

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Remand Notice*, 67 FR 10846, March 11, 2002. The Commission sought written public comment on the proposals in the *Remand Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

5. This Order is necessary to respond to the remand by the United States Court of Appeals for the Tenth Circuit of the *Ninth Report and Order*, 64 FR 67416, December 12, 1999, and also to respond to the Joint Board's *Recommended Decision*. Along with fulfilling the court's remand requirements, the objectives of this Order are to implement a non-rural high-cost support mechanism that fulfills the relevant principles in section 254(b) of the Act. The rules we adopt in this Order reflect the Commission's careful and considered determination to implement the mechanism consistently with section 254(b) and with the Joint Board's recommendations.

6. In this Order, we take the following actions in response to the Tenth Circuit's remand and the Joint Board's recommendations 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 goals. 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, 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 the 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.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. The Commission received no comments specifically addressing the IRFA. Nonetheless, the Commission considered the potential impact of the adopted rules on small entities and, based on analysis of the relevant data, determined that the compliance burden for small entities directly impacted will not be significant.

8. We note that the Commission did receive some general small entity-related comments not specifically addressing the rules and policies presented in the IRFA. Some commenters suggested that eligible communications carriers (ETCs) should be treated differently than the incumbent non-rural carriers. CUSC stated that the certification process should apply only to the incumbent non-rural carriers. RICA stated that ETCs and incumbent non-rural carriers should receive support through separate mechanisms. In making the determination reflected in the Order, we have considered the impact of our actions on these small entities. We have determined that any impact on small entities will be negligible.

9. Other small-entity related comments concerned the rural high-cost support mechanism and were not relevant to this Order, which modifies the non-rural high-cost support mechanism only. The Federal non-rural high-cost support mechanism, revised and implemented by this Order,