

**ACTION:** Proposed rule.

**SUMMARY:** On October 27, 2003, the State of Nevada requested EPA to redesignate the Lake Tahoe Nevada "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standards (NAAQS) and submitted a CO maintenance plan for the area as a revision to the Nevada State Implementation Plan (SIP). In this action, EPA is proposing to approve the redesignation request and the maintenance plan. EPA is also proposing to find that the maintenance plan is adequate for conformity purposes under the limited maintenance plan policy. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's redesignation request and SIP revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by January 14, 2004.

**ADDRESSES:** Please address your comments to Eleanor Kaplan, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to [kaplan.eleanor@epa.gov](mailto:kaplan.eleanor@epa.gov), or submit comments at <http://www.regulations.gov>. A copy of the State's submittal is available for public inspection during normal business hours at EPA's Region IX office. Please contact Eleanor Kaplan if you wish to schedule a visit. A copy of the submittal is also available at the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada 89706.

**FOR FURTHER INFORMATION CONTACT:** Eleanor Kaplan, EPA Region IX at (415) 947-4147 or [kaplan.eleanor@epa.gov](mailto:kaplan.eleanor@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information see the direct final

rule, of the same day, published in the "Rules and Regulations" section of this **Federal Register**.

Dated: November 20, 2003.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 03-30370 Filed 12-12-03; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 96-45; FCC 03-249]

### Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment to further develop the record on specific issues that relate to the rate review and expanded State certification process recommended by the Joint Board. The Commission also seeks comment on a proposal to further encourage States to preserve and advance universal service by making available additional targeted Federal support for high-cost wire centers in states that implement explicit universal service mechanisms.

**DATES:** Comments are due on or before January 14, 2004. Reply comments are due on or before February 13, 2004. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before February 13, 2004.

**ADDRESSES:** All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov), and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to [Kim\\_A.Johnson@omb.eop.gov](mailto:Kim_A.Johnson@omb.eop.gov) or by fax to 202-395-5167. Parties should also send three paper copies of their filings to Sheryl Todd, Telecommunications

Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5-B540, Washington, DC 20554. See

**SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202-418-0214, or via the Internet at [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 96-45 released on October 27, 2003. A companion Order on Remand and Memorandum Opinion and Order was also released in CC Docket No. 96-45 on October 27, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554 or at [www.fcc.gov/wcb/universal\\_service/highcost.html](http://www.fcc.gov/wcb/universal_service/highcost.html).

This Further Notice of Proposed Rulemaking (FNPRM) contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

### Paperwork Reduction Act

The FNPRM contained proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this FNPRM, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. Public and agency comments on the proposed information collections discussed in this Further Notice of Proposed Rulemaking are due on or before February 13, 2004. PRA comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and

clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of

automated collection techniques or other forms of information technology.  
*OMB Control Number:* 3060-XXXX.  
*Title:* Certification Letter Accounting for Receipt of Federal Support—CC  
 Docket Nos. 96-45 and 96-262.

*Form No.:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit; not for profit institutions.

Title	Number of respondents	Frequency of response	Total annual burden
1. Collection of Additional Rate Data ..... <i>Total Annual Burden:</i> 52 <i>Total Annual Costs:</i> \$0	52	1	52
2. Procedures for Filing And Processing any State Requests for further Federal Action ..... <i>Total Annual Burden:</i> 4 <i>Total Annual Costs:</i> \$0	1	4	1

*Grand Total Annual Burden:* 52 + 4 = 56.

**Needs and Uses:** In the Further Notice of Proposed Rulemaking, we seek further comment on issues related to the rate review and expanded certification process that we adopt in the Companion Remand Order. The Commission seeks comment on whether it should require States to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-rural mechanism and State actions to achieve comparability of urban and rural rates, including business rate data, rate data for non-rural areas served by non-rural carriers, and rate data from States that would not otherwise be required to file data under the rules we adopt in the Companion Remand Order. The Commission also seeks comment on how to treat any State requests for further Federal action, including procedures for States to submit any such requests, required showings by requesting States, and how to calculate any additional targeted Federal support. The additional rate data, along with the expanded certifications filed by all States, will aid the Commission in its review of rate comparability nationwide. Further, the information that State commissions will file to support requests for further Federal action will enable the Commission to determine if action is necessary.

### **I. Further Notice of Proposed Rulemaking**

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek further comment on issues related to the rate review and expanded certification process that we adopt in the Companion Remand Order. First, we seek comment on whether we should require States to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-

rural mechanism and State actions to achieve comparability of urban and rural rates, including business rate data, rate data for non-rural areas served by non-rural carriers, and rate data from States that would not otherwise be required to file data under the rules we adopt in the Companion Remand Order. Second, we seek comment on the role of calling scopes in the rate review process. Third, we seek comment on how to treat any State requests for further Federal action, including procedures for States to submit any such requests, required showings by requesting States, and how to calculate any additional targeted Federal support. In addition, we propose a method for calculating additional targeted Federal support on a wire-center basis using forward-looking model cost estimates. Finally, we seek comment on a proposal to further encourage States to advance the Act's universal service goals by making available additional targeted Federal support to States that implement explicit universal service mechanisms, without regard to their achievement of rate comparability.

#### *A. Collection of Additional Rate Data*

2. We seek comment on whether all States should submit rate data to the Commission in connection with the rate review and expanded certification process, in order to establish a more complete picture of State efforts to achieve rate comparability. In the Companion Remand Order, we adopt rules that require a State to file, in connection with its expanded certification, rate data for rural areas served by non-rural carriers only if its rural rates exceed the nationwide urban rate benchmark or if it certifies that its rural rates are not reasonably comparable to urban rates nationwide, despite being within the safe harbor established by the nationwide urban rate benchmark. These data, along with the expanded certifications filed by all

States, will aid the Commission in its review of the reasonable comparability of rural and urban rates nationwide. We seek comment on whether collecting additional rate data from a larger number of States, either on a mandatory or voluntary basis, would provide the Commission with a better basis for its review. To what extent would collecting additional rate data from all States improve the Commission's ability to assess the reasonable comparability of rural and urban rates nationwide through the rate review and expanded certification process? To what extent would the availability of this additional rate data improve the ability of each State to analyze its own rate comparability issues? To what extent would the availability of this additional rate data improve the ability of other interested parties to monitor the reasonable comparability of rural and urban rates nationwide? We anticipate that each State will have assembled much of the additional data in the course of performing its rate review. Would it be unduly burdensome if all States were to file such data?

3. We seek comment on whether we should require States to file data related to business rates, in addition to residential rates. A meaningful comparison of rates across different States may necessarily include business rates in addition to residential rates. For example, because Wyoming, unlike many other States, has rebalanced its single-line business rates to levels equivalent to residential rates, Wyoming's residential rates no longer rely on implicit support flows from its business rates, and its business customers pay lower rates than they would in a State that relied on such implicit support flows. Collecting data only on residential rates, therefore, may not permit the Commission to identify the specific nature of any problems with reasonable comparability. Would collecting data on business rates provide

the Commission with a more useful picture of the local rates charged in rural areas? Would requiring States to file business rate data unduly increase the administrative burdens on States associated with the rate review and expanded certification process? Is there any reason why the Commission should or should not concentrate solely on residential rates in assessing the state of rate comparability nationwide?

4. We also seek comment on whether we should collect data related to rates in non-rural areas served by non-rural carriers. While the rules we adopt today will result in the collection of some data regarding the rates in rural areas served by non-rural carriers, collecting non-rural rate data would provide the Commission with more complete data. To what extent would collecting rate information for non-rural areas in addition to rural areas provide the Commission with useful data to assess the reasonable comparability of rural and non-rural rates nationwide? To what extent would the collection of such data permit the Commission to assess the reason for high rural rates? For example, if a State's rates in areas other than rural areas were also above the benchmark, would it indicate that an adjustment to the Federal support mechanism was warranted? To what extent would collecting non-rural rate information aid the Commission in assessing whether States are fulfilling their obligations to promote the Act's goals? To what extent would requiring States to file non-rural rate data unduly increase the administrative burdens on the States associated with the rate review process?

5. With additional rate data, should states be required to file information annually related to their efforts to advance universal service by adopting explicit universal service mechanisms, such as the establishment of explicit State universal service funds? To what extent would such information aid the Commission in assessing the sources of any problems with rate comparability to determine whether additional actions are necessary at the Federal level? If we conclude that such information should be collected, what specific information should each State be required to file? For example, should each State be required to file data related to the existence and size of any explicit universal service support mechanisms established in the State? Should States be required to identify implicit support flows in the rate structure, including implicit support flowing from business line rates to residential line rates, from geographically averaged rates, and from intrastate access charges? Commenters

should identify any other information related to the establishment of explicit universal service policies that would assist the Commission in refining our comprehensive plan for supporting universal service in high-cost areas over time.

#### *B. Calling Scopes*

6. We seek comment on the role of calling scopes in the rate review process. The foregoing Order permits a State to consider the calling scopes available in rural areas served by non-rural carriers when reviewing whether rates in those areas are comparable to urban rates nationwide. Calling scopes are not included in the rate template, however, and States need not consider them if they choose to certify based on the safe harbor. To what extent should States be encouraged to consider the calling scopes available in rural areas served by non-rural carriers in assessing rate comparability? Should the Commission incorporate calling scopes into the safe harbor? If so, how would the Commission do so? To what extent would consideration of calling scopes increase the burdens associated with the rate review process? Commenters should describe in detail any proposed methodologies for normalizing the impact of calling scopes on rates. Alternatively, should the Commission provide States with additional guidance as to how calling scopes may be factored into their rate comparability analyses, if States decide that this is appropriate? What data would be useful for analyzing the calling scopes available in rural and urban areas?

#### *C. Procedures for Filing and Processing Any State Requests for Further Federal Action*

7. Consistent with the Joint Board's recommendation, we recognize that the procedures for filing and reviewing State requests for further Federal action should be as specific and predictable as possible, while also providing the necessary flexibility for each State to demonstrate the unique circumstances involved in its request. We also note that the Joint Board did not recommend a specific method for calculating any additional targeted Federal support, if necessary, and the present record does not provide an adequate basis for us to determine an appropriate method. Accordingly, we seek comment below on several interrelated issues. First, we seek comment on the timing of State requests for further Federal action. Second, we seek comment on the showing that a State should be required to make in order to demonstrate a need for further Federal action. Third, we

seek comment on the types of further Federal action that may be provided to requesting States if the Commission determines that further Federal action is necessary in a particular instance, including possible methods of calculating any additional targeted Federal support.

#### *1. Timing of Requests for Further Federal Action*

8. The Joint Board recommended that the Commission develop exact procedures to be used in the filing and processing of requests for further Federal action. We propose that a State should be permitted to make a request for further Federal action only concurrently with the filing of its expanded certification regarding the comparability of its rural rates in areas served by non-rural carriers. We anticipate that any State request for further Federal action will arise from the State rate review process and the expanded certification, and any State requests for further Federal action are likely to rely on the same data. Therefore, we believe that requiring the filing of any State requests at the time of the expanded certification will promote administrative simplicity. We seek comment on this proposal.

9. We also seek comment on how frequently a State should be required to seek further Federal action if the State's request is granted the first time. Should a State be required to seek further Federal action every year? Should further Federal action be provided for a specified period of years? If so, should that period be dependent on the specific circumstances of a particular request?

#### *2. Required Showings*

10. We seek comment on the showings that a State should be required to make in support of a request for further Federal action, in the interest of making the process as specific and predictable as possible. The Joint Board's *Recommended Decision* suggests that two showings should be required: (1) A demonstration that rural rates in non-rural carrier service areas in the State are not reasonably comparable to urban rates nationwide, including an analysis of the rates in the basic service template and other relevant factors; and (2) a demonstration that the State has taken all reasonable actions to achieve reasonable comparability of its rural rates to urban rates nationwide, including an explanation of how the requesting State has used any Federal support currently received to achieve comparable rates and whether it has implemented a State universal service fund. We propose that these showings

should be required in support of a State's request for further Federal action. We further propose that each State should bear the responsibility of fully explaining the basis for each element of its showing. As discussed in the Companion Remand Order, each State has rate-setting jurisdiction and primary responsibility for ensuring rate comparability within its border and, therefore, is in the best position to explain any problems it may have in achieving rate comparability and the actions it has taken to address those problems. In addition to these showings, are there any additional types of showings that a State should be required to make in support of a request for further Federal action? Should different showings be required for different types of further Federal action (*e.g.*, Commission action to address calling areas or quality of service where the State lacks jurisdiction)?

11. We also seek comment on what a State should be required to show to satisfy the first element of the Joint Board's recommended test, a demonstration that rural rates within the State are not reasonably comparable to urban rates nationwide. In making the required showing, to what extent should a State be permitted to rely on the presumption created by the nationwide urban rate benchmark? Should the Commission consider residential and business rates or only residential rates? What weight, relative to the presumption created by the rate benchmark, should the Commission accord additional non-rate factors that the State contends are relevant in determining whether rural rates in a State are reasonably comparable to urban rates nationwide?

12. Consistent with the Joint Board's recommendation, we also seek comment on what State actions should be considered reasonable and, therefore, necessary to support a request for further Federal action for purposes of the second element of the Joint Board's recommended showing. In particular, we seek comment on the extent to which States must reform their universal service support mechanisms in order to be able to demonstrate that they have taken all reasonably possible actions to achieve rate comparability. In this regard, we note that the Act strongly favors explicit support mechanisms, which are less vulnerable to erosion in competitive markets than implicit support mechanisms. Although States are not required to adopt explicit mechanisms to support universal service, we propose that a State that has not done so cannot be deemed to have taken all reasonably possible steps to

support rate comparability within the State, the requirement recommended by the Joint Board. We seek comment on this proposal.

13. We further propose that, in order to enable the Commission to determine whether a State has made its universal service mechanisms explicit, a State requesting further Federal action should be required to explain the extent to which it has made its universal service mechanisms explicit, and file supporting data, including rate data for residential and business lines in rural and urban areas served by non-rural carriers. We seek comment on these proposals. We also seek comment on the extent of reform that should be required for further Federal action. Some commenters argue that it is necessary for States to rebalance their residential and business rates in order to eliminate implicit support flows. For example, Wyoming has rebalanced its residential and business rates, while other States have not rebalanced rates. As a result, Wyoming's residential rates presumably will be higher than a State with comparable resources that has chosen to maintain implicit support flows through higher business rates. Should the rebalancing of residential and business rates be required in support of a request for further Federal action?

### 3. Types of Further Federal Action

14. We seek comment on the types of further Federal action that should be available to a requesting State if the Commission determines that further Federal action is appropriate. The Joint Board recommended that further Federal action could include additional targeted Federal support, as well as Commission action to address scope of local calling areas or quality of service where the State commission lacked the authority to do so. Are there any other types of further Federal action that the Commission should consider in addition to the Joint Board's recommendations? Should the Commission specify in advance all possible forms of further Federal action, or, in light of the Joint Board's recommendation that the Commission provide maximum flexibility for States, should the Commission retain the ability to develop additional types of further Federal action in response to the specific circumstances underlying a particular State's request? Are there any reasons that the Commission should not consider making certain types of Federal action available on request?

15. We propose that any additional targeted Federal support should equal a set percentage of estimated forward-looking wire-center costs in excess of

two standard deviations above the average cost per line. We believe that a method for calculating any additional targeted Federal support based on forward-looking wire-center cost estimates would be specific and predictable, and provide consistency with the non-rural support mechanism, which also uses model cost estimates to calculate and target support. We also believe that such a method would provide a fair and equitable means of determining any additional targeted Federal support and avoid inappropriate incentives that might be created if we were to base any additional targeted Federal support on rate levels in a particular area. Furthermore, a forward-looking cost estimate-based method would permit any additional support to be targeted specifically to high-cost wire-centers, consistent with the Joint Board's recommendation. We seek comments on this proposal. Is there another proposed method that, based on some measure other than forward-looking cost estimates, would provide a more appropriate basis for calculating any additional targeted Federal support? If so, a commenter should describe the method with specificity and provide any relevant supporting data. If any commenters contend that a rate-based method would be more appropriate, they should support their contentions with a detailed explanation of how rate-based support would be calculated under their proposal and any relevant supporting data.

16. To determine any additional targeted Federal support based on forward-looking cost estimates, we propose that any additional Federal support should be provided to wire centers in qualifying States with costs per line exceeding a benchmark of two standard deviations from the average cost per line among all non-rural carrier wire centers nationwide. Based on recent forward-looking high-cost model results, a wire center with per-line costs that are two standard deviations above the average wire center would have an average cost per line of \$40.85, or 189 percent of the nationwide average cost per line. Wire centers with costs per line exceeding the proposed nationwide average cost per loop would be very high cost wire centers in which it is likely to be more difficult to achieve rate comparability, despite otherwise sufficient State resources and Federal support. Because most States have wire centers that exceed two standard deviations from the national average wire center cost per line, we believe that this benchmark would provide an effective means of calculating any

additional targeted Federal support for any qualifying State in a specific, predictable and consistent manner. We seek comment on this proposed method for calculating additional targeted Federal support. Is two standard deviations an appropriate threshold for this purpose?

17. We also propose that any additional targeted Federal support for eligible wire centers in qualifying States should be calculated as a set percentage of costs in excess of the benchmark. For example, if the Commission were to set the percentage at 5 percent of costs in excess of two standard deviations above the average and Wyoming were to qualify for additional targeted Federal support, it would be eligible for approximately \$546,000. If the Commission were to set the percentage at 25 percent of costs in excess of two standard deviations above the average and Wyoming were to qualify, it would be eligible for approximately \$2,731,000 in additional targeted Federal support.

18. We believe that this proposal is consistent with the current and past methodologies for determining high-cost support for non-rural carriers and would provide meaningful support to assist States in resolving any rate comparability issues that combined Federal and State action have failed to resolve. Under the non-rural support mechanism, a non-rural carrier in a State with an average cost per loop for areas served by non-rural carriers that exceeds the cost benchmark of two standard deviations above the average is eligible for support for 76 percent of its costs in excess of the benchmark. This percentage represents an estimate of the costs above the benchmark that are assigned to the intrastate jurisdiction. Because any additional targeted Federal support would supplement the non-rural support mechanism in order to address exceptional problems, we do not believe that it would be necessary that such support be provided for the same percentage of costs in excess of the benchmark as covered by the non-rural support mechanism. We seek comment on what percentage of costs in excess of the benchmark should be supported for purposes of additional targeted Federal support. Is there another proposed method of calculating any additional targeted Federal support based on forward-looking cost estimates that would better address the purpose for which the support would be intended?

#### *D. Additional Inducements for State Action*

19. Finally, we seek comment on whether we should make additional targeted Federal support available for

high-cost wire centers in States that implement explicit universal service mechanisms. The purpose of this proposal is to create a positive incentive for States to reform their implicit universal service mechanisms. Under this proposal, as discussed below, any additional targeted Federal support would be determined using a methodology similar to that proposed above in connection with State requests for further Federal action. Unlike State requests for further Federal action, States would not be required to demonstrate that combined State and Federal efforts had failed to achieve rate comparability.

20. As discussed, section 254 states a clear preference for explicit, rather than implicit, support, but the 1996 Act does not require States to adopt explicit universal service support mechanisms. In the foregoing Order, therefore, we decline to adopt measures to require or induce all States to immediately remove implicit subsidies from intrastate rates through substantial increases in Federal support. Nevertheless, we agree with commenters that States should be encouraged to replace implicit support with explicit support mechanisms that will be sustainable in a competitive environment. To what extent should the Commission encourage States to replace their implicit universal service support mechanisms with explicit mechanisms? We seek comment on whether the Commission has an interest, other than the aspirational provisions of the Act, in States' decisions to adopt explicit mechanisms or to rely on implicit support flows. How do State universal service mechanisms, explicit and implicit, interact with the Federal universal service support mechanisms? We note that some States have made progress in making explicit their universal service support mechanisms. Can we expect States to adopt, in advance of or concurrently with the local development of competition, reforms that will reduce the vulnerability of the States' universal service mechanisms to competition? If States have not yet taken action to adopt explicit universal service mechanisms, can we assume that they will do so?

21. We seek comment on whether providing additional targeted Federal support to States that replace implicit universal service mechanisms with explicit universal service mechanisms would be an appropriate means of inducing reforms of State universal service support mechanisms. The availability of additional targeted Federal support would provide each State with a direct incentive to make its universal service support mechanisms

explicit, rather than implicit. This method of inducement would pose less risk to our universal service goals than conditioning receipt of existing non-rural high-cost support on State action. Moreover, providing States that implement universal service reforms with additional targeted Federal support might mitigate possible transitional issues associated with the replacement of implicit support with explicit support and encourage States to adopt a long-term approach to universal service. To what extent are there transitional issues associated with moving from implicit support mechanisms to explicit support mechanisms? If such transitional issues are a significant deterrent to State adoption of universal service reforms, should any additional targeted Federal support be limited for the period of time during which the transition takes place? If commenters contend that another form of inducement would be better suited for achieving the Commission's goals, the commenters should provide a detailed explanation of their inducement.

22. We further propose that any additional targeted Federal support that is provided to induce States to adopt explicit universal service mechanisms should be based on forward-looking wire-center cost estimates. Basing any additional targeted Federal support on forward-looking cost estimates will make such support specific and predictable, consistent with the Act, and would target the support to high-cost areas, which may ease a State's implementation of explicit universal service mechanisms. Similar to the additional targeted Federal support proposed above with respect to State requests for further Federal action to achieve rate comparability, we propose that any additional targeted Federal support provided for inducement purposes should be calculated based on a percentage of forward-looking costs in excess of a particular threshold for high-cost wire centers.

23. Specifically, we propose that, if a State meets the necessary conditions, it should receive additional targeted Federal support equal to a specific percentage of costs in excess of two standard deviations above the average cost wire center. We seek comment on this proposed method of calculating additional targeted Federal support for inducement purposes. We specifically seek comment on the appropriate percentage of costs in excess of the threshold that we should support with additional targeted Federal support. We note that 48 States and Puerto Rico would have at least one wire center with costs per loop above the benchmark of

the average cost per loop plus two standard deviations. We estimate that if the support amount were set at 10 percent of costs exceeding the proposed high-cost wire center benchmark, the 48 States and Puerto Rico would be eligible to receive a total of approximately \$116 million if they met the conditions for additional targeted Federal support, in addition to the support provided under the rules we adopt today.

24. Would the proposed methodology provide significant inducement to each State to reform its universal service mechanisms? Would the benefits of inducing State action to reform State universal service mechanisms outweigh the cost of the additional contributions to the universal service fund that this additional targeted Federal support could entail? Commenters should address how this proposal relates to the Act's requirement that universal service should be sufficient to achieve the Act's goals and, specifically, that sufficiency requires that support should not exceed the amount necessary to achieve the Act's goals.

25. We also seek comment on what showings a State should be required to make in order to receive any additional targeted Federal support, if such an inducement mechanism were adopted. Above, we seek comment on what showings a State must make in support of a request for further Federal action, in addition to showing the failure to achieve rate comparability. To what extent should the showings that a State is required to make in order to receive additional targeted Federal support for inducement purposes differ from the showings the State should be required to make in order to demonstrate that it has taken all reasonably possible actions to achieve rate comparability? Should a State be required to show that it has established an explicit support mechanism of a particular size relative to the number of lines in the State or some other measure? Should a State be required to demonstrate that it has rebalanced its residential and business rates? Should a State be required to demonstrate that it has eliminated geographic rate averaging through implicit support flows? Are there any specific actions reasonably calculated to eliminate or reduce implicit support in intrastate rates that a State should be required to show?

## II. Procedural Matters

### A. Initial Regulatory Flexibility Act Analysis

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared

this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of this FNPRM, including this IRFA, to the Chief Counsel of Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

27. Consistent with the Tenth Circuit's remand of the *Ninth Report and Order*, 64 FR 67416, December 1, 1999, and the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we modify the high-cost universal service support mechanism for non-rural carriers and adopt measures to induce States to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers in the Companion Remand Order. As discussed, the FNPRM is necessary to develop the record on specific issues that relate to the rate review and expanded State certification process recommended by the Joint Board. The rate review and expanded State certification process will fulfill the requirement of the Tenth Circuit remand by inducing State action to ensure that rates in rural and high-cost areas served by non-rural carriers are reasonably comparable to urban rates nationwide in compliance with section 254(b) of the Act.

28. First, in this FNPRM, we seek comment on whether we should require States to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-rural mechanism and State actions to achieve comparability of urban and rural rates, including business rate data, urban rate data, and rate data from States that would not otherwise be required to file data under the rules we adopt. Second, we seek comment on the role of calling scopes in the rate review process. Third, we seek comment on how to treat any State requests for further Federal action, including procedures for States to submit any such requests; how to review required showings by requesting States; and how to calculate any additional targeted Federal support. In addition, we propose a method for calculating

additional targeted Federal support on a wire-center basis using forward-looking model cost estimates. Finally, we also seek comment on a proposal to further encourage States to advance the Act's universal service goals by making available additional targeted Federal support to States that implement explicit universal service mechanisms, without regard to their achievement of rate comparability.

#### 2. Legal Basis

29. The legal basis as proposed for this *FNPRM* is contained in sections 4(i), 4(j), 201–205, 218–220, 254, 403 and 410 of the Communications Act of 1934, as amended.

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

30. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 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 appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

31. We have described in detail, in the Companion Order in the Final Regulatory Flexibility Analysis, the categories of entities that may be directly affected by any rules or proposals adopted in our efforts to reform the universal service contribution system. For this Initial Regulatory Flexibility Analysis, we hereby incorporate those entity descriptions by reference.

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

32. Should the Commission decide that modifications must be made to the rate review and expanded certification process implemented, the associated rule changes will only modify the reporting requirements of the State commissions. Based on our review of the process, such State reporting requirements have no direct effect on the Federal reporting and recordkeeping

requirements of telecommunications service providers regulated under the Communications Act, including any small business entities directly affected by the Order. No questions posed in the FNPRM consider any changes to the rules that would directly impose additional reporting, recordkeeping, and other compliance requirements on small business entities.

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

33. 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.

34. The Commission does not foresee that any modifications to the rate review and expanded certification process resulting from this FNPRM will have a direct impact on any small business entities. Furthermore, based on the current data, we do not believe that the result in any area of the proposals under consideration will have a differential impact on small entities. In this FNPRM, however, the commenters may present the Commission with various proposals that may have varying impacts on small businesses. We seek comment on whether any proposals, if implemented, may result in an unfair burden. If there is such an unfair burden, we seek comment on how best to mitigate or eliminate it, as appropriate.

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

35. None.

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

36. This FNPRM contained proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. Public and

agency comments are due February 13, 2004. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. PRA comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

#### C. Comment Filing Procedures

37. We invite comment on the issues and questions set forth in the FNPRM and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before January 14, 2004, and reply comments on or before February 13, 2004. 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.

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

39. 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. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by

first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

40. Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B540, Washington, DC 20554. 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 20054.

### III. Ordering Clauses

41. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 214, 218-220, 254, and 403 of the Communications Act of 1934, as amended, this Further Notice of Proposed Rulemaking is adopted.

42. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

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