent with its obligation under section 254 to maintain a specific, predictable, and sufficient universal service fund.[27]

7. In its Referral Order, the Commission noted that there have been many changes to the telecommunications marketplace since the Commission's rules were first adopted in 1997, and that competitive ETCs are increasingly qualifying for high-cost universal service support.[28] The Commission also observed that issues related to support for ETCs in competitive study areas have been raised in a number of Commission proceedings, as well as in petitions filed with the Commission.[29] In light of these developments, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing services, and the Commission's rules regarding support for second lines.[30] The Commission also asked the Joint Board to examine the process for designating ETCs.[31]

II. ISSUES FOR COMMENT

8. We seek comment on whether changes to the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing services and the Commission's rules regarding support for second lines are warranted, and if so, how those rules should be modified. We also seek comment regarding the process for designating ETCs. With respect to each of these issues, we ask that commenters specifically address how any proposed modifications will further, or impede, the Act's goals of maintaining universal service and fostering competition. We also ask commenters to address the effect of any rule changes on incentives to invest in and upgrade the network and on incentives to provide supported services in high-cost areas. In addition, commenters should address how any proposed modifications to the high-cost loop support mechanism for rural carriers would affect the specific conclusions adopted in the Rural Task Force Order, as well as its five-year time frame.

A. State of the Marketplace and Universal Service Fund

9. We seek to establish a complete record on the development of competition in high-cost areas,[32] the effect of the Commission's current policies on such development, and how line growth in high-cost areas may impact the universal service fund. To the extent possible, we request that commenters provide detailed data on competition and line growth in high-cost areas. The more specific data that we receive, the better able we

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eligible telecommunications carrier could result in excessive fund growth.").

[27] *Id.*

[28] *See Referral Order* at para. 4.

[29] *Id.* at para. 5.

[30] *Id.*

[31] *Id.*

[32] In this Public Notice, we use the term "high-cost areas" to refer to areas in which ETCs receive high-cost universal service support from the federal support mechanisms described above. *See supra* paras. 4-5.

will be to tailor our recommendations to meet the Act's goals of maintaining universal service and fostering competition.

10. Based on Universal Service Administrative Company (USAC) data, a total of approximately 1,400 ETCs received approximately $803 million in high-cost support disbursed in the third quarter of 2002 for service to approximately 31 million lines.[33] Of these ETCs, 45 were competitive ETCs, of which 15 were mobile wireless providers, and 30 were competitive LECs.[34] The competitive ETCs received approximately $14 million for service to 1.2 million lines for the same time period,[35] representing approximately 1.8 percent of the total amount of high-cost support provided to ETCs.[36] In contrast, in the first quarter of 2001, competitive ETCs received approximately $2 million out of approximately $638 million in high-cost support, or approximately 0.4 percent of total high-cost support.[37]

11. To what extent will support for competitive ETCs likely grow over time? Is the growth rate of support for competitive ETCs over the last eighteen months indicative of what one would expect to see in the future? How does the growth in support for competitive ETCs compare to the growth in support for other ETCs (i.e., incumbent LECs)?

12. According to the Commission's most recent Local Telephone Competition report, 93 percent of United States households are located in zip codes where there is at least one competitive local exchange carrier.[38] In some states, however, entry is occurring in only a limited number of zip codes.[39] According to the Commission's most recent CMRS Competition report, 94 percent of the total United States population lives in counties with access to three or more different mobile telephone service operators

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[33] Based on data provided by USAC. *See also* Federal Universal Service Support Mechanisms Fund Size Projections and Contribution Base for the Third Quarter 2002, Appendix HC 1, HC 4, HC 14 (Universal Service Administrative Company, May 2, 2002); Federal Universal Service Support Mechanisms Fund Size Projections and Contribution Base for the First Quarter 2003, Appendix HC 8 (Universal Service Administrative Company, November 1, 2002). Line count estimates are based on line count data submitted by incumbent LECs in accordance with Part 36 of the Commission's rules and by competitive ETCs in accordance with sections 54.307 and 54.802 for high-cost support disbursed in the third quarter of 2002. *See* 47 C.F.R. §§ 36.611, 36.612, 54.307, 54.802.

[34] *Id.* Competitive ETCs were located in 22 states, including Puerto Rico and Guam. In this Public Notice, we use the term "mobile wireless" to refer to Commercial Mobile Radio Service (CMRS) providers and not fixed wireless providers.

[35] *See supra* note 33.

[36] *Id.*

[37] Based on data provided by USAC. *See also* Federal Universal Service Support Mechanisms Fund Size Projections and Contribution Base for the First Quarter 2001, Appendix HC 1 (Universal Service Administrative Company, November 2, 2000).

[38] Industry Analysis and Technology Division, Wireline Competition Bureau, Local Telephone Competition, (released December 2002) at 3 and Table 14. A copy of the relevant table is attached as Appendix A.

[39] *Id.*

(including cellular, broadband Personal Communications Services, and/or digital Specialized Mobile Radio providers).[40] What percentage of consumers in rural and high-cost areas have access to competitive alternatives for services provided by incumbent LECs? What economic and business factors affect competitive entry in rural and high-cost areas? To what extent, if any, is there a relationship between competitive entry and receipt of high-cost support by competitive ETCs?

13. In addition, we encourage commenters to provide the Joint Board with data on the number of telephone connections in high-cost areas, and to also indicate the type of technological platform providing the telephone connections. Is there line growth in high cost areas, and if so, how much of the line growth is due to services being provided by wireline, wireless, and other technology platforms? To what extent does such growth represent secondary lines, and to what extent does it represent new end users? Where are such lines located? To what extent are such lines eligible for high-cost support, i.e., provided by ETCs? How many currently receive support?

14. To what extent does wireless or other technology represent the addition of complementary service rather then substitution for traditional wireline in rural and high-cost areas? We note that, according to the Commission's most recent Telephone Subscribership in the United States report, as of November 2001, 1.2 percent of households in the United States indicated that they had only wireless phones.[41] Is it reasonable to assume that this statistic on household wireless substitution nationwide is indicative of the degree of substitution occurring in high-cost areas? To what extent have customers of mobile wireless competitive ETCs substituted wireless for wireline service?

B. Methodology for Calculating Support in Competitive Study Areas

15. We seek comment regarding the methodology for calculating support for ETCs in competitive study areas. Under the Commission's current rules, per-line support for all ETCs is based on the support that the incumbent LEC would receive for the same line.[42] This means that support to the competitive ETC is based on a variety of factors directly related to the incumbent's operations.

16. We seek comment on the policy goals of portable support. Does providing universal service support for multiple ETCs in high-cost areas result in inefficient competition and impose greater costs on the universal service fund?[43] Do the

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[40] *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Seventh Report, 17 FCC Rcd 12985, 12989-12990 (2002) (CMRS Competition).

[41] Industry Analysis and Technology Division, Wireline Competition Bureau, Telephone Subscribership in the United States (released November 2002) at 2.

[42] *First Report and Order*, 12 FCC at 8932-8934, paras, 286-290, 8944-8945, paras. 311-313.

[43] Some analysts indicate that universal service funding received by an ETC for providing service to its wireless residential customers is reported as an incremental revenue source and that such incremental revenue represents "almost all margin." *See* Salomon Smith Barney, *Western Wireless (WWCA): USF Provides Upside to Our EBITDA* (January 9, 2003), at 1.

current rules promote competitive neutrality and properly balance the statutory goals of competition and universal service? Do the current rules promote efficient competition in high-cost areas?[44] Do they operate in a competitively neutral manner? Do they remove or create barriers to entry? Do the current rules have the effect of supporting the costs of two or more networks serving the same area concurrently? If so, is that consistent with the purpose of section 254 of the Act?

17. To what extent do the costs of competitive ETCs differ from the costs of incumbents? Do the Commission's rules create an unfair advantage for ETCs with lower costs? Should support vary depending on an ETC's technology platform? What is the effect of competitive entry in rural and non-rural study areas on the amount of support that an incumbent ETC receives?

18. We also seek comment on alternative methodologies for calculating support for competitive ETCs. For example, should the Commission calculate support for a competitive ETC based on its own costs?[45] What would be the competitive effects of paying different amounts per "customer" or per "line" to each ETC? To the extent competitive ETCs were to receive support based on their own costs, what costs would be appropriately included in determining support?[46] Under such an approach, should support be based on competitive ETCs' forward-looking economic costs or embedded costs? Should the methodology used to calculate competitive ETC support be the same as the methodology used to calculate support for the incumbent? We note that the Commission's forward-looking cost model is designed to model the costs of a wireline network, and that competitive ETCs are not subject to the same regulatory and reporting requirements as incumbent LECs. Also, several ETCs now provide service using wireless technology. What reporting requirements would be necessary in order to implement a requirement that support for each competitive ETC be based on its own costs? Under such an approach, would it be appropriate to calculate support for competitive ETCs on a per-line basis? If so, should per-line support amounts reflect solely the competitive ETC's line count, or some combination of the line counts reported by all area ETCs?[47] What are the alternatives to calculating support on a per-line basis?

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[44] In the *First Report and Order*, the Commission rejected the argument that providing support to competitive ETCs based on an incumbent LEC's cost would give preferential treatment to competitors. The Commission reasoned that if the competitive ETC can serve a customer's line at a significantly lower cost, this may indicate a less efficient incumbent LEC. The Commission also suggested that the presence of a more efficient competitor will influence the incumbent LEC to increase efficiency. *Id*. at 8933, para. 289.

[45] *See* 47 C.F.R. § 54.309(a).

[46] Part 36 of the Commission's rules specifies that particular costs recorded in an incumbent LEC's Uniform System of Accounts be utilized in determining, for instance, loop costs. ETCs that are not incumbent LECs are not subject to the Uniform System of Accounts and may have cost structures that vary significantly from those of incumbent LECs, depending on the technology used.

[47] As discussed above, under the Commission's current rules, whether an incumbent LEC is eligible for high-cost support – whether based on forward-looking or embedded costs – depends upon how much its average per-line costs exceed the relevant benchmark. *See supra* discussion at paras. 4-5.

19. In addition, we seek comment on other methods of determining high-cost support for ETCs in competitive study areas. For example, should support in competitive areas be based on the lowest-cost provider's costs, in order to promote efficiency? For example, if a fixed wireless carrier can serve an area at lower cost, should support to all carriers serving that area be based on the cost of the fixed wireless service? How should the Commission determine the lowest cost of service and to what extent should quality of service be considered when making such a determination? To the extent the costs of competitive ETCs are lower than the costs of incumbent LECs, what effect would such rules have on incumbent providers?

20. We also seek comment on whether and how auctions might be utilized to award support. For example, should high-cost support be awarded to the ETC with the lowest bid for support in a designated service area for a set period of time? Under such a system, how would the geographic units of the auction be determined, what criteria should determine when an ETC or ETCs receive support, what regulatory authority should administer the process, and how frequently should auctions be conducted? What responsibilities should be imposed on the ETC that receives high-cost support? Should such an ETC be required to assume quality of service obligations? How would auctions be implemented in light of section 214(e)(2) of the Act, which requires states to determine through the ETC process whether designation of a competitive ETC in a given service area would serve the public interest? What other laws should be considered when determining the suitability of auctions as a mechanism for directing support to rural or non-rural service areas? What would be the effect of auctions on the objective of fostering competition and the principle of competitive neutrality in high-cost areas? Specifically, what impact would auctions have on investment by incumbents and competitors in high-cost areas? What sort of measures could be adopted to encourage auction winners, as well as losers, to continue investing in high-cost areas? What level of competition should be present prior to auctions being conducted in a given service area? Under an auction system, would adequate incentives exist to ensure each carrier would provide its lowest bid?

21. In addition, we seek comment on the Commission's rules governing calculation of high-cost support for competitive ETCs utilizing UNEs. Currently, a competitive ETC that provides supported services utilizing UNEs receives the lesser of the UNE price or the per-line support amount available to the incumbent LEC.[48] Some competitive UNE-based ETCs serving high-cost areas may receive support equal to the full price of the UNEs they purchase from the incumbent LEC. As a result, these competitive ETCs have no net UNE cost, and may pay only non-UNE costs such as customer service support, administrative costs, and network costs ancillary to the UNE costs. Also, the geographic area for which support is calculated for competitive ETCs may be different from the area for which UNE prices are calculated by the state commission. Should the Commission revise its rules? If so, how? For example, should the Commission require a competitive ETC to qualify for high-cost support based on its cost associated with the purchase of UNEs?[49] What costs do competitive ETCs have in

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[48] 47 C.F.R. § 54.307(a)(2).

[49] ACS Fairbanks proposes that competitive ETCs should be required to certify, or submit data affirming

addition to the cost of purchasing UNEs? Under such an approach, how should these additional costs be considered in determining whether to provide support to a competitive ETC that utilizes UNEs? How should such costs be determined? Are modifications to the Commission's rules warranted in order to clarify how incumbents report loops sold as UNEs to competitive ETCs?

22. With respect to any proposed alternative methodologies, commenters should provide a detailed explanation as to how support should be calculated and the administrative burdens entailed. In particular, we seek a comprehensive assessment of the reporting obligations and the frequency of such reporting, and the necessity for either regular Commission review of embedded costs or development and update of models. Commenters should quantify the burden of any proposed reporting obligations and any necessary embedded cost or model review. Commenters should also address how any proposed alternative methodologies would affect competition and competitive neutrality, and how they would serve the principles of section 254 of the Act. In addition, commenters should address the relationship between carrier of last resort obligations and the proposed alternative methodology. To the extent a commenter's proposal would result in a change in the amount of support paid to an ETC, that commenter should also explain whether the change should occur as soon as possible, be phased in, or be deferred to hold existing ETCs harmless from the change.

23. Furthermore, we seek comment on whether the support available to competitive ETCs in high-cost areas should be subject to limitations similar to those imposed on support for incumbent LECs. Under the Commission's current rules, high-cost loop support for competitive ETCs is not capped, whereas the Commission's rules limit the overall amount of rural high-cost loop support available to incumbent LECs.[50] Should the maximum amount of support available to a single competitive ETC have some relation to the total amount of high-cost support available to the incumbent in the same area? Should the total amount of funding available to all ETCs in a geographic area be capped in some manner? Commenters should address the potential benefits and costs of modifying these rules on the stability, predictability, and sufficiency of the fund, as well as their potential effects on competition.

24. In addition, we seek comment regarding the specific concerns raised by the Rural Task Force relating to excessive growth in the fund if incumbent rural carriers lose a significant number of lines to competitive ETCs.[51] The Rural Task Force stated, for example, that as a rural incumbent LEC "loses" lines to a competitive ETC, the rural

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that they qualify for high-cost support based on their own costs associated with the purchase of UNEs. *See* ACS Fairbanks, Inc., Petition for Declaratory Ruling and Other Relief Pursuant to Section 245(e) of the Communications Act, filed July 24, 2002 (ACS Fairbanks Petition), at 33-37; *see also Wireline Competition Bureau Seeks Comment on ACS of Fairbanks, Inc. Petition for Declaratory Ruling and Other Relief*, CC Docket No. 96-45, Public Notice, DA 02-1853 (rel. Aug. 1, 2002).

[50] *See* 47 C.F.R. § 36.603. Interstate access support for both competitive and incumbent ETCs in study areas served by price cap LECs is subject to an overall cap of $650 million per year. *See generally* 47 C.F.R. §§ 54.805-54.806.

[51] *See Rural Task Force Order*, 16 FCC Rcd at 11325-11327, paras. 207-211.

incumbent LEC must recover its fixed costs from fewer lines, thus increasing its average per-line costs. With higher average per-line costs, the rural incumbent LEC could receive greater per-line support, which would also be available to the competitive ETC for each of the lines that it serves.[52] In response to these concerns, the Commission sought comment on whether to freeze per-line support amounts available to the rural incumbent LEC and any competitive ETC in competitive study areas served by rural carriers.[53] We invite commenters to update the record and provide alternative proposals that may be appropriate to address this issue. Commenters should support their responses with data or other empirical information regarding loss of lines by rural carriers to competitive ETCs. We request that such empirical information be categorized by customer class or service, including residential and business, single and multi-line business, special access, etc.

25. We also seek comment regarding the methodology for determining the location of a line served by a mobile wireless provider, and whether modifications are warranted.[54] Currently, competitive ETCs providing mobile wireless service use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area.[55] In the *Rural Task Force Order*, the Commission concluded that this approach was reasonable and the most administratively simple solution to the problem of determining the location of a wireless customer for universal service purposes, although it could be subject to abuse. The Commission also stated that it might revisit this approach "[a]s more mobile wireless carriers are designated as eligible to receive support[.]"[56] We invite commenters to address the reasonableness of the Commission's current approach and whether it should be reevaluated. To the extent commenters assert this approach has led to unintended consequences, they should describe such situations with specificity. We ask commenters to provide suggestions regarding alternative methods of determining the location of lines served by a mobile wireless service provider. Commenters should specifically address the administrative burdens entailed by any proposed approaches.

C. Scope of Support

26. Under the Commission's current rules, all residential and business connections provided by ETCs are eligible for high-cost support.[57] In its 1996 recommendations to the Commission regarding universal service, the Joint Board recommended that support be limited to the provision of a single connection to a subscriber's primary residence and to businesses with only a single connection.[58] The

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[52] *Id.*, para. 207.

[53] *Id*.

[54] *See* 47 C.F.R. 54.307(b).

[55] *Id*.

[56] *Id.*, 16 FCC Rcd at 11316, para. 183.

[57] *See First Report and Order*, 12 FCC Rcd at 8828-8830, paras. 94-96.

[58] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 132-134 (1996).

Joint Board also recommended that support not be provided to second residences.[59] In declining to adopt this recommendation, the Commission stated that it shared the Joint Board's concern regarding this matter, but it would continue to evaluate this recommendation as it further developed a support mechanism based on forward-looking economic costs.[60]

27. As noted above, currently incumbent LECs and competitive ETCs collectively serve a total of 32.2 million lines in high-cost areas.[61] What percentage of these lines, or lines in any particular geographic area, are second lines? To the extent possible, commenters should provide detailed empirical information and should address whether the percentage of lines that should be deemed "second lines" varies in any way between incumbent LECs and competitive ETCs.

28. We seek comment regarding whether the goals of section 254 would be better served if support were limited to a single connection to the residential or single-line business end-user – whether provided by the incumbent or a competitive ETC. Would limiting support to primary lines be consistent with the universal service principle stating that access in rural and high-cost areas should be "reasonably comparable" to urban areas?[62] How would a primary line restriction affect the implementation of federal support mechanisms based on embedded or forward-looking costs? How would such a restriction affect the implementation of the Commission's interstate access reform goals adopted in the *CALLS Order* and *MAG Order*?[63] Commenters also should address the significance of carrier of last resort obligations to these issues. What would be the impact of primary line restrictions on consumers, ETCs, and an ETC's ability to provide universal service?

29. If support were limited to a single connection, how would it be determined which line receives support? Is it administratively feasible to distinguish primary from second lines? Commenters should address whether and how primary lines should be defined. Should the end user be defined as a household, or a single individual? How would a rule limiting support to a single residential end user affect households in which two or more unrelated individuals reside? The Commission previously acknowledged the administrative difficulties associated with applying different primary and non-primary

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[59] *Id*.

[60] *See First Report and Order*, 12 FCC Rcd at 8828-8830, paras. 94-96 ("[w]e share the Joint Board's concern that providing universal service support in high cost areas for second residential connections, second residences, and businesses with multiple connections may be inconsistent with the goals of universal service in that business and residential consumers that presumably can afford to pay rates that reflect the carrier's costs to provide services nevertheless would receive support. We are also mindful that overly expansive universal service support mechanisms potentially could harm all consumers by increasing the expense of telecommunications services for all.").

[61] Based on data provided by USAC. *See also* Federal Universal Service Support Mechanisms Fund Size Projections and Contribution Base for the Third Quarter 2002, Appendix HC 1 (Universal Service Administrative Company, May 2, 2002). *See supra* note 33.

[62] *See* 47 U.S.C. § 254(b)(3).

[63] *See MAG Order*, 16 FCC Rcd at 19617, para. 3*; CALLS Order*, 15 FCC Rcd at 12964, para. 3.

residential SLC rates.[64] Would similar problems arise if the Commission were to limit high-cost support to primary lines? Would such problems be magnified in a multi-carrier environment? Would limiting support to primary lines reduce incentives to construct second lines in high-cost areas or create a negative financial effect on the incumbent? If the Commission limited support to primary lines, would the Commission also need to revise how it determined the amount of support per line? If so, how should the level of support be determined?

30. If support were limited to a single connection, should the end user designate the line to be supported, and if so, how would this rule be administered? How would consumers be affected by such action? How would this affect the price of services for single line subscribers and multi-line subscribers? Under such an approach, should support depend on the type of line designated by the end user?

31. Should support be provided to second residences, and if not, how would second residences be defined? Alternatively, should the number of connections eligible for high-cost support be limited in some manner other than a primary line restriction?[65]

32. We also ask commenters to discuss whether any proposed rule modifications would advance the goals of section 254, would be competitively neutral, and would promote more efficient competition in competitive study areas. How would a limit on the number of lines that receive support affect incumbent LECs' and competitive ETCs' incentives to compete for all lines?[66] Would a limit on the number of lines that receive support be a barrier to entry? In addition, to what extent would any proposed modifications affect the size of the universal service fund?

D. Process for Designating ETCs

33. In order to receive universal service support, carriers must obtain ETC designation from the relevant state commission, or the Commission in cases where the state commission lacks jurisdiction.[67] Before designating an additional ETC for an area served by a rural telephone company, the state commission or the Commission must find that the designation is in the public interest.[68] We seek comment regarding the system for resolving requests for ETC designations under sections 214(e)(2) and 214 (e)(6) of the

[64] *See CALLS Order*, 15 FCC Rcd at 13002, para 100; *MAG Order*, 16 FCC Rcd at 19636-19637, para. 47.

[65] *See, e.g.*, National Telecommunications Cooperative Association, Petition for Expedited Rulemaking, filed July 26, 2002 (NTCA Petition) (NTCA proposes that the terms "new" and "captured" in section 54.307(a) of the Commission's rules should be defined in order to reduce duplicative support to competitive ETCs); *Consumer and Governmental Affairs Bureau Reference Information Center Petitions for Rulemaking Filed*, Public Notice, Report No. 2567 (rel. Aug. 8, 2002); BellSouth Corporation, Comments to *Ninth Report and Order Joint Board Recommended Decision*, CC Docket No. 96-45, filed April 10, 2002, at 13 (proposing to limit support to "only one residential line per location for each ETC").

[66] *See supra* at para. 16.

[67] *See* 47 U.S.C. § 214(e)(1), (e)(2), (e)(6).

[68] 47 U.S.C. § 214(e)(2), (e)(6).

Act.[69] Is there a need to clarify the standards for ETC designations under the Act? What factors should the Commission consider when it performs ETC designations pursuant to section 214(e)(6)? In particular, what factors should the Commission consider in determining whether designation of more than one ETC is consistent with the public interest, convenience, and necessity? What additional factors, if any, should be considered when considering whether to designate an ETC in a rural carrier study area?

34. We also seek specific comment on ETC designations performed by states pursuant to section 214(e)(2) of the Act. Is it advisable to establish permissive federal guidelines for states to use in designating ETCs pursuant to section 214(e)(2), and if so, what should be included in such guidelines? Should the Commission encourage states to have similar standards for the designation of ETCs? In considering this issue, commenters should also address the impact of the Fifth Circuit's decision regarding the Commission's ability to prohibit states from imposing additional eligibility criteria on ETCs.[70] In addition, what effect, if any, does the current ETC designation system have on the emergence of competition? We also seek comment on the public interest finding that must be made before any competitive carrier can be designated as an ETC in a rural telephone company's study area.[71] What sort of factors do state commissions currently consider when evaluating whether the designation is in the public interest? If greater consistency among the states in performing the public interest evaluation is desirable, should the Commission provide guidance regarding the factors a state commission's public interest analysis should consider? To what extent are similar universal service obligations or quality of service obligations not imposed on incumbent LECs and competitive ETCs? Should any Commission guidelines differ depending upon whether or not the rural exemption has been lifted in the area for which ETC status is sought?

35. In the *Rural Task Force Order*, the Commission determined that rural carriers should be permitted to disaggregate and target per-line high-cost universal service support into geographic areas below the study area level.[72] The Commission concluded that such action would ensure that support is "distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service."[73] The Commission also determined that rural incumbent LECs must submit maps that clearly specify the boundaries of the designated disaggregation zones of

[69] *Id*. *See also* Procedure for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice, 63 Fed. Reg. 162 (1998).

[70] *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999).

[71] 47 U.S.C. § 214(e)(2).

[72] *See Rural Task Force Order*, 16 FCC Rcd at 11302, para. 145 ("We agree with the Rural Task Force and commenters that the provision of uniform support throughout the study area of a rural carrier may create uneconomic incentives for competitive entry and could result in support not being used for the purpose for which it was intended, in contravention of section 254(e)."). *See also* 47 C.F.R. § 54.307(a)(1) ("A competitive eligible telecommunications carrier…shall receive support for each line it services in a particular service area based on the support the incumbent LEC would receive for each such line, disaggregated by cost zone if disaggregation zones have been established within the service area pursuant to § 54.315 of this subpart."); 47 C.F.R. § 54.315.

[73] *Rural Task Force Order,* 16 FCC Rcd at 11302, para. 145.

support.[74] Do the Commission's reporting requirements adequately ensure that competitors have sufficient information about the geographic scope of incumbent disaggregation zones? We invite commenters to address whether the Commission should clarify its requirements. Further, the Commission concluded in the *Rural Task Force Order* that the level of disaggregation of support should be considered in determining whether to certify new ETCs for a service area other than a rural carrier's entire study area.[75] In light of the Commission's finding that disaggregation zones encourage efficient market entry, what weight should states and the Commission place on the presence of such zones when determining whether the designation of a competitive ETC below the study area level is in the public interest?[76]

36. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments 60 days from publication in the Federal Register, and reply comments 120 days from publication in the Federal Register.[77] Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[78] Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. 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 CC Docket No. 96-45. Parties also may submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and 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. Parties who choose to file by paper must file an original and four copies of each filing.

37. All paper filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties who choose to file by paper also should send three copies of their filings to Sheryl Todd, Telecommunications Access Policy Division, 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554. In addition, parties who choose to file by paper must send copies of their comments on diskette to the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554. Such submissions should be on a 3.5-inch diskette formatted in an IBM-compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, CC Docket No. 96-45, the type of pleading (comment or reply comment), the date of submission, and the name of the electronic file on the diskette. The label should also

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[74] The Commission concluded that such action would promote the integrity and flow of information to competitors, thereby ensuring that support is distributed in a competitively neutral manner. *Id.,* 16 FCC Rcd at 11307-11308, para. 161.

[75] *Id*., 16 FCC Rcd at 11308-11309, para. 164.

[76] *See Rural Task Force Order*, 16 FCC Rcd at 11302, para. 145.

[77] 47 C.F.R. §§ 1.415, 1.419.

[78] *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

38. 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.

39. For further information, please contact Katherine Tofigh or Paul Garnett, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400, TTY (202) 418-0484.