

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

I. Introduction

1. In this Order, in response to the decision of the United States Court of Appeals for the Tenth Circuit and the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we modify the high-cost universal service support mechanism for non-rural carriers and adopt measures to induce States to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers. We will continue to determine non-rural support by comparing statewide average costs to a national cost benchmark, but we establish a new cost benchmark at two standard deviations above the national average cost. Our action today ties the cost benchmark more closely to the data in the record, consistent with the court's directive, but does not substantially alter the level of non-rural support. Based on analysis of the relevant data, we explain why the modified non-rural mechanism will be sufficient to achieve the statutory principle of making rural and urban rates for non-rural carrier customers reasonably comparable.

2. In addition, we will implement a rate review, through an expanded annual certification process, to induce States to achieve reasonably comparable rates and to assess how successfully the non-rural high-cost support mechanism ensures reasonably comparable rural and urban rates. Consistent with the Joint Board recommendation, States will be required to certify that the basic service rates in their rural, high-cost areas served by non-rural carriers are reasonably comparable to a national urban rate benchmark or explain why they are not. This process will add a dynamic element to the non-rural high-cost support mechanism. By requiring States to review their rates in rural, high-cost areas served by non-rural carriers annually in comparison to a national urban rate benchmark, the Commission will be able to determine whether Federal and State universal service mechanisms are resulting in

reasonably comparable rural and urban rates as competition develops and erodes implicit support mechanisms.

II. Executive Summary

1. In this Order, we take the following actions to modify the non-rural high-cost support mechanism and to induce States to ensure reasonably comparable rural and urban rates in areas served by non-rural carriers:

- Consistent with the Joint Board's recommendations, we reaffirm that comparing statewide average costs to a nationwide cost benchmark reflects the appropriate Federal and State roles in determining Federal non-rural high-cost support. We find no evidence in the record either for radically altering the current non-rural mechanism or for establishing a substantially larger Federal subsidy to lower local telephone service rates, as some commenters advocate.

- In response to the Tenth Circuit's remand, we define the relevant statutory terms "sufficient" and "reasonably comparable" more precisely for purposes of the non-rural mechanism. As recommended by the Joint Board, we define "sufficient" in terms of the statutory principle in section 254(b)(3), as enough Federal support to enable States to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers. We also agree with the Joint Board that the principle of sufficiency means that non-rural support should be only as large as necessary to achieve the statutory goal. We define "reasonably comparable" in terms of a national urban rate benchmark recommended by the Joint Board. As part of the rate review process discussed below, the rate benchmark will be used in determining whether a State's local rates in rural, high-cost areas served by non-rural carriers are reasonably comparable to urban rates nationwide.

- We modify the non-rural mechanism by basing the cost benchmark, which is used to determine the amount of non-rural high-cost support, on two standard deviations above the national average cost per line. Modifying the cost benchmark ties it more directly to the relevant data, consistent with the court's directive, but does not alter the level of non-rural support in a major way. We agree with the Joint Board that the current level of non-rural support is supported by data from a General Accounting Office (GAO) Report indicating that rural and urban rates generally are reasonably comparable today.

- To induce States to achieve reasonably comparable rates, we adopt

with minor changes the rate review and expanded certification process recommended by the Joint Board. Each State will be required to review its rates in rural, high-cost areas served by non-rural carriers annually to assess their comparability to urban rates nationwide, and then to file a certification with the Commission stating whether its rural rates are reasonably comparable to urban rates nationwide or explaining why they are not.

- For purposes of the rate review process, we adopt the Joint Board's recommendation that we establish an annually-adjusted nationwide rate benchmark based on the most recent urban residential rates in the *Reference Book*, the Wireline Competition Bureau's annual rate survey. Specifically, we adopt a rate benchmark of two standard deviations above the average urban rate, which, based on the most recent *Reference Book* survey, is \$32.28 or 138 percent of the average urban rate. The rate benchmark will establish a "safe harbor," that is, a presumption that rates in rural, high-cost areas that are below the rate benchmark are reasonably comparable to urban rates nationwide. States with rural rates below the rate benchmark may certify that their rates are reasonably comparable without providing additional information, or rebut the presumption by demonstrating that factors other than basic service rates affect the comparability of their rates.

- For purposes of the rate review process, we also establish a basic service rate template for states to use in comparing rates in rural, high-cost areas served by non-rural carriers to the nationwide urban rate benchmark. In addition, we adopt, with slight modifications, the definition of "rural area" already contained in § 54.5 of the Commission's rules for purposes of the rate review process.

- We adopt the Joint Board's recommendation to permit States to request further Federal action, if necessary, based on a demonstration that the State's rates in rural, high-cost areas served by non-rural carriers are not reasonably comparable to urban rates nationwide and that the State has taken all reasonable steps to achieve reasonable comparability through State action and existing Federal support.

- In response to the Tenth Circuit's remand, we review and explain our comprehensive plan for supporting universal service in high-cost areas.