

U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–306 to read as follows:

§ 165.T11–306 Safety Zone; KFOG Kaboom, Fireworks Display, San Francisco, CA.

(a) *Location.* This temporary safety zone is established for a portion of the waters of San Francisco Bay in San Francisco, CA. The fireworks launch sites are located in position: 37°42′21.20″ N, 122°23′3.46″ W (NAD 83). From 7:45 a.m. on May 20, 2010, until 9 p.m. on May 22, 2010, the temporary safety zone extends to the navigable waters around the fireworks launch sites within a radius of 100 feet. From 9 p.m. until 9:30 p.m. on May 22, 2010, the area to which the temporary safety zones extends encompasses the navigable waters within a radius of 1,000 feet around the fireworks launch sites.

(b) *Definitions.* As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP’s designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zones on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Effective period.* This section is effective from 7:45 a.m. on May 20, 2010 through 9:30 p.m. on May 22, 2010.

Dated: April 16, 2010.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–10772 Filed 5–6–10; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 05–337, CC Docket No. 96–45; FCC 10–57]

High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) concludes that dramatic increases in telephone subscribership in Puerto Rico over the last several years make it unnecessary to adopt a new high-cost support mechanism for non-rural insular carriers as proposed by Puerto Rico Telephone Company. The Commission finds that the existing non-rural high-cost support mechanism, operating in conjunction with the Commission’s other universal service programs, is successfully increasing telephone subscribership in Puerto Rico and satisfies the requirements of the Communications Act of 1934, as amended, with respect to Puerto Rico. The Commission believes that the public would be best served by our focusing on comprehensive universal service reform, rather than developing a new non-rural insular high-cost support mechanism within the existing legacy universal service system.

DATES: Effective June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Ted Burmeister, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7389 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Order in WC Docket No. 05–337, CC Docket No. 96–45, WC Docket No. 03–109, FCC 10–57, adopted April 16, 2010, and released April 16, 2010. This Order was also released with a companion Proposed Rule document that is published elsewhere in this **Federal Register** issue. 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 the Internet at

<http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

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Synopsis of the Order

I. Introduction

1. In this Order, we conclude that dramatic increases in telephone subscribership in Puerto Rico over the last several years make it unnecessary to adopt a new high-cost support mechanism for non-rural insular carriers as proposed by Puerto Rico Telephone Company (PRTC). In 2005, the Commission considered creating a separate high-cost universal service support mechanism for non-rural insular areas. At that time, telephone subscribership in Puerto Rico (a non-rural insular area) was 73.8 percent, far below the national average of 94.8 percent. By 2008—the most recent year for which data are available—subscribership in Puerto Rico had jumped to 91.9 percent. During the same period, Puerto Rico has experienced significant growth in disbursements from federal universal service support programs due in large part to changes the Commission made to its rules. Total high-cost support for Puerto Rico has risen from less than \$140 million in 1998 to more than \$215 million in 2008, an increase of nearly 54 percent, and low-income support has jumped from \$1.16 million in 2001 to \$23.4 million in 2008. Although subscription rates in Puerto Rico are still lower than the national average (98.2 percent in 2008), the substantial growth in universal service support and the commensurate increase in telephone subscribership represent significant changed circumstances since we issued the NPRM, 71 FR 1721, January 11, 2006, in 2005.

2. In light of these positive developments, we find that the existing non-rural high-cost support mechanism, operating in conjunction with the Commission's other universal service programs, is successfully increasing telephone subscribership in Puerto Rico and satisfies the requirements of section 254 of the Communications Act of 1934, as amended (the Act), with respect to Puerto Rico. Telephone subscribership in Puerto Rico is not yet at the same level as in the mainland United States, but the data before us indicate that the

gap is closing rapidly and may well be eliminated entirely in the near future. The Commission, moreover, recently adopted a Joint Statement on Broadband that recommends comprehensive reform of universal service, and delivered to Congress a National Broadband Plan that recommends, among other things, transitioning legacy high-cost universal service support to a new high-cost program that would support broadband as well as voice services. We believe that the public would be best served by our focusing on comprehensive universal service reform, rather than developing a new non-rural insular high-cost support mechanism within the existing legacy universal service system. As we comprehensively reform universal service and implement the National Broadband Plan recommendations, we will strive to further increase telephone subscribership rates in Puerto Rico and to ensure that high-quality voice and broadband services are available in insular areas.

II. Order

3. In response to a proposal PRTC had submitted, the Commission's 2005 NPRM sought comment on the adoption of a stand alone universal service support mechanism for non-rural insular carriers. PRTC argues that the Commission must adopt its proposed embedded cost-based mechanism because: (1) Section 254(b)(3) compels the agency to address the unique characteristics of non-rural insular carriers with regime that is distinct from the existing generally applicable non-rural high-cost support mechanism; (2) the existing mechanism does not provide support that is sufficient to ensure reasonably comparable service and affordable rates in Puerto Rico; and (3) the forward-looking economic cost model that currently is used to determine PRTC's eligibility for high-cost model support does not accurately measure its costs. As discussed below, we conclude that the statute does not require us to adopt a separate insular support mechanism as proposed by PRTC.

1. Section 254 of the Act Does Not Require the Commission To Establish an Insular High-Cost Support Mechanism

4. PRTC asserts that section 254(b)(3) of the Act imposes upon the Commission a clear, non-discretionary duty to adopt a separate universal service mechanism for insular areas. We disagree. Section 254(b)(3) provides that “[c]onsumers in all regions of the Nation * * * should have access to telecommunications and information

services that are “reasonably comparable” in terms of price and quality to “those services provided in urban areas.” That provision also gives examples of the “consumers in all regions of the Nation” that must have such reasonably comparable service; they “include[e] low-income consumers and those in rural, insular and high cost areas.” Nothing in the text or structure of the statute, however, requires the Commission to adopt a stand alone mechanism addressed to each of the enumerated examples of non-urban “consumers in all regions of the Nation.” Congress in section 254 sought to achieve a result—reasonably comparable rates and services—but did not mandate that the Commission employ specific mechanisms to achieve that result. Rather, the statute leaves to the Commission's discretion the task of developing one or more mechanisms successfully to implement the broad “reasonable comparability” goal of section 254(b)(3).

5. The Commission has taken multiple actions to implement section 254(b)(3)—both by expanding low-income (Lifeline and Link-Up) programs and by designing high-cost support mechanisms. Carriers in insular areas, just like carriers in non-insular areas, are eligible for support under the existing, generally applicable rural and non-rural high-cost support mechanisms. Indeed, carriers in Puerto Rico received \$215.6 million in Interstate Common Line Support (a form of high-cost support) during 2008, and rural carriers in insular areas received \$42.1 million in high-cost support. Likewise, Puerto Rico receives a substantial amount of low-income support—\$23.4 million in 2008. As a result, Puerto Rico currently is the fourth largest recipient of federal high-cost support, the seventh largest recipient of federal low-income support, and the third largest net recipient of universal service dollars among the U.S. states and territories. Instead of creating a specifically tailored program for insular areas, we have chosen to date to comply with the principle in section 254(b)(3) by ensuring that carriers in insular areas are eligible for generally applicable support mechanisms.

6. We must additionally disagree with PRTC's reading of the 2005 NPRM. PRTC suggests that the language in the 2005 NPRM acknowledges, as a practical matter, the existence of a duty to address insular support separately from a single high-cost mechanism. The NPRM merely confirms, however, that in the Commission's view, section 254(b)(3) may authorize the adoption of a separate insular mechanism, but does

not mandate one. In particular, the Commission posited that “[t]here would be no need for a rural insular mechanism because all rural insular carriers already receive rural high-cost support.” And the Commission sought comment not on whether section 254(b) requires a separate mechanism for non-rural insular carriers, but whether that statute even “provides the Commission with authority” to adopt one.

7. Although PRTC argues that we have failed to establish mechanisms to provide universal service support to non-rural insular areas, it appears that PRTC’s primary objection is that it does not receive high-cost model support under the non-rural mechanism. On three prior occasions, we have declined to adopt PRTC’s view that the non-rural high-cost support mechanism fails adequately to take into account cost characteristics and other conditions in Puerto Rico. Consistent with those prior decisions, we conclude that we have met our obligation under section 254(b)(3) by ensuring that carriers in insular areas are eligible for generally applicable support mechanisms, and we address PRTC’s other objection further below.

2. The Commission’s Universal Service Programs Provide Support That Is Sufficient To Ensure Reasonably Comparable Service and Affordable Rates in Puerto Rico

8. The Commission has long measured the success of its universal service policies on the basis of telephone penetration rates. In tentatively concluding that a non-rural insular mechanism should be adopted, the Commission in the *NPRM* relied heavily on an apparent decline in overall telephone subscribership in Puerto Rico during the period PRTC transitioned to the non-rural high-cost support mechanism. That assumption by the Commission may have been made on the basis of incomplete information at the time we issued the *NPRM*. In any event, it has been rebutted by marketplace developments over the four-plus years since we adopted the *NPRM*. During that period, Puerto Rico’s telephone subscribership penetration rate has risen from approximately 73.8 percent in 2005 to 91.9 percent in 2008. And over that same four-year period, the gap in telephone penetration between Puerto Rico and the nation as a whole has been dramatically narrowed—from a deficit of 21 percentage points to one of just over six percentage points. Given this substantial change in circumstances since we issued the *NPRM*, we find that the non-rural high-cost support

mechanism, acting in conjunction with our other universal service programs, produces sufficient support to achieve reasonably comparable service in Puerto Rico and non-insular areas consistent with section 254.

9. PRTC argues that a decrease in wireline telephone subscribership in Puerto Rico demonstrates that the non-rural high-cost support mechanism provides insufficient support. We disagree. The Commission measures telephone subscribership based on access to telecommunications service, regardless of whether such access is provided by traditional wireline service or by newer technologies, including wireless. This approach is consistent with our current universal service policies, which make high-cost support “portable” to any carrier that serves a particular customer, regardless of the technology used. Thus, on this record, a decline in wireline subscribership (as measured solely by PRTC’s loss of switched access lines) is not determinative given the overall increase in telephone subscribership in Puerto Rico. Commission data show that competitive local exchange carriers served approximately 19 percent of all switched access lines in Puerto Rico as of June 2008, and the number of wireless subscribers in the Commonwealth more than doubled from approximately 1.1 million in 2001 to more than 2.4 million in 2007. Indeed, PRTC’s own 2005 study concluded that “universal service is a virtual reality,” because 92.8 percent of households surveyed in Puerto Rico had wireline or wireless service, and 44 percent of households had both. Accordingly, we believe it more likely that PRTC’s line losses have resulted from customer migration to new service providers, not from the decisions of customers to terminate service entirely because high-cost support levels have rendered local service rates unaffordable. This decision to “cut the cord” reflects a trend occurring throughout the country.

10. PRTC further asserts that several communities and many customers in Puerto Rico have no access to telecommunications infrastructure (and, thus, no service) because PRTC has found it too costly to deploy facilities without federal high-cost loop support. We find that this claim does not justify the creation of PRTC’s preferred non-rural insular support mechanism, within the current high-cost support framework, for several reasons. First, it is not clear in the record before us how many households on Puerto Rico lack access to wireline infrastructure that delivers basic voice service. To the

extent that PRTC believes unique circumstances in Puerto Rico warrant additional high-cost support in order to extend broadband infrastructure, those arguments are more appropriately raised in the context of upcoming proceedings to consider the recommendations of the National Broadband Plan to reform the legacy high-cost support mechanisms to support broadband. Second, establishing a non-rural insular mechanism would not guarantee that PRTC would deploy infrastructure to expand service. Third, we are not persuaded that areas unserved by PRTC are without access to basic local telephone service from *any* provider today. Data from American Roamer show that mobile wireless coverage in Puerto Rico is nearly ubiquitous, and that wireless subscribership has more than doubled since 2001.

11. PRTC also claims that “[a]bsent sufficient federal support, carriers are forced to choose between fully investing in network development and expansion and raising rates to levels that could further diminish subscribership levels.” There are no data in the record supporting this position, however. As we found in 2003, PRTC offered no evidence that the elimination of its high-cost loop support caused rate shock or rate comparability problems. While PRTC asserts that any increase in rates would negatively affect telephone subscribership in Puerto Rico, PRTC has placed no rate data in the record. Moreover, recent rate data submitted by Verizon show that PRTC’s local service rates fall well below the national average urban rate, demonstrating that these rates are reasonably comparable to the rates paid by consumers in non-insular areas. We further note that PRTC submitted a study of telephone subscribership, which it claims is “useful in demonstrating that increases in residential wireline rates” in Puerto Rico “would not be inconsistent with public policy. Moreover, the relevance of PRTC’s earlier (2004–2006) claim that it cannot invest in its network without additional high-cost support is substantially diminished, if not extinguished, by its later (2007) commitment—unqualified with respect to universal service support—to the Commission that it would invest more than \$1 billion over five years to improve communications and information services in Puerto Rico.

12. In short, PRTC has not shown that the subscribership levels in Puerto Rico are related to excessively high local rates or that providing additional high-cost support would have any direct impact on facilities deployment or subscribership levels.

13. Although most of the increase in high-cost support disbursements to Puerto Rico is attributable to support received by other providers, notably PRTC's wireless affiliate and other mobile wireless service providers, those carriers (as much as PRTC) promote the universal service goals of the 1996 Act. The current universal service program does not embody a preference for service by any one carrier, or any one technology. Thus, the dramatic increase in high-cost support for wireless competitive ETCs in Puerto Rico relative to PRTC, the only wireline ETC, is entirely consistent with the high-cost program, as it is currently designed. As the Fifth Circuit explained, "the purpose of universal service is to benefit the customer, not the carrier," so "[s]ufficient funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy."

14. A similar lack of evidence caused the Fifth Circuit Court of Appeals to reject a challenge to a cap the Commission had imposed on certain ILEC high-cost support mechanisms. The court in that case held that a single provider's reduced rate of return "does not establish that the cap [on certain ILEC high-cost support mechanisms] fails to provide sufficient service" to customers. "[T]he Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers." So long as the mechanism in place enables "customer[s] to receive basic telecommunications services, the FCC * * * is not further required to ensure sufficient funding of every local provider as well." Faced with record evidence showing that universal service for customers has dramatically improved since we adopted the *NPRM* in 2005, we reject PRTC's argument that the non-rural mechanism provides insufficient support to maintain affordable rates and reasonably comparable service in Puerto Rico.

15. Comments challenging the sufficiency of universal service support in Puerto Rico also fail to give weight to efforts by the FCC, the Puerto Rico Telecommunications Regulatory Board (TRB), PRTC, and competitive ETCs that have significantly increased the number of recipients of federal low-income support in Puerto Rico since 2003 and, commensurately, increased telephone subscribership. The Commission has taken steps to improve the effectiveness of the low-income support mechanism by expanding the federal default eligibility criteria for Lifeline/Link-Up to include an income-based criterion and additional means-tested programs.

And to target low-income consumers more effectively, the Commission adopted outreach guidelines for Lifeline/Link-Up and issued a voluntary survey to gather data and information from states regarding the administration of the programs. Further, low-income consumers in Puerto Rico receive the maximum amount of Lifeline assistance available (\$13.50 per month) due to the substantial contribution (\$3.50 per month) provided by the Commonwealth. Importantly, the Commission has found a positive correlation between the amount of state Lifeline support and telephone subscribership penetration rates. We also found that the transfer of PRTC to América Móvil in 2007 was in the public interest based, in part, on América Móvil's extensive experience in designing products specifically for rural and low-income populations. Finally, we note again that through the operation of market forces, the wireless subscription rate in Puerto Rico has grown substantially, with low-income customers subscribing to wireless service in ever-increasing numbers, so that the customers of wireless competitive ETCs received more than one-third of total low-income support in 2008.

16. These combined public and private efforts have contributed to the dramatic growth in low-income support provided to the Commonwealth. Combined annual Lifeline and Link-Up support in Puerto Rico has grown from just over \$1.16 million in 2001 to more than \$23.4 million in 2008, ranking Puerto Rico as the seventh largest recipient of low-income support among the states and territories. This increase was driven by a dramatic expansion in the number of low-income support recipients, which grew from zero in 1997 to 188,000 in 2008. The Commission has previously attributed Puerto Rico's historically lagging telephone subscribership penetration rate to low per-capita income, not a high cost of service. PRTC acknowledges this fact. We therefore find the expansion of subsidies associated with the low-income support program significant given our prior finding that low-income support—not high-cost support—is the federal program best suited to address issues of affordability and subscribership in Puerto Rico. On the basis of the record before us, we are unpersuaded that providing additional high-cost support through a non-rural insular mechanism is needed to address the underlying concern that PRTC identifies regarding low telephone subscribership in Puerto Rico. While we

emphasize that there is still work to be done, this dramatic narrowing of the gap in telephone subscribership between Puerto Rico and non-insular areas reinforces our long-held view that low-income support, in combination with our other universal service programs, is an effective means to address affordability and subscribership in Puerto Rico. As indicated in the companion NPRM, we seek comment on whether, due to the extraordinarily low income levels in Puerto Rico, it is appropriate to amend our rules to allow eligible low-income consumers in Puerto Rico additional support through the Link Up Program to offset special construction charges incurred if additional facilities are required to provide them with access to voice telephone service.

17. In summary, we agree with PRTC that "the Commission has created a set of complementary universal service programs that work in conjunction to ensure that all consumers have access to affordable and reasonably comparable telecommunications services." Indeed, in responding to the Tenth Circuit's *Qwest II* decision, we concluded generally that the non-rural high-cost support mechanism, acting in combination with the Commission's other universal service programs, provides sufficient support to achieve the universal service objectives set forth in section 254 of the Act. These programs have produced almost ubiquitous access to telecommunications services and very high telephone subscribership rates throughout the United States, including Puerto Rico. We therefore do not agree with PRTC that its loss of high-cost loop support from the legacy program that preceded the creation of the non-rural support mechanism rendered universal service support to Puerto Rico insufficient. As we recently explained, the Commission cannot reasonably evaluate the non-rural high-cost support mechanism in isolation. Sufficient support that satisfies the universal service objectives of Act—including reasonable comparability and affordability—can only be achieved through the totality of the Commission's universal service programs. Moreover, we reject PRTC's contention that the Commission views high-cost support and low-income support to be "mutually exclusive." To the contrary, we simply find that PRTC is not entitled to federal high-cost model support under the non-rural mechanism because its costs do not meet the eligibility threshold and, on the basis of this record, that total support provided to Puerto Rico through

the various universal service programs is sufficient to satisfy the objectives in section 254 of the Act.

18. We acknowledge that in the 2005 *NPRM*, the Commission tentatively concluded that “adopting a non-rural mechanism would have a limited impact on the universal service fund.” PRTC estimates that a non-rural insular mechanism would provide PRTC with approximately \$33 million in additional annual support based on 2004 data, which amounts to less than one percent of the total high-cost program. We are not persuaded, however, that the relatively limited financial impact of PRTC’s proposal compels us to adopt it. Because universal service is funded by contributions from telecommunications carriers, which typically pass their contributions on to consumers, we must take care to avoid “excess subsidization of the universal service fund,” which may actually “detract from universal service by causing rates to unnecessarily rise, thereby pricing some consumers out of the market.” Moreover, as the D.C. Circuit recently held, we “must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service.” In administering the universal service program, we take seriously our obligation to “strike an appropriate balance between the interests of widely dispersed customers with small stakes and a concentrated interest group seeking to increase its already large stake.” Given our conclusion on this record that universal service support for Puerto Rico is sufficient under the Commission’s existing universal service programs, we find that any additional high-cost support provided to PRTC cannot be justified under those existing programs.

3. *The Application of the Commission’s Forward-Looking Cost-Based Model for Determining Non-Rural High-Cost Support Adequately Addresses PRTC’s Circumstances*

19. The Commission determined in the *Universal Service First Report and Order*, 62 FR 32862, June 17, 1997, that non-rural carriers would receive support based on forward-looking economic costs (*i.e.*, costs estimated by the Commission’s cost model), that the definition of rural carriers would exclude carriers of PRTC’s size, and that a separate support mechanism for carriers serving insular areas was not warranted. As a result, although PRTC receives significant levels of Interstate Common Line Support, it does not receive high-cost model support or any specially targeted insular support today.

In the *NPRM*, the Commission sought comment on a PRTC proposal that the Commission adopt a non-rural insular high-cost support mechanism based on the existing rural high-cost loop support mechanism, but with a cost threshold far below that currently used for rural telephone companies.

20. PRTC’s proposal is predicated, in part, on its long-standing contention that the extreme weather and terrain conditions and high shipping costs in insular areas make the cost characteristics of even large insular carriers more like those of rural carriers. In the *Universal Service First Report and Order*, the Commission rejected this argument as grounds for providing PRTC high-cost support on the basis of embedded costs, finding that, “as a large telephone company[ly],” PRTC “should possess the economies of scale and scope to deal efficiently with the cost of providing service in their areas.” We believe this reasoning still applies to PRTC. In approving license transfers associated with América Móvil’s 2007 acquisition of PRTC, for example, we found that América Móvil “brings significant advantages of scale and scope to bear” in providing telecommunications services to consumers.

21. Even more significantly, record evidence in this proceeding reinforces our earlier decision. While PRTC claims that its costs are similar to those of rural carriers, PRTC’s embedded costs are actually too low to make it eligible for support under the high-cost support mechanism that currently funds much smaller, rural telephone companies that do not enjoy the same economies of scale and scope. Only by lowering the rural mechanism’s cost threshold significantly—from slightly more than \$400 per loop to about \$240 per loop (as proposed by PRTC)—would PRTC become eligible for the significant increase in high-cost loop support (about \$33 million annually) that it has requested. Thus, based on PRTC’s own embedded cost data in the record before us, we find that PRTC has not justified a departure from our prior determinations that, for purposes of high-cost support, PRTC should be treated as a non-rural carrier due to its size and resulting economies of scale and scope.

22. We also reject PRTC’s claim that the non-rural forward-looking cost model fails accurately to represent insular costs. In particular, we do not find persuasive PRTC’s arguments that it should receive high-cost support based on its embedded costs because the forward-looking economic costs produced by the high-cost model are

less than PRTC’s actual costs. First, PRTC’s arguments do not address the central purpose of using forward-looking economic costs in the non-rural support model, which is to estimate the costs that would be incurred by an efficient provider of service. The Commission previously found that “variability in historic costs among companies is due to a variety of factors and does not simply reflect how efficient or inefficient a firm is in providing the supported services.” Indeed, in this proceeding, PRTC has merely asserted that its costs are higher because it serves an insular area and has not addressed whether inefficiencies may have contributed to the difference. Second, PRTC argues that the national average costs used in the model are inappropriate for estimating the costs of serving insular areas and states that “it remains unclear the extent to which [PRTC’s] costs were included in those national averages.” In the *Tenth Report and Order*, 64 FR 67372, December 1, 1999, the Commission considered the use of a variety of data sources to determine input values in the high-cost model, including surveys of non-rural carriers. To the extent that PRTC declined to respond to a voluntary survey seeking cost data from carriers, the Commission could not include PRTC’s cost data. Finally, PRTC’s argument relies on inaccurate premises. For example, PRTC argues that the model’s use of customer addresses from Puerto Rico results in erroneous customer locations that generate inaccurate results. In fact, the road surrogate method used by the model assumes an even distribution of customers along roads and does not attempt to precisely assign customer location based on addresses. PRTC also complains that “[a] comparison of the actual operating costs of other non-rural jurisdictions further calls attention to the disparate treatment of Puerto Rico.” But it does not follow that the forward-looking cost model produces inaccurate results simply because Puerto Rico receives less high-cost model support than other jurisdictions. In any event, we find PRTC’s “analysis” unpersuasive due to the manner in which it mixes statewide average embedded costs with support amounts from two different support mechanisms (*i.e.*, the rural and non-rural support mechanisms) that are based on two different methodologies (*i.e.*, embedded versus forward-looking costs).

23. PRTC’s attacks on the accuracy of the forward-looking cost model are similar to arguments that the Commission rejected when it adopted

that model in the *Tenth Report and Order*. For example, in “explain[ing] why the model estimates higher costs in some states relative to others in a distribution that differs from carriers’ book costs and from some observers’ expectations,” the Commission found that “[i]n general, * * * the states where the model estimated the highest costs were those states in which the territory served by the non-rural carriers, which are typically larger carriers, included more rural areas than in other states.” This analysis is entirely consistent with the data in the record, which show that PRTC’s embedded costs fall below the threshold for support under the rural high-cost support mechanism. Simply stated, PRTC has not persuaded us that the model fails to accurately measure its costs because PRTC has not demonstrated that its actual costs share the cost characteristics of rural carriers, as opposed to non-rural carriers. We further note that the Tenth Circuit in *Qwest I* upheld that Order (and our use of the cost model) against a similar challenge from Qwest, explaining that “while Qwest notes analytic problems with * * * the model it has not presented any evidence that the model overall produces such inaccurate results that it cannot form the basis of rational decision-making.” Indeed, as the Tenth Circuit explained, “[t]he model is meant to estimate the costs of providing service,” so “[i]t need not reflect physical reality in all aspects if it produces ‘reasonably accurate estimates,’ as the FCC has found it does.” PRTC has provided no new evidence on this record that compels reconsideration of our previous conclusion that the cost model provides a reasonable means of determining appropriate levels of high-cost support. To the contrary, as noted, the record demonstrates a significant increase in telephone subscribership in Puerto Rico in the years since the *NPRM* was issued.

24. Nor do we believe that it would be in the public interest to transition PRTC from the non-rural mechanism to an entirely new high-cost support mechanism based on embedded costs, even on an interim basis. As a general matter, we have determined that the appropriate basis for high-cost support is forward-looking economic cost and have moved away from the use of embedded costs for determining universal service support wherever possible. We intend to continue that process, and agree with GCI that adoption of PRTC’s proposal would be a step in the wrong direction.

4. Comprehensive Reform and the National Broadband Plan

25. The Commission has long recognized the need for comprehensive review and possible reform of universal service reform, and has sought comment on various proposals for comprehensive reform of the high-cost support mechanisms, rural as well as non-rural. Since the Commission originally adopted the non-rural high-cost mechanism in 1999, the telecommunications marketplace has undergone significant changes. While in 1996 the majority of consumers subscribed to separate local and long distance providers, today the majority of consumers subscribe to local/long distance bundles offered by a single provider. In addition, the vast majority of subscribers have wireless phones as well as wireline phones, and an increasing percentage of consumers are dropping their wireline phones in favor of wireless or broadband-based (voice over Internet protocol) phone services. Finally, an increasing percentage of carriers are converting their networks from circuit-switched to Internet protocol (IP) technology.

26. On March 16, 2010, the Commission adopted a Joint Statement on Broadband, which sets forth the overarching vision and goals for U.S. broadband policy and recommends comprehensive reform of universal service. The Commission also delivered to Congress the National Broadband Plan, which contains specific recommendations for reform. The National Broadband Plan recommends that all Americans should have access to affordable broadband service and proposes a comprehensive reform program to shift the high-cost universal service program from primarily supporting voice communications to supporting broadband platforms that enable many applications, including voice. As set forth in the National Broadband plan, a new Connect America Fund would provide universal service support in areas where there is no private sector business case to offer broadband platforms that are capable of delivering high-quality voice services because providers cannot earn enough revenue to cover the costs of deploying and operating broadband infrastructure and services.

27. The recommendations to transition the existing high-cost universal service mechanisms to a new broadband program further cause us to conclude that PRTC’s requested reform, limited only to non-rural insular areas, should not be undertaken at this time. While we believe that we have fully

addressed the insular support questions raised in the *NPRM*, we anticipate that our efforts to reform universal service support will be advanced further through future proceedings that follow from the National Broadband Plan. The Commission will release a notice of proposed rulemaking later this year that will address the high-cost universal service recommendations of the National Broadband Plan. We encourage parties with information about any unique cost characteristics of providing broadband service in insular areas, such as Puerto Rico, to participate in these forthcoming proceedings and submit any relevant data. Doing so will ensure that the Commission has the information necessary to determine the cost of deploying and operating a broadband infrastructure in insular areas.

28. In the interim, we find that it will further the public interest if PRTC remains subject to the non-rural support mechanism until comprehensive universal service reform is adopted, consistent with the recommendations contained in the National Broadband Plan. If PRTC were to receive additional support for voice service pursuant to its proposed non-rural insular mechanism, it likely would be more difficult to transition that support to focus on areas unserved or underserved by broadband.

III. Procedural Matters

A. Procedural Matters Related to the Order

1. Paperwork Reduction Analysis

29. This order does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new, modified, or proposed “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).

2. Final Regulatory Flexibility Act Certification

30. As we are adopting no rules in this order, no regulatory flexibility analysis is required.

3. Congressional Review Act

31. The Commission will not send a copy of this order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act because no rules are being adopted at this time.

B. Ex Parte Presentations

32. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. 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. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission’s rules.

List of Subjects in 47 CFR Part 54

Communications common carriers, High-Cost universal support, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–10852 Filed 5–6–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 10–698; MB Docket No. 09–230; RM–11586]

Television Broadcasting Services; Seaford, DE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants the allotment of channel 5 to Seaford, Delaware. The Commission waived the freeze on the filing of new DTV allotments to initiate this proceeding and to advance the policy, as set forth in Section 331(a) of the Communications Act of 1934, as amended, to allocate not less than one very high frequency commercial television channel to each State, if technically feasible.

DATES: This rule is effective June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s *Report and Order*, MB Docket No. 09–230, adopted April 23, 2010, and released April 28, 2010. The full text of this

document is available for public inspection and copying during normal business hours in the FCC’s Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://fjallfoss.fcc.gov/ecfs/>). This document may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company’s Web site, <http://www.bcipweb.com>. 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 or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any 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). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Delaware, is amended by adding channel 5 at Seaford.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. 2010–10865 Filed 5–6–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 252****Defense Federal Acquisition Regulation Supplement; Technical Amendment**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a technical amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to correct a reference to a paragraph in a FAR clause.

DATES: *Effective Date:* May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette R. Shelkin, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–8384; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text at 252.204–7007, Alternate A, Annual Representations and Certifications, by correcting the paragraph reference to FAR 52.204–8 from paragraph (c) to paragraph (d).

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore DoD is amending 48 CFR part 252 as follows:

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.204–7007 [Amended]**

■ 2. Amend section 252.204–7007 by revising the clause date to read “(MAY 2010)” and the paragraph designation in the FAR provision to read “(d)”.

[FR Doc. 2010–10757 Filed 5–6–10; 8:45 am]

BILLING CODE 5001–08–P