

**§ 1160.6 [Amended]**

5. Amend paragraph (j)(2) of newly redesignated § 1160.6 by removing “Director of the United States Information Agency that the exhibition” and adding in its place “Secretary of State or his designee that the international exhibition with eligible items under § 1160.4”.

**§ 1160.7 [Amended]**

6. Amend newly redesignated § 1160.7 by removing “the application will be submitted to the Director of the United States Information Agency” and adding in its place “applications for international exhibitions with eligible items under § 1160.4 will be submitted to the Secretary of State or his designee”.

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**FEDERAL COMMUNICATIONS COMMISSION**
**47 CFR Parts 32, 36 and 54**

[WC Docket No. 05-337; CC Docket No. 96-45; FCC 08-4]

**High-Cost Universal Service Support; Federal-State Joint Board on Universal Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission seeks comment on the Commission’s rules governing the amount of high-cost universal service support provided to competitive eligible telecommunications carriers (ETCs), and tentatively concludes that it should eliminate the existing “identical support” rule—also known as the “equal support” rule—which provides competitive ETCs with the same per-line high-cost universal service support amounts that incumbent local exchange carriers receive.

**DATES:** Comments are due on or before April 3, 2008 and reply comments are due on or before May 5, 2008.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 05-337 and CC Docket No. 96-45, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission’s Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the

message, “get form.” A sample form and directions will be sent in response. Include the docket number in the subject line of the message.

- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20544.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail:* [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or *phone:* 202-418-0530 or *TTY:* 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Ted Burmeister or Katie King, Wireline Competition Bureau, Telecommunications Access Policy Division, 202-418-7400 or TTY: 202-418-0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s Notice of Proposed Rulemaking (NPRM) in WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4, adopted January 9, 2008, and released January 29, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554.

The document may also be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission’s Web site at <http://www.fcc.gov>.

**Initial Paperwork Reduction Act of 1995 Analysis**

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

**Synopsis of the Notice of Proposed Rulemaking**
**Introduction**

1. In this NPRM, we seek comment on the Commission’s rules governing the

amount of high-cost universal service support provided to competitive eligible telecommunications carriers (ETCs). As discussed below, we tentatively conclude that we should eliminate the Commission’s current “identical support” rule—also known as the “equal support rule”—which provides competitive ETCs with the same per-line high-cost universal service support amounts that incumbent local exchange carriers (LECs) receive. We seek comment on this tentative conclusion. We also seek comment on our tentative conclusion to provide support to a competitive ETC based on its own costs of providing the supported services. We then seek comment on methodologies for determining a competitive ETC’s relevant costs for universal service support purposes, and other matters related to how the support should be calculated, including the appropriate reporting obligations, and whether we should cap such support at the level of the incumbent LECs.

**Background**

2. Section 254(b) of the Communications Act of 1934, as amended, (the Act) directs the Federal-State Joint Board on Universal Service (Joint Board) and the 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. Public Law 104-104. The Commission adopted the additional principle that federal support mechanisms should be competitively neutral. 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. *Federal-State Joint Board on Universal Service*, 62 FR 32862, June 17, 1997 (*First Report and Order*). Section 254(e) of the Act requires that a carrier that receives support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” Furthermore, pursuant to section 214(e) of the Act, an ETC must provide service and advertise its service throughout the entire service area. 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.

3. Under the Commission's existing rules, a competitive ETC that serves a customer in an incumbent LEC's service area receives the same per-line amount of high-cost universal service support that the incumbent LEC would receive for serving that same customer. The Commission's universal service rules do not distinguish between primary and secondary lines; therefore, multiple connections to a single end-user in high-cost areas may receive universal service support for each connection.

4. High-cost support for competitive ETCs has grown rapidly over the last several years, placing extraordinary pressure on the federal universal service fund. In 2006, the universal service fund provided approximately \$4.1 billion per year in high-cost support. In contrast, in 2001, high-cost universal service support totaled approximately \$2.6 billion. In recent years, this growth has been due to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the incumbent LECs receive, rather than on the competitive ETCs' own costs. While support to incumbent LECs has been flat, or has even declined since 2003, competitive ETC support, in the six years from 2001 through 2006, has grown from under \$17 million to \$980 million—an annual growth rate of over 100 percent. Competitive ETCs received \$557 million in high-cost support in the first six months of 2007. Annualizing this amount projects that they will receive approximately \$1.11 billion in 2007.

## Discussion

### *Basis of Support for Competitive ETCs*

5. To ensure the sufficiency of the universal service mechanism, we believe that the Commission must fundamentally reform how we distribute support under the existing high-cost mechanism. We therefore tentatively conclude that we should eliminate the Commission's current identical support rule for competitive ETCs, which bears no relationship to the amount of money such competitive ETCs have invested in rural and other high-cost areas of the country. We further tentatively conclude that a competitive ETC should receive high-cost support based on its own costs, which better reflect real investment in rural and other high-cost areas of the country, and which creates greater incentives for investment in such areas.

6. In its 1996 *Recommended Decision*, the Joint Board recommended *inter alia* that the Commission should “establish ‘competitive neutrality’ as an additional principle upon which it shall base

policies for the preservation and advancement of universal service.” *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 87 (1996). The Joint Board did not define what it meant by “competitive neutrality,” however. The Joint Board further recommended that the support payments to incumbent LECs be made “portable” to competitive ETCs. Specifically, it recommended that “[a] CLEC should be allowed to receive support payments to the extent that it is able to capture subscribers formerly served by carriers eligible for frozen support payments or to add new customers in the incumbent LEC's study area.” The Joint Board also recommended that high-cost support be limited to “a single connection to a subscriber's principal residence.”

7. In May 1997, the Commission adopted the majority of the Joint Board's recommendations. *First Report and Order*, 62 FR 32862, June 17, 1997. First, it adopted “competitive neutrality” as a principle for universal service support. The Commission provided the following very general definition of competitive neutrality: “competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage or disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another.” The Commission did not explain what it meant to “unfairly advantage or disadvantage one provider over another,” however. In addition, the Commission acknowledged that, “given the complexities and diversity of the telecommunications marketplace it would be extremely difficult to achieve strict competitive neutrality.”

8. The Commission also adopted the Joint Board's recommendation that it make incumbent carriers' support payments “portable to other eligible telecommunications carriers.” In justifying this portability requirement, both the Joint Board and Commission made clear that they envisioned that competitive ETCs would compete directly against incumbent LECs and try to take existing customers from them. Thus, for example, the Commission explained:

A competitive carrier that has been designated as an eligible telecommunications carrier shall receive universal service support to the extent that it captures subscribers' lines formerly served by an incumbent LEC or new customer lines in that incumbent LEC's study area. At the same time, the incumbent LEC will continue to receive support for the customer lines it continues to serve.

9. The predictions of the Joint Board and the Commission have proven inaccurate, however. First, they did not

foresee that competitive ETCs might offer supported services that were not viewed by consumers as substitutes for the incumbent LEC's supported service. Second, wireless carriers, rather than wireline competitive LECs, have received a majority of competitive ETC designations, serve a majority of competitive ETC lines, and have received a majority of competitive ETC support. These wireless competitive ETCs do not capture lines from the incumbent LEC to become a customer's sole service provider, except in a small portion of households. Thus, rather than providing a complete substitute for traditional wireline service, these wireless competitive ETCs largely provide mobile wireless telephony service in addition to a customer's existing wireline service.

10. This has created a number of serious problems for the high-cost fund, and calls into question the rationale for the identical support rule. First, instead of competitive ETCs competing against the incumbent LECs for a relatively fixed number of subscriber lines, the certification of wireless competitive ETCs has led to significant increases in the total number of supported lines. Because the majority of households do not view wireline and wireless services to be direct substitutes, many households subscribe to both services and receive support for multiple lines, which has led to a rapid increase in the size of the fund. In addition, the identical support rule fails to create efficient investment incentives for competitive ETCs. Because a competitive ETC's per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act's universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas. Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their networks.

11. For these and other reasons, numerous parties and the Joint Board have recommended that the Commission consider abandoning the identical support rule and replacing it with a requirement that competitive ETCs receive support based on their own costs. Since 2004, several parties have recommended that the Commission make such a change. More

recently, on May 1, 2007, the Joint Board issued a recommended decision that “recommend[ed] the Commission consider abandoning the identical support rule” and also issued a public notice that sought comment on comprehensive high-cost reform, including “whether the Commission should replace the current identical support rule with a requirement that competitive ETCs demonstrate their own costs in order to receive support.” *Federal State Joint Board on Universal Service*, 22 FCC Rcd 8998 (2007); *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, 22 FCC Rcd 9023 (2007). The Joint Board also sought comment on other possible avenues of comprehensive high-cost reform.

12. Given the near-unanimous support of Joint Board members for the Commission moving to eliminate the identical support rule, and for the reasons set forth above, we tentatively conclude that the goal of universal service will be better served if we eliminate the identical support rule and instead provide support based on the competitive ETCs’ own costs. We tentatively conclude that such a change in policy is further justified by the failure of the identical support rule to reward investment in communications infrastructure in rural and other high-cost areas. Additionally, we tentatively conclude that we should require competitive ETCs that seek high-cost support to file cost data demonstrating their costs of providing service in high-cost service areas. We seek comment on whether this proposal is consistent with the goal of competitive neutrality, given that the majority of competitive ETCs generally do not sell services that consumers view as direct substitutes for wireline services. To the extent that commenters argue that elimination of the identical support rule would be inconsistent with the goal of competitive neutrality, we seek comment on whether such a minimal departure is compensated by the potential stabilization of the high-cost fund and improved investment incentives that would result from the rule change. We seek comment on the above analysis and on these proposals.

#### *Determination of Costs for Competitive ETCs*

13. We tentatively conclude that competitive ETCs should file cost data showing their own per-line costs of providing service in a supported service area in order to receive high-cost universal service support. Specifically, we propose that each competitive ETC

should file cost data with the Commission or the relevant state commission—whichever approved, or subsequently approves, its ETC application—on an annual basis and line-count data on a quarterly basis. We further propose that competitive ETCs have the option of updating their cost data on a quarterly basis, as do rural incumbents today. Only if the cost data is approved by the relevant state commission or the Commission may the competitive ETC then file the cost data submission with the Universal Service Administrative Company (USAC). We seek comment on these tentative conclusions. Additionally, we invite parties to submit detailed cost data proposals or, in the case of competitive ETCs, actual cost data that would enable us to compare their costs for supported services in high-cost areas to those of incumbent LECs for those same areas. We note that Advocates for Regulatory Action submitted a proposal to replace the identical support rule with wireless carrier actual costs (the WiCAC Proposal), and we seek comment on that proposal.

#### *Methods for Examining Competitive ETC Costs*

14. Consistent with our tentative conclusions above, a competitive ETC would be required to report sufficient cost information to allow the Commission or the state commissions to evaluate competitive ETC’s costs for purposes of determining high-cost support. We seek comment on the manner in which competitive ETCs should be required to report their costs.

15. *Disaggregation.* Incumbent LECs are required to separate their network costs into components pursuant to part 32 of the Commission’s rules. Rural incumbent LECs receive high-cost loop support (HCLS) on a per-line basis based on costs assigned to the common line network component, and non-rural incumbent LECs receive high-cost model support (HCMS) on a per-line basis for the common line, local switching, and local transport network components. Although traditionally we have not regulated the manner in which non-dominant carriers record their costs and revenues, we seek comment here on whether we should require competitive ETCs seeking high-cost support to separate costs into network components in a similar manner, so that their costs can be compared to the incumbent LECs’ cost benchmarks for purposes of determining whether competitive ETCs qualify for high-cost support. We further seek comment on whether the Commission should develop a system of accounts for competitive ETCs,

including wireless carriers, that mirror the part 32 rules applicable to incumbent LECs. For example, the WiCAC Proposal would utilize 23 specific part 32 accounts to calculate wireless competitive ETC costs. We seek comment on the WiCAC Proposal’s use of part 32 accounts specifically to determine wireless competitive ETC costs. We also seek comment generally on other possible methods of identifying the network components and associated costs in a wireless network that are equivalent to a wireline carrier’s local loop, switching, and transport components. We also seek comment on whether, if we require disaggregation of costs into network components, competitive ETCs should be able to recover costs for different network components for non-rural service areas than for rural service areas. Finally, we seek comment on whether the Commission should consider any limitations on the total per-line support available to ETCs in a designated area.

16. *Geographic Disaggregation.* We further seek comment on whether, because competitive ETCs will, in general, operate in multiple study areas of incumbent carriers, it will be necessary to disaggregate each competitive ETC’s cost by relevant competitive ETC service area, and by the relevant incumbent LEC study area, wire center, or disaggregation zone. We seek comment on whether the default methodology for such geographic disaggregation should be to allocate costs (total or by individual network component) in proportion to the active telephone numbers employed or the number of customers served in each study area. As an alternative, if a competitive ETC can demonstrate that it has maintained separate cost accounts by individual study area, then these accounts can be used to report cost for each study area individually. We seek comment on these issues. We also seek comment on how to best ensure that a competitive ETC does not inflate the costs being allocated to high-cost areas as compared to lower cost areas for which the competitive ETC may not be seeking support. For example, should we require that a competitive ETC identify total costs for all study areas or wire centers as well as the specific costs which the competitive ETC is associating with the study or services areas or wire centers for which it is seeking support?

17. *Wireless-Specific Costs.* We tentatively conclude that wireless spectrum costs should be included in high-cost support cost submissions only to the extent that the competitive ETC actually paid for the spectrum, either

through an auction or by purchasing it on the open market. We also tentatively conclude that a carrier should not be able to assign a market value or opportunity costs to spectrum. Thus, a wireless provider that obtained spectrum at auction would be able to include the price it paid for the spectrum at auction, but if a carrier obtained its spectrum through a lottery, it would not be able to recover any costs for the spectrum from the high-cost universal service mechanisms. Further, we tentatively conclude that wireless handsets should not be treated as an allowed expense, both because they are more akin to traditional customer-owned telephones in a wireline network than to the network interface device, and because the handsets are purchased by subscribers rather than leased to customers by carriers. We seek comment on these tentative conclusions.

#### *Cost Reporting Requirements*

18. To aid the Commission and state commissions in their review of competitive ETC cost submissions, we propose a general set of rules to govern the cost data submitted by competitive ETCs. We tentatively conclude that the competitive ETCs should use Generally Accepted Accounting Principles (GAAP) and, with the exceptions discussed below, the accounting methodologies should be the same as those used to provide information about the company's performance to external parties, such as investors and creditors. The cost of capital should be assumed to be 11.25 percent, which is the average cost of capital used in the Commission's forward-looking model and in other regulatory proceedings. Depreciation expense should be computed in a manner consistent with GAAP, and, in addition, the same depreciation schedules used by the competitive ETC in any other financial reports must be used for purposes of determining total network cost for universal service support purposes. Operating and maintenance expense should be based on actual expenses incurred. The allocation for corporate overhead should be comparable to the limitations imposed on rural and non-rural carriers. Specifically, for rural carriers the amount of corporate operations expenses included in determining high-cost loop support is the lesser of actual expenses or the amount calculated under the formulas in § 36.622(a)(4) of the Commission's rules. 47 CFR 36.622(a)(4). For non-rural carriers, the input value for common support services expenses is \$7.32 per line, per month. Consistent with the approach under the HCMS rules, corporate

operations expenses for competitive ETCs serving non-rural study areas would be the lesser of actual expenses or \$7.32 per line, per month. Further, any costs not kept in separate books of account should be identified and allocated to the appropriate study area based on active telephone numbers employed or the number of customers served. All elements of the cost report will be subject to audit. We seek comment on these observations, proposals, and tentative conclusions.

19. It may be necessary to adopt additional requirements concerning the manner in which competitive ETCs are allowed to report their costs. For example, although spectrum acquired through an auction or purchased on the open market may be a legitimate business expense, it is not clear that we should allow carriers to earn a return of 11.25 percent on these investments in perpetuity if spectrum costs are not depreciated. In addition to those issues identified above, other issues may arise due to fundamental differences between wireline and wireless network design. We seek comment on these issues. We also seek comment on whether we should adopt any additional requirements on the competitive ETC cost submissions.

#### *Calculation of Support*

20. As noted above, we seek comment on whether a competitive ETC should receive high-cost universal service support based on its own costs by applying the same benchmarks that are applied to the incumbent LEC's costs to determine its support. For example, in the case of a competitive ETC providing service in a non-rural study area, a cost per line would be developed, which would be compared to the benchmark threshold for support calculated by the High-Cost Proxy Model. For competitive ETCs providing service to rural study areas, a cost per line would be developed for each competitive ETC for each incumbent study area that it serves. Support could be determined by comparing the competitive ETC's cost per loop incurred to provide the supported services to the national average cost per loop developed by the National Exchange Carrier Association (NECA) pursuant to § 36.613 of the Commission's rules, as adjusted to accommodate the cap on incumbent high-cost loop support. 47 CFR 36.613. We seek comment on this methodology and other possible methodologies for providing support to competitive ETCs serving rural areas. Similarly, we seek comment on a methodology for developing support based on wireless costs for competitive ETCs serving non-

rural areas. We also seek comment on whether we should develop a method of estimating wireless competitive ETCs' forward-looking economic costs analogous to the High-Cost Proxy Model the Commission currently uses to calculate HCMS.

21. HCLS and HCMS both are calculated in terms of per-line support. Because a competitive ETC may have few or no lines when it first receives its ETC designation, performing a calculation of per-line support at the initial time of market entry likely would result in a considerable upward bias in the resulting support amount. We therefore seek comment on whether a competitive ETC should be required to project its subscribership for some future point in time when performing its cost submissions. To the extent that we require such subscribership projections, we seek comment on how far into the future a competitive ETC should be required to project (e.g., 3 years, 5 years). We also seek comment on whether, and when, it would be appropriate to switch from projected future subscribership to actual subscribership. Further, for wireless ETCs, we seek comment on whether subscribership should be based on the number of handsets or on some other statistic, such as individual billing accounts.

22. We also seek comment on whether the Commission should examine wireless competitive ETC costs independently from wireline LEC costs for purposes of determining high-cost support. Wireless networks may be very different from wireline networks, potentially resulting in very different costs. We seek comment on methods for reviewing and determining wireless high-cost support on a separate basis from the existing wireline mechanisms, and whether adopting such a separate wireless high-cost support mechanism comports with the goal of competitive neutrality.

23. We tentatively conclude that competitive ETCs should no longer receive Interstate Access Support (IAS) and Interstate Common Line Support (ICLS). IAS and ICLS were created by the Commission in order to maintain the Commission's cap on subscriber line charge (SLC) rates that incumbent LECs may charge end users, while eliminating the implicit support found in common line access charges, imposed by incumbent LECs on interexchange carriers, that previously preserved the lower SLC rates. Some parties previously have argued that, because competitive ETCs' rates generally are not regulated and they are not subject to SLC caps, they are able to recover their

revenues from end users and have no need to recover additional interstate revenues from access charges or from universal service, and therefore should not be eligible for support under IAS or ICLS. We tentatively conclude that permitting competitive ETCs to receive IAS or ICLS is inconsistent with how competitive ETCs recover their costs or set rates. We seek comment on these tentative conclusions.

24. Similarly, we seek comment on whether competitive ETCs should no longer receive Local Switching Support (LSS). The Commission created LSS in the *First Report and Order* by removing the existing Dial Equipment Minutes weighting subsidy from the access rate structure and, instead, providing carriers explicit support from the universal service fund. LSS therefore includes a number of assumptions regarding switching costs, such as the economies of scope and scale, that are not likely to be accurate for competitive ETCs. We seek comment on whether LSS should no longer be available to competitive ETCs. Accordingly, if competitive ETCs no longer receive IAS, ICLS, and LSS, competitive ETCs would be permitted to receive high-cost support only for their local loop-equivalent costs, to the extent such costs can be shown to be high-cost. We seek comment on whether to limit competitive ETC support in this manner.

#### *Ceiling on Competitive ETC Per-Line Support*

25. We seek comment on whether we should establish a ceiling on the per-line high-cost support that a competitive ETC may receive. An incumbent LEC's HCMS is limited by the forward-looking estimated costs produced by the model, even if the incumbent LEC's actual costs are higher. For competitive ETCs providing service in non-rural study areas, we seek comment on setting the ceiling at the per-line HCMS that the incumbent LEC receives in a particular wire center. For competitive ETCs providing service in rural areas, we seek comment on setting the ceiling at the amount that the incumbent LEC receives from HCLS or, in the alternative, at the sum of the per-line HCLS and LSS that the incumbent receives. Adopting a ceiling for competitive ETCs at the level of incumbent LEC support could avoid rewarding competitive ETCs for being inefficient and reduce incentives for competitive ETCs to inflate their costs. We seek comment on this analysis, as well as on whether there are any other approaches for adopting a ceiling for competitive ETC funding.

#### *Other Issues*

26. We also seek comment regarding the sufficiency of the Commission's existing use certifications with respect to competitive ETCs. Section 254(e) of the Act requires that "[a] carrier that receives [universal service support] shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Currently, the Commission requires each state to file an annual certification stating that all federal high-cost universal service support provided to LECs or competitive ETCs within the state will be used only for the purposes for which the support is intended. The Commission also requires that each LEC or competitive ETC receiving IAS or ICLS must file a certification that the high-cost support received pursuant to those mechanisms will be used for the intended purpose. Some parties contend, however, that wireless competitive ETCs are not using their universal service support to promote universal service goals. We seek comment on whether these certifications, as well as the Commission's rules requiring competitive ETCs to submit five-year build out plans (beginning October 1, 2006), provide sufficient protection against misuse of universal service support by competitive ETCs. We request that parties arguing that stronger protections are necessary identify with specificity any recommended additional protections.

#### **Procedural Matters**

27. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 3, 2008 and reply comments are due on or before May 5, 2008. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or

rulemaking number referenced in the caption. In completing the transmittal screen, filers 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, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* 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, filers 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor 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, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

#### *Ex Parte Requirements*

28. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200-1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries

of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

#### Initial Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA, which is set forth below. Comments must be identified as responses to the IRFA and must be filed on or before April 3, 2008. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a).

#### *Need for, and Objectives of, the Proposed Rules*

30. Over the last few years, the size of the universal service fund has grown rapidly, threatening the sustainability of the fund. This growth has been driven largely by the increase in high-cost universal service support for competitive eligible telecommunications carriers (ETCs). The increase in high-cost support to competitive ETCs is, in turn, a product of the growing number of competitive ETC lines (due to both new designations of competitive ETCs and growth in subscribership to wireless services), the availability of support for multiple lines per household, and the identical support rule, which provides that each competitive ETC receives the same per-line support amount that the incumbent local exchange carrier (LEC) receives. In the NPRM, the Commission tentatively concludes that the identical support rule should be eliminated because it bears no relationship to the amount of money competitive ETCs have invested in rural and other high-cost areas of the country. The Commission seeks comment on its tentative conclusion to provide support based on a competitive ETC's own costs as a means of constraining the growth of the universal service fund and providing appropriate investment incentives for competitive ETCs.

#### *Legal Basis*

31. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 4(j), 201 through 205, 214, 254, and 403 of the Communications Act of 1934, as amended, and §§ 1.1, 1.411 through 1.419, and 1.1200 through 1.1216 of the Commission's rules. 47 U.S.C. 151, 152, 154(i) through (j), 201 through 205, 214, 254, 403; 47 CFR 1.1, 1.411 through 1.419, 1.1200 through 1.1216.

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

32. 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, if adopted. 5 U.S.C. 604(a)(3). The RFA generally defines the term "small entity," 5 U.S.C. 601(6), as having the same meaning as the terms "small business," 5 U.S.C. 601(3), "small organization," 5 U.S.C. 601(4), and "small governmental jurisdiction." 5 U.S.C. 601(3). 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. 5 U.S.C. 601(3). 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). 15 U.S.C. 632. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations.

33. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. 13 CFR 121.201. Under these categories, a business is small if it has 1,500 or fewer employees.

Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

#### *Wireline Carriers and Service Providers*

34. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

35. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

36. *Competitive LECs, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are

“Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are “Other Local Service Providers.” Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our action.

#### *Wireless Carriers and Service Providers*

37. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging” and “Cellular and Other Wireless Telecommunications.” 13 CFR 121.201. Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

38. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services. 13 CFR 121.201. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 221 of these are small under the SBA small business size standard.

#### *Satellite Service Providers*

39. The first category of Satellite Telecommunications “comprises establishments primarily engaged in

providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

40. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.” For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

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

41. This NPRM seeks comment on whether to calculate support for competitive ETCs based on their own costs. If the Commission ultimately adopts such a method for determining high-cost support for competitive ETCs, it will likely require competitive ETCs to begin recording and reporting their cost data in order to receive high-cost support. Specifically, the NPRM seeks comment on how such costs should be identified and reported, and proposes that the costs must be reported to the Commission or the relevant state authority for approval before submission to the universal service administrator for use in calculating and disbursing support.

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

42. 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 and 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 part thereof, for small entities. See 5 U.S.C. 603(c).

43. This NPRM seeks comment generally on how competitive ETCs should identify and report their costs and how to calculate their high-cost universal service support. Furthermore, the NPRM specifically seeks comment on whether less stringent cost accounting requirements should apply to smaller competitive ETCs. The NPRM seeks comment on whether the methods for determining competitive ETC costs discussed therein would significantly economically affect smaller competitive ETCs. If so, the NPRM seeks comment on alternative methods for smaller competitive ETCs to submit information that would allow the Commission and the state commissions adequately to assess these companies’ costs for purposes of determining high-cost support. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding. Moreover, the NPRM seeks comment on whether to eliminate or retain the existing identical support rule, but tentatively concludes that the existing rule threatens the sufficiency of the universal service fund. The NPRM seeks comment on whether replacing the existing rule with a support mechanism that provides support to competitive ETCs based on their own costs may have a significant economic impact on some competitive ETCs, and, if so, seeks comment on alternative methods for smaller competitive ETCs to report their costs to the Commission and the state commissions.

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

44. None.



## Ordering Clauses

45. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201–205, 214, 254, 403 and §§ 1.1, 1.411–1.419, and 1.1200–1.1216 of the Commission's rules, 47 CFR 1.1, 1.411–1.419, 1.1200–1.1216, this Notice of Proposed Rulemaking is adopted.

46. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–4148 Filed 3–3–08; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 32, 36, 54 and 63

[WC Docket No. 05–337; CC Docket No. 96–45; FCC 08–22]

### High-Cost Universal Service Support; Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission seeks comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service, released on November 20, 2007, regarding comprehensive reform of high-cost universal service. We also incorporate by reference the *Identical Support NPRM* and the *Reverse Auctions NPRM* into this NPRM. In addition, we will incorporate the records developed in response to those two items into this proceeding.

**DATES:** Comments are due on or before April 3, 2008 and reply comments are due on or before May 5, 2008.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 05–337 and CC Docket No. 96–45, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov>.

[www.fcc.gov/cgb/ecfs/](http://www.fcc.gov/cgb/ecfs/). Follow the instructions for submitting comments.

- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response. Include the docket number in the subject line of the message.

- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Ted Burmeister or Katie King, Wireline Competition Bureau, Telecommunications Access Policy Division, 202–418–7400 or TTY: 202–418–0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking in WC Docket No. 05–337, CC Docket No. 96–45, FCC 08–22, adopted January 16, 2008, and released January 29, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554.

The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

### Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

## Synopsis of the Notice of Proposed Rulemaking

### Introduction

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on ways to reform the high-cost universal service program. Specifically, we seek comment on the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) regarding comprehensive reform of high-cost universal service support. *Federal-State Joint Board on Universal Service*, Recommended Decision, 22 FCC Rcd 20477 (2007) (*Recommended Decision*). We also incorporate into this NPRM the following two Notices of Proposed Rulemaking: (1) The Notice of Proposed Rulemaking released by the Commission on January 29, 2008, which seeks comment on the Commission's rules governing the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs), including elimination of the “identical support rule;” and (2) the Notice of Proposed Rulemaking released by the Commission on January 29, 2008, which seeks comment on whether and how to implement reverse auctions (a form of competitive bidding) as the disbursement mechanism for determining the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 08–4 (rel. Jan. 29, 2008) (*Identical Support Rule NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 08–5 (rel. Jan. 29, 2008) (*Reverse Auctions NPRM*). We also will incorporate the records developed in response to those NPRMs into this proceeding. We note, however, that such incorporation of these two NPRMs does not change or otherwise affect, and we expressly preserve, the positions of the Commission members with regard to those particular NPRMs and the Joint Board's recommendation.

### Background

2. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition. Telecommunications Act of 1996, Public Law 104–104 (1996). Section 254(b) of the Act, which was added by the 1996 Act, directs the Joint Board and the Commission to base policies for the preservation and advancement of universal service on